

Competition and Markets Authority

Investigation into Meta's use of data – Case AT 51013

Decision to accept binding commitments offered by Meta on its use of data obtained through digital display advertising

3 November 2023

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1. Introduction and summary

- 1.1 In this decision (the **Decision**) made under section 31A of the Competition Act 1998 (the **Act**), the Competition and Markets Authority (the **CMA**) accepts the commitments offered by Meta Platforms, Inc.¹ and its group companies, including Meta Platforms Ireland Ltd and Facebook UK Ltd, (all of which companies are collectively referred to in this Decision as **Meta**) as set out in the Annex to this Decision (the **Commitments**).
- 1.2 Meta has offered the Commitments to address competition concerns identified by the CMA in its investigation under the Act into the conduct of Meta. The CMA opened its investigation in June 2021, following the CMA's market study into online platforms and digital advertising.²
- 1.3 Specifically, the CMA is concerned that, from at the latest January 2015, Meta has engaged in conduct which abused, and continues to abuse, its dominant position in the market for digital display advertising services³ (**DDA**) or, alternatively, in a narrower relevant product market, such as digital display advertising services on social media (**DDASM**). The CMA's concerns relate to:
- (a) the terms and conditions governing the provision of DDA and business tool services⁴ in the United Kingdom⁵ which Meta generally requires its DDA customers to sign up to, and which enable Meta to use data it receives or otherwise has by virtue of providing DDA and business tool services for purposes beyond the provision of DDA, including in the development and improvement of Meta products; and
 - (b) evidence that indicates Meta has actually used such data from competitors of Facebook Marketplace which, based on the CMA's investigation to date, the CMA suspects was used in the development, improvement and operation of Facebook Marketplace in ways which Meta would not otherwise have been able to do.
- 1.4 On 26 May 2023, the CMA gave notice, under paragraph 2 of Schedule 6A to the Act, that it intended to accept commitments offered by Meta and invited representations from persons likely to be affected.

¹ Meta Platforms, Inc. was known as Facebook, Inc. until 28 October 2021.

² [CMA Online Platforms and Digital Advertising Market Study final report](#), 1 July 2020.

³ This includes services in respect of DDA on and off Meta's platforms.

⁴ Meta Business Tools are services which include Pixel, SDKs, the Conversions API, and Offline Conversions. Further detail about Meta Business Tools is available at: <https://www.facebook.com/help/331509497253087>.

⁵ This includes advertising which is displayed to individual end-users based in the United Kingdom and DDA provided to advertising customers based in the United Kingdom.

1.5 For the reasons set out in this Decision, the CMA, having fully considered the evidence and consultation responses in the round, has concluded that the Commitments address the competition concerns it has identified, by Meta:

(a) using all reasonable endeavours to ensure that certain advertising data is not used to develop or improve a Meta product in competition with specific products or services offered by advertisers, and publicly committing to doing so; and

(b) setting technical controls to prevent competitor advertising data from being used in data assets⁶ managed by Facebook Marketplace employees,

as more fully detailed below in chapters 5 and 6.

1.6 In summary, the main elements of the Commitments are:

(a) **Facebook Marketplace technical solution:** Meta will implement technical systems to prevent the use of certain competitor advertising data in the operation of Facebook Marketplace and the development and/or improvement of the product design, layout and/or functionality of Facebook Marketplace. This technical solution will apply for advertisers who have voluntarily opted out of their advertising data being used, or who have been automatically opted out by Meta (and who have not objected to this).⁷

(b) **Commitments to address the CMA's concerns regarding unfair trading conditions in Meta's terms and conditions:** Given the potential for further use of advertiser customers' data for purposes beyond the provision of DDA by virtue of Meta's terms and conditions, Meta will use all reasonable endeavours to ensure that employees working on product development refrain from using data it receives or otherwise has by virtue of providing DDA and business tool services to develop or improve Meta's products in competition with specific products or services offered by advertisers.⁸ Meta will include a clear public statement in its Code of Conduct, which is a published statement of Meta's expectations of how Meta (and all its employees) act and make decisions, that such data derived from advertisers should not be used in the development and improvement of its products in competition with those advertisers.⁹

⁶ Data assets are individual items, such as code modules, or data objects including features to machine learning models, that are involved in acquiring, processing, storing and/or accessing data.

⁷ See paragraphs 5.3 to 5.5 below, and clauses 2.1, 3.1(a) and 3.2 of the Commitments.

⁸ See paragraph 5.7 below, and clause 4.1 of the Commitments.

⁹ See Appendix 3 to and clauses 1.1(v) and 4.1 of the Commitments.

- (c) In respect of both elements set out above, Meta will undertake compliance measures for relevant employees, including mandatory annual training and the signature of personal acknowledgments and agreements to the restrictions on the use of data.¹⁰
- 1.7 As with any acceptance of commitments by the CMA, this does not involve any decision by the CMA on whether or not Meta has in fact infringed the prohibition in section 18(1) of the Act (the **Chapter II prohibition**).¹¹ The offer of the Commitments by Meta does not constitute an admission of any infringement by Meta.
- 1.8 As a result of accepting the Commitments, the CMA has closed its investigation.¹² Acceptance of the Commitments does not prevent the CMA from taking any action in relation to competition concerns which are not addressed by the Commitments.¹³ Moreover, acceptance of the Commitments does not prevent the CMA from continuing its investigation, making an infringement decision, or giving a direction in circumstances where the CMA has reasonable grounds for:
- (a) believing that there has been a material change of circumstances since the Commitments were accepted;
 - (b) suspecting that a person has failed to adhere to one or more of the terms of the Commitments; or
 - (c) suspecting that information which led the CMA to accept the Commitments was incomplete, false or misleading in a material particular.¹⁴
- 1.9 If Meta should fail, without reasonable excuse, to adhere to the Commitments, the CMA may also apply to the court for an order requiring, among other matters, the default to be made good.¹⁵
- 1.10 The CMA expects to assume responsibilities to regulate certain firms' conduct in relation to specific digital activities under the proposed new regime for digital markets set out in the Digital Markets, Competition and Consumers Bill, introduced before Parliament in April 2023. Under the proposed new regime, the CMA may introduce requirements governing a digital activity carried out

¹⁰ See paragraphs 5.12 below, and clause 4.1(b) of the Commitments.

¹¹ Section 18(1) of the Act prohibits any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market if it may affect trade within the United Kingdom, or any part(s) of the United Kingdom, unless any of the excluded cases pursuant to section 19 of the Act apply. For these purposes, a dominant position means a dominant position within the United Kingdom or any part(s) of the United Kingdom.

¹² Section 31B(2) of the Act.

¹³ Section 31B(3) of the Act.

¹⁴ Section 31B(4) of the Act.

¹⁵ Section 31E of the Act.

by an undertaking if the undertaking is designated as having Strategic Market Status in relation to that digital activity. Any decision to designate firms with Strategic Market Status in relation to any digital activity (or activities) will be taken based on a detailed assessment applying the test set out in the final legislation. If the CMA decides to designate Meta as having Strategic Market Status and imposes requirements under the new regime, those requirements may apply alongside the Commitments, or – where they overlap and render the Commitments unnecessary in whole or part – may result in the Commitments being varied or terminated in whole or in part.

