

**DEROGATION LETTER  
IN RESPECT OF INTERIM ORDER ISSUED  
PURSUANT TO SECTION 81 OF ENTERPRISE ACT 2002**

**Consent under section 81 of the Enterprise Act (the 'Act') to certain actions for the purposes of the Interim Order made by the Competition and Markets Authority ('CMA') on 18 July 2022**

**Completed acquisition by Meta Platforms, Inc. (formerly Facebook, Inc.) of Giphy, Inc (the 'Merger')**

Dear Mr. Little,

We refer to your submissions dated 30 June 2022, 8 July 2022, 19 July 2022 and 26 July 2022 requesting that the CMA consents to derogations to the Interim Order of 18 July 2022 (the '**Interim Order**'). Unless otherwise stated, the terms defined in the Interim Order have the same meaning in this letter. Further, in this derogation:

**'GIF-related Activities'** means any activities relating to the procurement, supply or development of GIF-related Content whether by or to Facebook, Giphy or any third party, including (without limitation) any operational, relationship management, strategic, development, technical or back-office activities or services.

**'GIF-related Content'** means non-text content created or shared by users via a social media, social network or messaging platform (including GIFs, stickers (including GIF stickers), emojis, video clips, images and other micro-expression assets)

**'Reference'** means the reference of the Merger on 1 April 2022 for further investigation and report by a group of CMA panel members, in exercise of the CMA's duty under section 22(1) of the Act.

**'Remittal'** means the CMA's reconsideration of the Reference following the order of the Competition Appeal Tribunal dated 14 July 2022 in order to determine whether the Merger has resulted, or may be expected to result, in an SLC, and if so, what action should be taken to remedy, mitigate or prevent the SLC or any adverse effect resulting from the SLC.

Under the Interim Order, save for prior written consent by the CMA, Meta Platforms, Inc. (**'Meta'**) and its subsidiaries, and Giphy, Inc. (**'Giphy'**) are required to hold separate the Meta business from the business of Giphy and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Interim Order, based on the information received from you and in the particular circumstances of this case, the CMA consents to Meta and Giphy carrying out the following actions, in respect of the specific paragraphs:

### 1. Paragraph 6(l) of the Interim Order

Meta is seeking the CMA's consent to permit certain identified individuals within the Meta business to receive, review and use confidential, proprietary and commercially-sensitive information of Giphy, strictly for the purpose of taking preparatory steps for the divestiture of Giphy to a third party purchaser (the '**Divestiture**'). For the avoidance of doubt, [§<].

The CMA understands that Meta will use the information provided by Giphy in order to take the following internal preparatory steps to facilitate the Divestiture:

- a) set up a virtual data room including all necessary due diligence information (with support from Giphy as required);
- b) prepare marketing materials, including an information memorandum;
- c) prepare a Giphy employee transition and compensation plan; and
- d) prepare a bid package including a draft purchaser agreement and representation and warranty insurance policy, (together, the '**Preparatory Steps**').

On the basis of Meta's representations, the CMA consents to a derogation from paragraph 6(l) of the Interim Order to permit Giphy to share certain information with Meta for the purposes of taking the Preparatory Steps for the Divestiture, strictly on the basis that:

- (i) the information provided by Giphy to Meta will be limited to that which is strictly necessary and described in Annex 1, to allow Meta to take the Preparatory Steps (the '**Divestiture Information**'), and will not include any other information not described in Annex 1 (without the prior written consent of the CMA, which can be provided via email);
- (ii) the information provided by Giphy to Meta will only be provided to the individuals identified in Annex 2 for whom it is strictly necessary to see this information (the '**Designated Individuals**'). Should Meta wish to alter the list of Designated Individuals, Meta shall seek the prior, written consent of the CMA (which can be provided by email);
- (iii) the Designated Individuals do not hold a commercial, strategic or operational role within the Meta business in respect of its advertising products and/or social media services, and have no involvement in Meta's GIF-related Activities;

