

COMPLETED ACQUISITION BY FACEBOOK, INC. (NOW META PLATFORMS, INC) OF GIPHY, INC.

Variation Order made by the Competition and Markets Authority pursuant to section 84(3)(b) of the Enterprise Act 2002

Whereas:

1. On 15 May 2020, Facebook, Inc. through its subsidiary, Tabby Acquisition Sub, Inc., (together "**Facebook**") completed its acquisition of Giphy, Inc. (**Giphy**) (the **Merger**).
2. On 1 April 2021, the CMA in exercise of its duty under section 22(1) of the Act, referred the Merger, for further investigation and report (the **Reference**) by a group of CMA panel members (the **Phase 2 Inquiry Group**).
3. On 28 October 2021 Facebook changed its corporate name to Meta Platforms, Inc. (**Meta**) pursuant to an amended and restated certificate of incorporation filed with the Delaware Secretary of State on October 28, 2021.
4. On 30 November 2021 the CMA published a final report pursuant to section 38 of the Act (the **Phase 2 Final Report**) which concluded, among other matters, that the Merger had resulted has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) and, that Giphy be divested (the **Phase 2 Remedy**).
5. On 23 December 2021 Meta made an application to the Competition Appeal Tribunal (the **Tribunal**) pursuant to [section 120](#) of the Act for a review of the CMA's decision in the Final Report and sought an order quashing the CMA's decisions.
6. Meta did not offer undertakings implementing the Phase 2 Remedy. On 29 March 2022, the CMA made an order pursuant to [section 84](#) of the Act for the purpose of remedying, mitigating or preventing the SLC identified in the Phase 2 Final Report and any adverse effects which have resulted from, or may be expected to result from it (the **Phase 2 Final Order**).

7. On 14 June 2022 the Tribunal’s judgment was handed down on (the ‘**Judgment**’). In the Judgment, the Tribunal unanimously dismissed five of six of Meta’s grounds of challenge but partially upheld Meta’s application on one ground.
8. On 15 July 2022 the Tribunal issued an order (the ‘**Tribunal Order**’) remitting the Reference to the CMA for reconsideration in the light of the Judgment (the ‘**Remittal**’). On the same day a group consisting of the same CMA panel members who constituted the Phase 2 Inquiry Group was appointed (the ‘**Inquiry Group**’) to investigate the Reference on remittal (the ‘**Remittal Inquiry**’).
9. On 18 July 2022 in light of the Remittal, the CMA made an interim order pursuant to [section 81](#) of the Act to prevent pre-emptive action during the Remittal and revoked the Phase 2 Final Order (the ‘**Interim Order**’).
10. On 19 October 2022 the CMA issued a final report on the Remittal Inquiry (the ‘**Final Report**’) which concluded that:
 - (a) the Merger had resulted in the creation of a relevant merger situation;
 - (b) the creation of that situation has resulted, or may be expected to result, in a SLC in the following respects:
 - (i) in the supply of display advertising in the UK due to horizontal unilateral effects arising from a loss of dynamic competition; and
 - (ii) in the supply of social media services worldwide due to vertical effects resulting from input foreclosure;
 - (c) the CMA should take action to remedy the SLCs identified and any adverse effects likely to arise; and,
 - (d) that Giphy be divested (the ‘**Remedy**’).
11. On 31 October 2022 Meta advised that it did not intend to offer undertakings. On 6 January 2023 the CMA made a Final Order (the ‘**Final Order**’) pursuant to section 84 of the Act for the purpose of implementing the Remedy. On 9 January 2023, the CMA appointed a group, consisting of the same CMA panel members who constituted the Phase 2 Inquiry Group, to implement the Remedy (the ‘**Remedy Group**’).
12. On 22 May 2023 the CMA decided that the Final Order should be varied in order to address practical difficulties identified by Meta and Giphy in certain provisions of the Final Order, so as to ensure effective implementation of the Remedy.

13. NOW, for the purpose of varying the Final Order and in performance of its duty under [section 41](#) and in exercise of its powers under [section 84](#), the CMA makes the following order:

1. Title, Commencement, Application and Scope

- 1.1 The title of this Order is the 'Meta Platforms, Inc./ Giphy, Inc. Final Order Variation Order 2023'.
- 1.2 The purpose of this Order is to vary the Final Order.
- 1.3 The Order applies to Meta and its subsidiaries, including for the avoidance of doubt, Giphy, and any person who is an Affiliate of Meta, and to a Monitoring Trustee, Divestiture Trustee or a Hold Separate Manager appointed or reappointed under the Final Order.
- 1.4 The Order comes into force on Thursday 1 June 2023.
- 1.5 The Order may be varied or revoked by the CMA under [section 84](#) of the Act.
- 1.6 Section 94 of the Act places a duty on any person to whom the Final Order as amended by this Final Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action. Section 94 of the Act also provides that the CMA can seek to enforce the Final Order as amended by this Order by civil proceedings for an injunction or for any other appropriate relief or remedy.
- 1.7 Any words or expressions used in this Order, or the recitals of this Order shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act and the Final Report.
- 1.8 References to any statute or statutory provision shall be construed as references to that statute or statutory provisions as amended, re-enacted or modified, whether by statute or otherwise.

2. Interpretation

- 2.1 In this Order the definitions, interpretations and meanings ascribed to words and expressions in the Final Order apply to this Order except where words and expressions are expressly defined.

3. Variation to Final Order

- 3.1 The Final Order is varied as follows:
 1. Article 6.3(a) of the Final Order is substituted by the following Article:

(a) Monitoring to ensure that none of the Giphy Intellectual Property or New Giphy Intellectual Property will be accessible to Meta from the Completion Date and that all steps are taken to [X] the Giphy Source Code from Meta's 'version control server', except for that required in the ordinary course of business or ordinary course of business GIF-related Activities and in accordance with the terms of any agreement with the Approved Purchaser concluded in accordance with paragraph 1.4 of Schedule 6.

2. Paragraph 1.2 of Schedule 6 of the Final Order is substituted by the following paragraph:

In addition to the assurances in paragraph 1.1, demonstrate to the Approved Purchaser's satisfaction that all Giphy Intellectual Property, Giphy-Owned Intellectual Property, Software, Giphy Source Code, all Giphy Data and all Infrastructure extant at 4 May 2020 has remained the property of or registered to Giphy as the case may be and undertake to promptly transfer to the Approved Purchaser, any and all which has transferred to Meta since 4 May 2020 [X].

3. Paragraph [X] of Schedule 6 to the Final Order is substituted by the following paragraph:

[X]

4. Paragraph [X] of Schedule 6 is substituted by the following paragraph:

[X]

5. Paragraph [X] of Schedule 6 is substituted by the following paragraph:

[X]

6. Paragraph 3.1 of Schedule 6 to the Final Order is substituted by the following paragraph:

Following the transfer to Giphy in accordance with paragraph 1.3 and before the Completion Date [X], Meta shall, permanently delete from its Infrastructure all Giphy Intellectual Property, New Giphy Intellectual Property, [X] Giphy Data and any Giphy Products unless licensed to Meta in accordance with a service agreement with the Approved Purchaser, as specified in paragraph 1.4, or otherwise required in order to meet Meta's legal and regulatory obligations. [X].