1.11 The remainder of this Decision is structured as follows:

- (a) Chapter 2 provides information on the CMA’s investigation, the commitments regime, relevant information on the Commitments and relevant market context;
- (b) Chapter 3 sets out the relevant market(s), key aspects of competition in the relevant market(s), Meta’s position in the relevant market(s) and the terms and conditions on which Meta provides DDA and business tool services;
- (c) Chapter 4 sets out the CMA’s competition concerns regarding Meta’s conduct;
- (d) Chapter 5 summarises the Commitments;
- (e) Chapter 6 sets out the CMA’s assessment of the Commitments and of the responses to the consultation on the Commitments;
- (f) Chapter 7 sets out the CMA’s decision to accept the Commitments.

1.12 Unless otherwise indicated, capitalised defined terms have the meaning assigned to them in the Commitments annexed to this Decision.

2. The CMA's investigation

The investigation

- 2.1 Following the CMA's market study into online platforms and digital advertising, the CMA opened a formal investigation into Meta's conduct under section 25 of the Act on 3 June 2021.¹⁶ The CMA and the Office of Communications (**Ofcom**) have concurrent jurisdiction to exercise functions under Part 1 of the Act in respect of this case. It was agreed (pursuant to regulation 4 of the Competition Act 1998 (Concurrency) Regulations 2014)¹⁷ that the CMA would exercise those functions in relation to this investigation.¹⁸
- 2.2 Meta provides various online products and services to UK users, as more particularly described below. Those online products and services include popular platforms such as Facebook (**Facebook Blue**), Instagram, and WhatsApp. Facebook Blue offers individual end-users multiple ways to engage via a variety of features available on Facebook Blue such as Feed, Reels, Stories, Groups, Facebook Marketplace, Facebook Dating and more.¹⁹
- 2.3 Meta provides DDA, either on its own social media platforms (DDA is currently provided on Facebook Blue, including Messenger and features available on Facebook Blue, and on Instagram) or on third-parties' platforms via Meta Audience Network (as set out in more detail in paragraphs 2.18 and 2.19 below); and business tool services which include application programming interface services. DDA and business tool services are together referred to as the **Services**.
- 2.4 The CMA's investigation under the Act into the conduct of Meta focused on the following concerns:
- (i) the terms and conditions governing the provision of DDA in the United Kingdom which enable Meta to use data which it receives or

¹⁶ By means of case initiation letter and a notice to Meta seeking information under s.26 of the Act.

¹⁷ Section 54 of the Act combined with sector-specific legislation provides that in a number of industries, the application and enforcement of Part 1 of the Act may be carried out by certain sectoral regulators concurrently with the CMA. Ofcom's concurrent competition powers to enforce Part 1 of the Act are provided for in Chapter 1 of Part 5 of the Communications Act 2003. [The Competition Act 1998 \(Concurrency\) Regulations 2014](#) make provision for the CMA and sectoral regulators with concurrent competition powers to co-ordinate the performance of those functions.

¹⁸ This was agreed in accordance with the Concurrency Regulations, the Guidance on concurrent application of competition law to regulated industries ([CMA10](#)) and the procedure set out in paragraphs 32-37 of the memorandum of understanding between the CMA and Ofcom on concurrent competition powers, dated 2 February 2016 ([CMA_Ofcom_MOU](#)).

¹⁹ Meta Platforms, Inc. Annual Report 2022 ([10K](#)), page 7 (8 of the PDF).

otherwise has by virtue of providing DDA, for purposes beyond the provision of those services; and

- (ii) Meta's use of such data from competitors of Facebook Marketplace in the development, improvement and operation of Facebook Marketplace, which is a feature in the Facebook app and on desktops and tablets that allows users to post or browse classified ads items for sale.²⁰

2.5 Having regard to the information gathered during this investigation, the CMA has reasonable grounds for suspecting that Meta has infringed and is infringing the Chapter II prohibition.

2.6 Specifically, the CMA has reasonable grounds for suspecting that, from at the latest January 2015:

- (a) Meta has held a dominant position within the UK in the market for DDA or, alternatively, in DDASM; and

- (b) Meta has engaged in conduct which abused, and continues to abuse, its dominant position by:

- (i) Imposing unfair trading conditions on Meta's DDA customers (**Advertising Customers**) in respect of the Services, including Advertising Customers which compete, either at present or in the future, with Meta in markets other than DDA, DDASM or social media (**Adjacent Markets**). These unfair trading conditions are in the terms and conditions that govern Meta's collection and use of data it has by virtue of providing the Services. This data comprises:

- (A) data shared by, or otherwise obtained from, Advertising Customers when using the Services, such as event data (defined in certain of Meta's terms and conditions, and as set out in footnote 21 below, **Event Data**);²¹

²⁰ The CMA's initial investigation also focused on data use in Facebook Dating and Meta's use of data obtained from its single sign-on, Facebook Login. However, after conducting limited evidence-gathering in respect of Facebook Login data not provided for the purposes of advertising services and Facebook Dating, further evidence gathering was paused on administrative priority grounds.

²¹ Meta Business Tools Terms, which govern the use of data obtained through Advertising Customers' use of Meta Business Tools, define 'Event Data' as follows: '*Event Data is other information that you share about people and the actions that they take on your websites and apps or in your shops, such as visits to your sites, installations of your apps, and purchases of your products. While Event Data does include information collected and transferred when people access a website or app with Facebook Login or Social Plugins (e.g. the Like button), it does not include information created when an individual interacts with our platform via Facebook Login, Social Plugins, or otherwise (e.g. by logging in, or liking or sharing an article or song). Information created when*

(B) data relating to or derived from Advertising Customers' use of the Services, including interactions of Meta's individual end-users (**Users**) with its social media services displaying advertisements; and

(C) data otherwise pertaining to Advertising Customers which is generated in the course of providing the Services,

(all such data together being **Advertising Data**).

The terms and conditions enable Meta, with few limitations or restrictions, to use Advertising Data in any features, apps, technologies, software or services offered by Meta, including in the development and improvement of such existing and new Meta products or services in Adjacent Markets.²² These terms go beyond what is necessary to provide DDA; and/or

(ii) Using Advertising Data in a way that is capable of affording Meta a competitive advantage in respect of Facebook Marketplace (being a product in an Adjacent Market) which would not have arisen from competition on the merits; and

(c) This conduct may affect trade within the UK.

2.7 During its investigation, the CMA undertook a number of steps to gather evidence from Meta and from third parties. This included sending formal notices requiring the production of documents and the provision of information under section 26 of the Act as well as obtaining further information through meetings and other correspondence.

The commitments offered and consultation process

2.8 Section 31A of the Act provides that, for the purposes of addressing the competition concerns it has identified, the CMA may accept from such person (or persons) as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate. The CMA's *Guidance on the CMA's investigation procedures in Competition Act 1998*

an individual interacts with our platform via Facebook Login, Social Plugins, or otherwise is governed by the Platform Terms.' Meta Business Tools Terms (which can be accessed via the Facebook Help Centre (<https://www.facebook.com/help>) last accessed 17/10/2023).