- (iv) the Designated Individuals shall enter into a confidentiality undertaking in a form approved by the CMA, preventing them from sharing the Divestiture Information with any unauthorised individuals within the Meta business, and from using the information for purposes other than assisting with the Preparatory Steps. Copies of all signed confidentiality undertakings will promptly be provided to the Monitoring Trustee;
- (v) IT firewalls and/or other ring-fencing measures will be put in place to prevent any unauthorised individuals within the Meta business from accessing the information shared with the Designated Individuals for the purpose of this derogation. At the CMA's request, such IT firewall and ring-fencing measures will be subject to an audit by the Monitoring Trustee to confirm their adequacy;
- (vi) Meta and Giphy shall keep a record of all information shared pursuant to this derogation, and the Monitoring Trustee will be provided with copies of all Divestiture Information that is shared with the Designated Individuals pursuant to this derogation;
- (vii) Meta will provide training to the Designated Individuals on their obligations under the Interim Order and this derogation. Such training will be subject to review and approval by the Monitoring Trustee before it is provided to the Designated Individuals;
- (viii) should Meta wish to take steps beyond the Preparatory Steps (for example, outreach to potential purchasers), Meta shall seek the prior written consent of the CMA, which can be provided via email. Should such consent be granted by the CMA, Meta will ensure that all communications with potential purchasers be managed in line with guidance provided by the CMA;
- (ix) upon the direction of the CMA, after the completion of the Divestiture, or in case the Divestiture is aborted, any records or copies (electronic or otherwise) of Divestiture Information that have passed to the Designated Individuals, wherever they may be held, will be returned to Giphy and/or any copies destroyed, except to the extent that record retention is required by law or regulation. Compliance by Meta with this obligation may, at the CMA's request, be subject to review by the Monitoring Trustee; and
- (x) the granting of this derogation will not result in any pre-emptive action which might prejudice the outcome of the Reference or impede the taking of any action which may be justified by the CMA's decisions on the Reference.

Yours sincerely,

**Stuart McIntosh**  
**Chair, Remittal Group**  
**27 July 2022**

## Annex 1 – Divestiture Information

**GIPHY acquisition data room** including (and subject to prior CMA consent, not limited to) materials held in the internal Meta virtual data room established for the purposes of carrying out the Merger and to which access is currently removed.

**Corporate documents** including (and subject to prior CMA consent, not limited to) Giphy's corporate governance documents, board and shareholder documents, licences, registrations, permits, real property documentation and company policies / procedures.

**Material contracts** including (and subject to prior CMA consent, not limited to) contracts with Giphy's partners, vendors, API access agreements, licences of any software, technology or other intellectual property, Giphy employee contracts and lease agreements for real property.

**Employee arrangements and benefit plans** including (and subject to prior CMA consent, not limited to) employment information for GIPHY staff (including all contract workers) on remuneration, benefits, performance ratings, job description / responsibilities, full employment contracts (part of material contracts), organisational charts detailing reporting hierarchy, and information on past remuneration and any recent terminations to assist with recruitment, and/or contracting advisory services to the extent this may be required by the CMA following the Remittal in connection with a Divestiture.

**Financial documents and taxes** including (and subject to prior CMA consent, not limited to) profit and loss accounts, including future financial forecasts to form part of the data room and information memorandum, details of Giphy's financial history, assets and liabilities to form part of the information memorandum, a summary of bank accounts (including bank account numbers and latest balances), a list of all insurance policies currently in force, including information regarding premiums, exclusions and other relevant terms, and tax returns since inception.

**Intellectual Property** including (and subject to prior CMA consent, not limited to) a list of trademarks/service marks, trademark/service mark registrations and/or pending applications and trade names (both domestic and foreign), and a list of any patents/copyrights, copyright registrations and/or pending applications.

**Documentation relating to litigation, assessments or claims** including (and subject to prior CMA consent, not limited to) documentation relating to any pending or threatened litigation, disputes or claims involving Giphy, its executive officers or its directors, and details of all government inspections, notices and enforcement actions.

**Data privacy and security** including (and subject to prior CMA consent, not limited to) Giphy's compliance documentation with applicable data security laws (e.g. CCPA, GDPR) e.g. policies, procedures, records of processing, DPIAs, forms of data processing agreements in place with customers and vendors, disclosure of any known data breaches, disclosure of any correspondence with privacy regulators and related to any material privacy complaints or disputes, or from any data protection authority.

## Annex 2 – Designated Individuals

[REDACTED]