²² The CMA's investigation in the present case has focused on the use of data outside Meta's current core social media platforms on which it provides DDA, including on features available on these platforms such as Facebook Marketplace.

cases: *CMA8* (the **Procedural Guidance**)²³ describes the circumstances in which it may be appropriate to accept binding commitments and the process by which parties to an investigation may offer commitments to the CMA.²⁴

- 2.9 Following correspondence with the CMA, Meta indicated an intention to offer commitments under section 31A of the Act to address the CMA's competition concerns. Accordingly, and in line with paragraph 10.22 of the Procedural Guidance, the CMA proceeded to discuss with Meta the scope of any commitments which the CMA considered would be appropriate to address the competition concerns it had identified.
- 2.10 On 19 May 2023, Meta submitted a formal offer of commitments under section 31A of the Act to address the CMA's competition concerns. The offering of commitments does not constitute an admission by Meta of an infringement of the Chapter II prohibition.
- 2.11 On 26 May 2023, the CMA issued, under paragraph 2 of Schedule 6A to the Act, a notice of intention to accept binding commitments (the **Notice**), setting out the commitments offered and the reasons the CMA proposed to accept them, and inviting interested third parties to make representations by 26 June 2023 (the **Consultation**).
- 2.12 The CMA received ten individual written replies from third parties in response to the Consultation. The Consultation responses and the CMA's consideration of them are summarised in chapter 6.
- 2.13 On 2 October 2023, Meta offered revised commitments which clarified the notion of 'explicit consent' at clause 5.1 (further details are set out at paragraph 6.98(e) below). The Commitments are described in chapter 5 of this Decision and are set out in full in the Annex to this Decision.
- 2.14 The CMA has given full consideration to all the relevant material in its possession, including the representations made to the Consultation, and, having had regard to paragraphs 10.17 to 10.20 of the Procedural Guidance, has concluded that, for the reasons set out in chapter 6 of this Decision, the Commitments address its competition concerns in this case and it is appropriate for the CMA to exercise its discretion to close its investigation by way of a formal decision to accept commitments. The CMA has therefore decided to accept the Commitments. Accordingly, the CMA has closed its

²³ Pursuant to section 31D(8) of the Act, the CMA must have regard to the Procedural Guidance when exercising its discretion to accept commitments under section 31A of the Act.

²⁴ Procedural Guidance, paragraphs 10.15-10.25.

investigation with no decision made on whether or not the Act has been infringed.

The relevant party and products and services

2.15 The relevant party is Meta, a multi-entity undertaking comprising Meta Platforms, Inc. and its group companies, including Meta Platforms Ireland Ltd and Facebook UK Ltd.

(a) Meta Platforms, Inc. is a listed company²⁵ incorporated under the laws of the State of Delaware, United States, and headquartered in California. Meta Platforms, Inc. is the ultimate parent company of the Meta group of companies and operates on a global basis, including in the UK. With effect from 25 April 2023, Meta Platforms, Inc. took over the role of provider of Meta Products to UK Users (as set out in the Terms of Service).²⁶ Meta Platforms, Inc. also became the data controller in respect of personal data of UK Users of Meta Products.²⁷ Meta Platforms, Inc. also processes personal data of UK Users that Advertising Customers in the UK share with it, for example via Meta Business Tools such as Pixel.

(b) Meta Platforms Ireland Ltd is a subsidiary of Meta Platforms, Inc. and is incorporated in the Republic of Ireland. Within the UK, Meta Platforms Ireland Ltd provides certain Services to UK-based Advertising Customers.

(c) Facebook UK Ltd is a subsidiary of Meta Platforms, Inc. and is incorporated in the UK.²⁸ Facebook UK Ltd is also a provider of certain Services to UK-based Advertising Customers.²⁹ Facebook UK Ltd provides support services (such as marketing, sales) to Meta Platforms

²⁵ On the Nasdaq Stock Exchange Market LLC ([Meta Platforms, Inc. Class A Common Stock](#), last accessed 17/10/2023).

²⁶ [Meta's Terms of Services](#) state: "Meta Platforms, Inc. is now providing Facebook in the UK. We've updated our Terms of Service and Privacy Policy to reflect this change on 25 April 2023. [...] These Terms of Service (the "Terms") govern your use of Facebook, Messenger and the other products, features, apps, services, technologies and software that we offer (the Meta Products or Products), except where we expressly state that separate terms (and not these) apply. These Products are provided to you by Meta Platforms, Inc.". As set out in the link within the Terms of Service, "Meta Products include: "Facebook (including the Facebook mobile app and in-app browser); Messenger; Instagram (including apps such as Threads and Boomerang); Meta Portal-branded devices; Meta Platforms Technologies Products, such as Meta Horizon Worlds or Meta Quest (when using a Facebook or Meta account); Shops; Meta Spark; Meta Audience Network; NPE Team apps; Meta Business Tools; Any other features, apps, technologies, software or services offered by Meta Platforms, Inc. or Meta Platforms Ireland Limited under our Privacy Policy." (see [What are the Meta Products? | Facebook Help Centre](#)) (last accessed 17/10/2023).

²⁷ See [Meta Privacy Policy – How Meta collects and uses user data | Privacy Centre | Manage your privacy on Facebook, Instagram and Messenger | Facebook Privacy](#) (last accessed 17/10/2023).

²⁸ [Companies House](#) (last accessed 17/10/2023).

²⁹ The DDA which Facebook UK Ltd resells to UK-based Advertising Customers includes self-serve advertising. See [Meta's Self-serve Ad Terms](#) (last accessed on 17/10/2023) read together with [Meta's Country-specific Ads Terms](#), Section 21 on the UK (last accessed on 17/10/2023).

Ireland Ltd and Meta Platforms, Inc. including in respect of UK Users and processes certain data on behalf of both.

(d) The global infrastructure necessary to provide Meta's services may be owned, operated or controlled by Meta Platforms, Inc., Meta Platforms Ireland Ltd or its affiliates.³⁰

2.16 Meta offers various online products and services to UK Users, which are generally provided for no direct monetary cost. As set out above, those online products and services include popular platforms such as Facebook Blue, Instagram, Messenger and WhatsApp, which broadly enable Users to connect and communicate with other Users, including family and friends, interest groups and businesses. Facebook Blue offers Users multiple ways to engage via a variety of features available on Facebook Blue such as Feed, Reels, Stories, Facebook Marketplace, Facebook Dating and more.³¹

2.17 Facebook Marketplace is an online classified advertising service (**OCA**) that was launched in the UK in October 2016.³² With no upfront monetary charges, it allows sellers to place adverts for items for sale and buyers to contact sellers. It is accessed through the Facebook Blue app or website.³³ Users of Facebook Marketplace can communicate with each other through Messenger.

2.18 In addition, Meta also provides DDA, a form of digital advertising where advertisers pay online companies such as social media platforms to display advertising on the latter's web pages or mobile apps. Meta offers DDA in various forms, including video and non-video advertising. With respect to on-Meta advertising, this is currently displayed to Users on social media platforms only, namely Facebook Blue (including Messenger) and Instagram, including on features available on these such as Facebook Marketplace, Reels and Stories.³⁴

2.19 Meta has the ability to display advertising to Users who are most likely to find the advertising relevant to them,³⁵ by using data to target specific groups of

³⁰ Meta's Terms of Service state: "Ensuring access to our services: To operate our global services and enable you to connect with people around the world, we need to transfer, store and distribute content and data to our data centres, partners, service providers, vendors and systems around the world, including outside your country of residence. The use of this global infrastructure is necessary and essential to provide our services. This infrastructure may be owned, operated or controlled by Meta Platforms, Inc., Meta Platforms Ireland Limited or its affiliates." See <https://m.facebook.com/legal/terms> (last accessed 17/10/2023).

³¹ Meta Platforms, Inc. Annual Report 2022 (10-K), page 7 (8 of the PDF).

³² <https://about.fb.com/news/2016/10/introducing-marketplace-buy-and-sell-with-your-local-community/> (last accessed 17/10/2023).

³³ <https://www.facebook.com/marketplace/learn-more/> (last accessed 17/10/2023).

³⁴ All of these products can be accessed via desktop computers or smartphone apps. Meta does not currently offer DDA on its WhatsApp platform.

³⁵ See Meta's description of its ad targeting services on its website: <https://en-gb.facebook.com/business/ads/ad-targeting> (last accessed 17/10/2023).

Users or broader audiences. Its advertising offering is therefore different to other means of advertising that do not target specific audiences and is distinguishable from traditional advertising media. Meta also offers additional tools to businesses, including to enhance the targeting and delivery of their advertising, e.g. tools which target groups of Users who have previously engaged with the business (including Website Custom Audiences,³⁶ Mobile App Custom Audiences³⁷ and Offline Custom Audiences³⁸), Users forming a particular audience based on specific criteria (Core Audience) or Users with similar interests to existing customers (Lookalike Audience).

2.20 Advertising revenue accounted for approximately 97% of Meta's worldwide revenue in 2022.³⁹

³⁶ Website Custom Audiences is a targeting option based on people who visit or take specific actions on an Advertiser's website. See <https://developers.facebook.com/docs/marketing-api/audiences/guides/website-custom-audiences/> (last accessed 17/10/2023).

³⁷ Mobile App Custom Audiences is a targeting option based on people's action in an Advertiser's app. See <https://developers.facebook.com/docs/marketing-api/audiences/guides/mobile-app-custom-audiences/> (last accessed 17/10/2023).

³⁸ Offline Custom Audiences is a targeting option based on people who visit an Advertiser's store, made calls to its customer service, or took action offline. See <https://developers.facebook.com/docs/marketing-api/audiences/guides/offline-custom-audiences/> (last accessed 17/10/2023).

³⁹ Meta Platforms, Inc. Annual Report 2022 (10-K), page 70 (71 of the PDF).

3. Background

- 3.1 Given that the CMA has not conducted a full, in-depth investigation following the offer of commitments, this chapter sets out the CMA's preliminary view on:
- (a) key aspects of competition in the markets relevant to the CMA's investigation;
 - (b) the relevant market(s);
 - (c) Meta's position in the relevant market for DDA and narrower markets within DDA in the UK; and
 - (d) the terms and conditions on which Meta provides the Services.
- 3.2 The purpose of this chapter is to provide context to chapter 4 of this Decision, which describes the CMA's competition concerns.

Key aspects of competition in the markets relevant to the CMA's investigation

Meta's services as two-sided platforms

- 3.3 As set out above, Meta owns and operates Facebook Blue, Instagram and Messenger, among other services. These products are two-sided platforms; they serve users, including users of social media, on one side, and they sell DDA on social media platforms to advertisers on the other side. Users are attracted by the ability to connect and interact with each other and to access social media content. Advertisers are attracted by the access to a large audience and/or the ability to target specific user audiences.
- 3.4 The social media and digital display advertising sides are intrinsically linked and exhibit strong network effects. On the social media side, there are direct network effects, where, as the number of users increases, the platform becomes more attractive for other users. It also exhibits indirect network effects, in that, as the number of users increases, the other side of the platform becomes more attractive for advertisers. Therefore, Meta's position in digital display advertising is largely driven by its position as owner of popular social media platforms.⁴⁰

⁴⁰ In 2020, the CMA found that Meta's social media platforms made up by far the highest share of user time spent on social media in the UK (73% in February 2020), and that other platforms tend to be accessed in addition to the Meta platforms, rather than as an alternative to them. See [CMA Online Platforms and Digital Advertising Market Study final report](#), 1 July 2020, paragraph 3.171, and Figure 3.9, and paragraph 3.173, pages 121 – 123.

Online classified advertising in the UK

- 3.5 OCA platforms are marketplaces that seek to connect buyers and sellers, primarily in their local communities. Sellers include both individuals and local (likely small) businesses. OCA platforms fall within a broader category of ecommerce platforms. There are differences between types of ecommerce platforms in how they generate revenues, in the services they offer for buyers and sellers and consequently in their target users. One important distinction appears to be that OCA platforms typically do not offer services to facilitate transactions, such as payment processing, whereas other ecommerce platforms (often referred to as marketplaces) also offer further services, such as payment gateway and service fulfilment.
- 3.6 Facebook Marketplace competes with providers such as eBay, Etsy and Gumtree. Since launch, it has grown very strongly in the UK, both in terms of the number of monthly active Users and on a revenue basis. In 2020, Facebook Marketplace had [20-30] million monthly active Users in the UK,⁴¹ and a UK advertising revenue of £[50-70] million.⁴²

The relevant market(s)

- 3.7 On the basis of its investigation, the CMA's preliminary view is that the relevant market for the purposes of this investigation is no broader than the provision of DDA in the UK. The CMA has seen some evidence suggesting that the relevant product market may be narrower than DDA. However, the CMA does not consider it necessary to reach a definitive conclusion on the exact relevant product market for present purposes, as the CMA suspects that Meta holds a dominant position in the market for DDA in the UK or, alternatively in a narrower relevant product market, such as DDASM in the UK, as described in paragraphs 3.14 to 3.19 below.
- 3.8 As set out above, DDA are services where advertisers pay to place advertisements on websites or apps in a variety of formats, including banner-style advertisements, 'native' advertisements,⁴³ sponsored content, and video advertisements.
- 3.9 In line with the CMA's previous investigations, the CMA's preliminary view is that digital advertising markets (including DDA) are distinct from traditional

⁴¹ [redacted].

⁴² [redacted].

⁴³ 'Native' advertising is a form of paid advertising in which the advertising matches the form and function of the media format upon which it appears in order to fit on it seamlessly.

advertising media markets (i.e. non-digital and offline advertising) due to the high cost of traditional advertising and its inability to target specific audiences.

- 3.10 There are different types of digital advertising, including search advertising and display advertising. Search advertising is primarily intent-based advertising designed to provide immediate answers to consumers who have already shown interest in buying the product or service but have not yet bought it, whereas DDA is typically used for raising brand awareness and reaching new audiences that are not yet aware of the product or service. The CMA considers that there is limited demand-side substitutability between these two types of digital advertising as each has a distinct purpose. In line with the CMA's previous investigations, the CMA's preliminary view is that DDA are in a distinct product market to that of search advertising.
- 3.11 DDA encompass different types of display advertising reflecting, for example, different advertising formats (e.g. video vs static/non-video advertising) or different forms of hosting, which include owned-and-operated display (typically social media platforms which sell advertising inventory themselves) and open display (which uses a chain of intermediaries to sell advertising inventory). Owned-and-operated services may also be further narrowed by type of platform, for example DDASM.⁴⁴
- 3.12 The CMA has received some evidence that the relevant product market may be as narrow as DDASM. With respect to on-Meta advertising, Meta currently displays advertising on social media platforms only. However, as noted above, the CMA does not consider it necessary to reach a definitive conclusion on relevant product market definition for present purposes, noting that it has reasonable grounds to suspect that Meta has a dominant market position whether the relevant product market is DDA or narrower, such as DDASM, as set out in paragraphs 3.14 to 3.19 below.
- 3.13 In line with the CMA's previous investigations, the CMA's preliminary view is that the appropriate scope of the geographic market for DDA (or a narrower relevant product market such as DDASM) is UK-wide due to advertisers' targeting customers of a particular country or region.⁴⁵

⁴⁴ There may also be segments for specific uses of display advertising such as 're-targeting' services, which is advertising to customers who have previously visited the advertiser's website.

⁴⁵ See [Facebook/Giphy, final report on the case remitted to the CMA](#), page 135, paragraphs 5.191–5.192.

Meta's position in the market for DDA and narrower markets within DDA in the UK

- 3.14 Meta is by far the largest DDA supplier in the UK. In the calendar year 2020, it earned £[3-4] billion from UK advertising on Facebook Blue and £[1-2] billion from UK advertising on Instagram,⁴⁶ and a total of £[4-5] billion in 2021.⁴⁷
- 3.15 Meta has held a persistently high market share in DDA in the UK. Based on DDA revenues, Meta's market share in DDA in the UK in recent years was [40-50]% in 2020, [50-60]% in 2021 and [40-50]% in the first half of 2022.⁴⁸
- 3.16 During this period, i.e. between 2020 and the first half of 2022, Meta's market share in terms of all DDA revenue in the UK was also much larger than that of the next largest DDA supplier in the UK, which remained stable at around [5-10]%.⁴⁹ Furthermore, notwithstanding the recent growth of certain other social media platforms, they are still significantly smaller in terms of DDA revenues than Meta's platforms and do not have the broad user reach and capabilities of Meta.
- 3.17 This is consistent with Meta being viewed as an important advertising channel by advertisers contacted by the CMA, because of its significant reach and capabilities, including its extensive and granular source of data on its Users.
- 3.18 Based on the above, the CMA suspects that Meta is dominant in the market for DDA in the UK.
- 3.19 The CMA also suspects that Meta would be dominant in a narrower relevant product market, such as DDASM, in the UK, and notes in this regard that in respect of the narrower channel of owned-and-operated display (which in turn includes DDASM), Meta's market shares are significantly higher than in DDA, reaching [70-80]% in 2020 and [60-70]% in the first half of 2022.⁵⁰

The terms and conditions on which Meta provides the Services

- 3.20 Generally, businesses wishing to use the Services are required to sign up to a suite of standard terms and conditions. These include Meta's Terms of

⁴⁶ [§<].

⁴⁷ [§<].

⁴⁸ See [Facebook/Giphy, final report on the case remitted to the CMA](#), pages 136-137, Tables 5 and 5A. In 2020, 2021 and H1 2022, Facebook (Blue) had [30-40]% market share in the market for DDA in the UK and Instagram had a market share of [10-20]%.

⁴⁹ See [Facebook/Giphy, final report on the case remitted to the CMA](#), pages 136-137, Tables 5 and 5A. In 2020, 2021, and H1 2022 YouTube had market share in the market for DDA in the UK of [5-10%].

⁵⁰ See [Facebook/Giphy, final report on the case remitted to the CMA](#), page 136, paragraph 5.197 and page 137, paragraph 5.199.

Service, which refer to Meta's Privacy Policy, and Commercial Terms, as well as other terms and policies relevant to providing DDA such as the Product Catalogue Terms, Platform Terms, Audience Network Terms, Customer List Custom Audiences Terms, Business Tools Terms.

3.21 With some limited exceptions, the terms and conditions applicable to the Services, together with Meta's Privacy Policy which applies broadly across Meta's customers and Users, give Meta wide rights and permissions to use Advertising Data, including to develop and improve its existing and new products and services. Such products and services are broadly described and extend beyond the provision of DDA.

3.22 For example, Meta's current Business Tools Terms state that Event Data may be used by Meta:

'for research and development purposes and to maintain the integrity of and to improve the Meta Products'.⁵¹

3.23 Another example can be seen in Meta's current Commercial Terms, which apply to all business users and stipulate that:

'... We retain commercial content as necessary to provide our services to users, for internal record keeping and for product improvement and safety purposes'.⁵²

3.24 Meta's current Privacy Policy, which is referred to in its Terms of Service, sets out the broad ways information, including Advertising Data, may be used, including:

'We use information we collect to: See if a product is working correctly; Troubleshoot and fix it when it's not; Try out new products and features to see if they work; Get feedback on our ideas for products or features;

⁵¹ [Meta Business Tools Terms](#), as effective at 25 April 2023, clause 2.a.v.3. Note: This wording reflects the current version of Meta Business Tools Terms but broadly equivalent wording was contained in previous iterations. The same applies to all other terms quoted in this document.

Meta Products are defined to include: 'Facebook (including the Facebook mobile app and in-app browser); Messenger; Instagram (including apps such as Threads and Boomerang); Meta Portal-branded devices; Meta Platforms Technologies Products, such as Meta Horizon Worlds or Meta Quest (when using a Facebook or Meta account); Shops; Meta Spark; Meta Audience Network; NPE Team apps; Meta Business Tools; and Any other features, apps, technologies, software or services offered by Meta platforms, Inc. or Meta Platforms Ireland Ltd under our Privacy Policy' on [What are the Meta Products? | Facebook Help Centre](#). ([Meta Business Tools Terms](#) and [What are the Meta Products? | Facebook Help Centre](#), last accessed 17/10/2023).

⁵² [Meta Commercial Terms](#), as effective at 4 January 2022, clause 7.h. Commercial content is defined at clause 7.g.as 'your advertising content and Facebook Page posts'. ([Meta Commercial Terms](#), last accessed 17/10/2023).

*Conduct surveys and other research about what you like about our Products and brands and what we can do better’.*⁵³

⁵³ Meta [Privacy Policy](#), as effective at 15 June 2023. ‘Products’ is defined to include: ‘Facebook, Messenger, Instagram (including apps such as Boomerang and Threads), Facebook Portal products, Meta Platforms Technologies Products, such as Meta Horizon Worlds or Meta Quest (when using a Facebook or Meta account), Shops, Marketplace, Spark AR, Meta Business Tools, Meta Audience Network, Facebook View, Meta Pay, Meta checkout experiences.’ (Meta [Privacy Policy](#), last accessed 17/10/2023).

4. The CMA's competition concerns

- 4.1 In this chapter, the CMA sets out its competition concerns regarding Meta's conduct.

Unfair trading conditions

- 4.2 Based on its investigation to date, and for the reasons set out in paragraphs 3.20 to 3.24, the CMA is concerned that, given Meta's suspected dominant position described in paragraphs 3.14 to 3.19 above:
- (a) generally, (i) Meta requires Advertising Customers wishing to use the Services, to agree to Meta's standard terms and conditions applicable to the provision of the Services, and (ii) such Advertising Customers have little choice in practice but to agree to them;
 - (b) those standard terms and conditions allow Meta to collect and use Advertising Data that the CMA considers could be commercially valuable, which is often not publicly available, and which it receives or otherwise has by virtue of providing DDA, for purposes beyond what is necessary to provide DDA, including in the development and improvement of other existing and new Meta products and services in Adjacent Markets;⁵⁴ and
 - (c) this is the imposition of an unfair trading condition, unfairly exploiting Meta's dominant position as outlined in (a) and (b) above.
- 4.3 The CMA is concerned that this conduct is capable of affording Meta an unfair competitive advantage that it would not otherwise have obtained purely by competing on the merits and/or otherwise disadvantaging Advertising Customers which, either at present or in the future, compete with Meta in Adjacent Markets.
- 4.4 The CMA's view of the terms and conditions allowing Meta to collect and use data in the way set out in paragraph 4.2(b) above is supported by the instances that the CMA has identified, and which are discussed below, where Meta has actually used Advertising Data in Facebook Marketplace.
- 4.5 The CMA's view based on its investigation to date is that Meta's existing internal policies and measures on how Meta and its employees may use Advertising Data provide insufficient restriction or reassurance to Advertising

⁵⁴ The CMA's investigation in the present case has focused on the use of data outside Meta's current core social media platforms on which it provides DDA, including on features available on these platforms such as Facebook Marketplace.

Customers and are therefore insufficient on their own to address the CMA's competition concerns.

Use of Advertising Data in Facebook Marketplace

- 4.6 Based on its investigation to date, the CMA has concerns that Meta has the ability and incentive to use – and the CMA has evidence that Meta has actually used – Advertising Data from Advertising Customers to advantage its position in an Adjacent Market, namely Meta's Facebook Marketplace product. Based on its investigation to date, the CMA suspects that Meta has used Advertising Data from competitors of Facebook Marketplace for the strategic planning, product development and launch of Facebook Marketplace, as well as for the operation and improvement of Facebook Marketplace.
- 4.7 The CMA has concerns that this conduct is capable of affording (and capable of having afforded) Meta, in respect of its Facebook Marketplace product, an unfair competitive advantage that it would not have obtained purely by competing on the merits.
- 4.8 The CMA has identified several instances where it appears that Meta has used Advertising Data from some OCA providers who are or were DDA customers (**OCA Customers**) for purposes other than providing DDA. The types of Advertising Data it appears Meta has used include Event Data, product catalogue data and ad click data (data derived from Users' engagement with advertising by clicking on dynamic product ads).
- 4.9 On the basis of the CMA's investigation to date, the CMA suspects that Meta has used OCA Customers' Advertising Data in the operation of Facebook Marketplace and that such conduct is capable of giving rise to a competitive advantage falling outside the scope of competition on the merits, and/or otherwise disadvantaging Advertising Customers which compete with Facebook Marketplace, and is capable of distorting competition in the OCA market.

Conclusion on competition concerns

- 4.10 For the reasons set out in this Decision, the CMA has competition concerns in respect of:
- (a) the trading conditions on which Meta provides the Services, which in most cases Advertising Customers wishing to use the Services have little choice in practice but to agree to. The trading conditions give Meta the ability to

use Advertising Data in the development and improvement of existing and new Meta products or services in Adjacent Markets; and

- (b) Meta's actual use of Advertising Data from competitors of Facebook Marketplace which the CMA suspects was used to develop, improve and operate Facebook Marketplace in ways which it would not otherwise have been able to do.

The CMA is concerned that such conduct is capable of affording Meta an unfair competitive advantage that it would not otherwise have obtained purely by competing on the merits, and/or otherwise disadvantaging Advertising Customers, as described above.

5. The Commitments

- 5.1 In order to address the CMA's competition concerns described in chapter 4, Meta has offered the Commitments to the CMA. The Commitments are set out in the Annex to this Decision and summarised in this chapter. Further detail on the Commitments is set out in chapter 6.
- 5.2 For the purposes of the Commitments and this Decision, '**Advertiser**' means a current or former user of the Meta advertising services that are made available on the Facebook Service (including Messenger), Instagram, and on any future ad-supported social media services developed or provided by Meta, and via Meta Audience Network.⁵⁵

The Commitments

Commitments to address use of Advertising Data in Facebook Marketplace

- 5.3 Meta will implement and maintain systems and technical controls in respect of Advertisers which either (i) have opted out of permitting use of their advertising data by Meta within Facebook Marketplace at any point during the lifetime of the Commitments or (ii) have been automatically opted out by Meta via inclusion on the list in Appendix 1 to the Commitments which lists Advertisers that Meta identifies as competitors of Facebook Marketplace in the provision of OCA (and who have not informed Meta that they wish to permit Meta to use data relating to them). For these Advertisers Meta will implement and maintain the following systems and technical controls:
- (a) for the operation of Facebook Marketplace – to identify and remove certain advertising data⁵⁶ in the operation of Facebook Marketplace (including by retraining certain machine learning models), where that data is detected within the collection of data assets internally owned and managed by Marketplace Employees⁵⁷ that are used to determine which Facebook Marketplace listings are surfaced;⁵⁸ and
 - (b) for Marketplace Analytics⁵⁹ – to prevent Facebook Marketplace employees involved in the development and/or improvement of the product design,

⁵⁵ See clauses 1.1(a), and 1.1(r)-(t) of the Commitments.

⁵⁶ Data defined as 'Specified Relevant Data' in the Commitments at clause 1.1(jj).

⁵⁷ Data assets defined as 'Marketplace Data Assets' in the Commitments at clause 1.1(m). Marketplace Employees are defined in the Commitments at clause 1.1(n).

⁵⁸ See clause 2.1 of the Commitments.

⁵⁹ Marketplace Analytics means the interrogation and use of Specified Relevant Data in Meta's systems to develop and/or improve the product design, layout and/or functionality of the Facebook Marketplace Feature.

layout and/or functionality of Facebook Marketplace⁶⁰ from using certain advertising data⁶¹ which explicitly identifies the Advertiser.⁶²

- 5.4 The categories of advertising data restricted from use under this commitment (referred to as '**Relevant Data**')⁶³ includes the following categories of data (set out in more detail in paragraph 6.41 below):
- (a) data that Advertisers share with Meta for the purposes of advertising, including ad creative data and data from Facebook Login⁶⁴ or Social Plugins;⁶⁵
 - (b) data derived from Users' engagement with ads, such as ad clicks and ad impressions; and
 - (c) data derived from product catalogue data.
- 5.5 This commitment is referred to in this Decision as the '**Marketplace Technical Solution**'. It is to be implemented within twelve months of the acceptance of commitments by the CMA (the **Marketplace Implementation Period**).⁶⁶
- 5.6 In addition, Meta commits to undertake compliance measures for relevant employees, including mandatory annual training and the signature of personal acknowledgments and agreements to the restrictions on the use of Advertisers' data for Marketplace Analytics explained to them in the training (pursuant to the Commitments).

Commitments to address unfair trading conditions concern

- 5.7 Meta will use all reasonable endeavours to ensure that Meta employees and contractors working on product development⁶⁷ refrain from using and interrogating certain advertising data which explicitly identifies Advertisers⁶⁸ to develop or improve existing and new Meta products and services available in

⁶⁰ Employees defined as 'Marketplace Analytics Employees' in the Commitments at clause 1.1(l).

⁶¹ Data defined as 'Specified Relevant Data' in the Commitments at clause 1.1(jj).

⁶² See clause 3.1(b) of the Commitments.

⁶³ See the definition of 'Relevant Data' at clause 1.1(ff) of the Commitments.

⁶⁴ Facebook Login means the Meta tool which can be used by an Advertiser to provide its users with the option of using their Facebook account to log in to an Advertiser's website or mobile app.

⁶⁵ Social Plugins means the Meta plugins which can be incorporated in an Advertiser's website or mobile app to enable it to provide Meta social experiences (e.g., like and share buttons).

⁶⁶ Implementation period defined as 'Marketplace Implementation Period' in the Commitments at clause 1.1(p).

⁶⁷ Employees defined as 'Product Development Analytics Employees' in the Commitments at clause 1.1(cc).

⁶⁸ Defined as 'Identifiable Relevant Data' in the Commitments at clause 1.1(i).

the UK⁶⁹ in competition with specific products or services offered by Advertisers.⁷⁰

- 5.8 The categories of advertising data restricted from use are the same as described at paragraph 5.4 above.
- 5.9 This commitment is to be implemented within six months of any acceptance of commitments by the CMA (the **Product Development Implementation Period**).⁷¹
- 5.10 To implement this, Meta will amend its publicly available Code of Conduct⁷² by inserting the following new provision:

'Meta personnel should not use non-public data or information directly or indirectly derived from advertisers' use of Meta's advertising services to develop products in competition with those advertisers unless approved in advance by Legal.'

- 5.11 This provision in the Code of Conduct reflects the principle that Meta employees should not use Relevant Data which explicitly identifies individual Advertisers to develop Meta Products made available to users in the UK in competition with those Advertisers (this principle being set out in the Commitments and referred to as the '**Product Development Principle**'⁷³).
- 5.12 In addition, Meta will undertake compliance measures for relevant employees, including mandatory annual training and the signature of personal acknowledgments and agreements to the restrictions on the use of Advertisers' data for product development explained to them in the training (pursuant to the Commitments).

⁶⁹ See the definition of 'Meta Products' at clause 1.1(u) read together with the definition of 'Product Development' at clause 1.1(aa): this covers all products (or features or functionalities thereof) including all features, apps, technologies, software or services offered or launched by Meta in the UK during the period of the Commitments.

⁷⁰ See clause 4.1 of the Commitments.

⁷¹ See clause 1.1(dd) of the Commitments.

⁷² Meta's Code of Conduct, currently available online at: <https://about.meta.com/en/code-of-conduct/>, includes several principles that set out Meta's expectations for how Meta employees should act and make decisions, explains some of the legal rules that Meta must abide by, and makes clear the standards to which Meta holds itself to. All Meta employees are required to abide by, and uphold, the Code of Conduct. As set out in the document (page 9), potential violations of the Code of Conduct will trigger an internal investigation and, if Meta determines that a violation has occurred, action will be taken, including disciplinary action up to termination. (Last accessed 17/10/2023).

⁷³ See clause 1.1(ee) and clause 4.1 of the Commitments.

Permitted data use

- 5.13 Meta is not prohibited from using data for certain specified purposes set out in clause 5.1 of the Commitments, which includes the use of data to:
- (a) ensure the safety, security and integrity of Meta's services as well as essential system and infrastructure functionality;
 - (b) support the delivery of tools and functionalities to facilitate Users' navigation of the Facebook Service,⁷⁴ which is intended to carve out organisational and navigational tools such as bookmarks, notifications and dynamic tabs, as well as quick promotions which operate through Meta's ad auction process;⁷⁵ and
 - (c) develop advertising services and monetisation products (tools which allow creators to monetise their content such as branded content and subtraction tools).

Duration and variation

- 5.14 The Commitments will apply from the date of this Decision. Subject to any earlier variation or release pursuant to sections 31A(3) and 31A(4) of the Act or in accordance with clause 7 of the Commitments (discussed below), for the proposed solution to address unfair trading concerns they will remain in effect for five years from the expiry of the Product Development Implementation Period; and for the Marketplace Technical Solution they will remain in effect for a period of the shorter of five years from expiry of the Marketplace Implementation Period or for as long as Meta offers the Facebook Marketplace feature to Users in the UK.
- 5.15 The Commitments, in clause 6.2, allow the CMA to extend the periods for implementation by a maximum of four calendar months in response to a reasonable request from Meta, or at the CMA's own initiative.
- 5.16 On 25 April 2023, the UK Government introduced before Parliament the Digital Markets, Competition and Consumers Bill,⁷⁶ which, if enacted, will confer powers on the CMA to regulate firms designated as having Strategic Market Status in respect of specific digital activities. These powers will include the ability to impose legally binding obligations on such firms, such as conduct requirements and pro-competition interventions.

⁷⁴ See the definition of 'Facebook Service' at clause 1.1(h) of the Commitments.

⁷⁵ The ad auction process is explained on Meta's website as follows: <https://www.facebook.com/business/ads/ad-auction>

⁷⁶ <https://publications.parliament.uk/pa/bills/cbill/58-03/0294/220294.pdf>

5.17 The CMA has not decided whether, if it acquires such powers, it would designate Meta as having Strategic Market Status in relation to any given digital activity (or activities). However, if it does, then it is possible that the CMA may impose obligations under those new powers that cover (in whole or in part), or are relevant to, the competition concerns addressed by the Commitments. The Commitments therefore include a provision in clause 7.2 that the commitments will cease (in whole or in part) if and to the extent that the CMA imposes any obligations on Meta pursuant to new powers under the proposed Digital Markets, Competition and Consumers Act that the CMA considers would address, whether by the same or different means, some or all of the competition concerns addressed by the Commitments, where the CMA has specified to Meta in writing that it considers this to be the case.

Reporting and compliance

5.18 Meta will appoint an independent monitoring trustee to monitor Meta's compliance with the Commitments as soon as practicable following the date of this Decision until the termination date of the Commitments (the **Monitoring Trustee**). The Monitoring Trustee shall also appoint a technical expert (the **Technical Expert**), and, if necessary, other advisers.⁷⁷ The CMA must approve the appointment of the Monitoring Trustee, Technical Expert and any other appointed adviser.

5.19 The Commitments provide that Meta shall provide a detailed explanation of the technical means for implementing the Marketplace Technical Solution, for approval by the CMA in consultation with the Monitoring Trustee. This detailed explanation must be submitted to the CMA no later than a month from the date the Commitments come into effect and to the Monitoring Trustee on their appointment.

5.20 The Monitoring Trustee must monitor Meta's compliance with the Commitments including by:⁷⁸

(a) approving the training material (which shall be updated regularly as necessary) and monitoring completion of the training;

(b) providing the CMA with written reports on Meta's compliance with the Commitments every three calendar months starting from the date the Commitments come into effect until the expiry of the Marketplace Implementation Period, and every six months thereafter;

⁷⁷ See Appendix 5 to the Commitments.

⁷⁸ See clause 8.1(a) of, and Appendix 5 to, the Commitments.

- (c) proposing to Meta or, where appropriate to the CMA, necessary measures to ensure Meta's compliance with the Commitments; and
- (d) promptly reporting to the CMA any failure by Meta to comply with the Commitments.

6. The CMA's assessment of the appropriateness of commitments in this case

- 6.1 This chapter sets out the CMA's assessment of the Commitments against the criteria set out in its Procedural Guidance and the reasons why the CMA considers, having taken careful account of the information available, including all of the representations the CMA received in response to the Consultation, that acceptance of the Commitments would be an appropriate way to address its competition concerns.
- 6.2 The CMA received ten written replies from third parties in response to the Consultation. As noted above, the CMA considered these responses carefully and, where the CMA deemed it necessary, it sought and obtained further clarifications of certain points made by respondents.⁷⁹
- 6.3 Nine of the written responses were from OCA providers, and one was from a provider of an online dating application.
- 6.4 The Consultation responses are summarised below in the relevant parts of this chapter.

General requirements for accepting commitments

- 6.5 Under section 31A of the Act the CMA may, for the purposes of addressing the competition concerns it has identified, accept from such person (or persons) concerned as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate.
- 6.6 In order to accept commitments, the CMA must consider that the commitments offered will address the competition concerns the CMA has identified and the CMA must consider, in the exercise of its discretion, that it is appropriate to accept commitments in the case in question.⁸⁰
- 6.7 The Procedural Guidance states that the CMA is likely to consider it appropriate to accept binding commitments only in cases where: (a) the competition concerns are readily identifiable; (b) the competition concerns will be addressed by the commitments offered; and (c) the proposed commitments can be implemented effectively and, if necessary, within a short period of time.⁸¹

⁷⁹ The CMA received written clarificatory responses from [X].

⁸⁰ See paragraphs 10.15 to 10.20 of the Procedural Guidance.

⁸¹ Paragraph 10.18 of the Procedural Guidance.

- 6.8 The Procedural Guidance further states that the CMA will not, however, accept commitments where compliance with them and their effectiveness would be difficult to discern and/or where the CMA considers that not to complete the relevant aspect of its investigation and make a decision would undermine deterrence.⁸²
- 6.9 Commitments are a means of resolving investigations more quickly and efficiently. The Competition Appeal Tribunal has noted that *'[t]he CMA's power to accept binding commitments is intended to allow it to resolve cases more quickly and efficiently by avoiding the need for a full investigation, thereby enabling the CMA to use its limited resources for a broader range of enforcement purposes'*.⁸³
- 6.10 The CMA cannot require parties to an investigation to offer commitments or particular commitments. It is solely for each party to an investigation to determine what, if any, commitments they are willing to offer the CMA. The CMA then assesses whether any commitments offered should or should not be accepted.
- 6.11 The CMA has a broad discretion to determine which cases are suitable for commitments and whether the commitments offered should be accepted.⁸⁴ The Competition Appeal Tribunal has acknowledged that, in the exercise of the competition authority's judgement when accepting commitments, it is legitimate for the competition authority to 'strike a balance in terms of the appropriate level of intervention' in a case, provided that in doing so, 'it takes proper account of material points drawn to its attention and avoids obvious error'.⁸⁵

The CMA's assessment of the Commitments

- 6.12 In the following section the CMA describes the main elements of the Commitments and sets out the CMA's assessment of how the Commitments address the CMA's competition concerns. The CMA's approach to assessing the Commitments (including their appropriateness) has involved an assessment in the round based on (i) its investigation to date which, as noted above, has focused on the use of Advertising Data in Facebook

⁸² Paragraph 10.20 of the Procedural Guidance.

⁸³ *Skyscanner Limited v Competition and Markets Authority* [2014] CAT 16, at [21].

⁸⁴ See paragraphs 10.17 to 10.21 of the Procedural Guidance.

⁸⁵ *Skyscanner Limited v Competition and Markets Authority* [2014] CAT 16, at [130] and [132].

Marketplace⁸⁶ and (at a more principled level) in relation to Meta's terms and conditions, in so far as they relate to Advertising Customers, and (ii) the representations made in response to the Consultation.

6.13 The CMA has carefully considered the Commitments by reference to the criteria set out in paragraphs 6.7 and 6.8 above.

6.14 In accordance with the CMA's Procedural Guidance, the remainder of this chapter is structured as follows:

(a) Assessment of whether the competition concerns are readily identifiable;

(b) Assessment of whether the Commitments address the CMA's competition concerns;

(c) Assessment of whether the Commitments are capable of being implemented effectively and, if necessary, within a short period of time;

(d) Assessment of whether compliance with and the effectiveness of the Commitments would be difficult to discern; and

(e) Assessment of whether acceptance of the Commitments would undermine deterrence.

Assessment of whether the competition concerns are readily identifiable

6.15 The CMA considers that the competition concerns in respect of Meta's conduct, which are set out in chapter 4 of this Decision, are readily identifiable.

6.16 Respondents either did not make substantive comment on or generally agreed with the competition concerns identified by the CMA, set out in chapter 4.⁸⁷

6.17 A number of respondents raised additional concerns, which the CMA considers are⁸⁶ out of scope as they do not relate to the conduct being considered by the CMA in this case.

⁸⁶ As set out in paragraph 2.4 above, the CMA initially looked at the potential use of advertising data in the development, improvement and operation of Facebook Dating as well as Facebook Marketplace, but after the initial stages of the investigation a decision was made on administrative priority grounds to focus the investigation of actual data use on Facebook Marketplace, in respect of which the CMA saw instances of data use including those set out in paragraphs 4.6 to 4.9 and to pause further evidence gathering in respect of Facebook Dating. However, the CMA notes that Meta's offer to use all reasonable endeavours to refrain from using certain advertising data which explicitly identifies Advertisers to develop or improve Meta products available in the UK in competition with those Advertisers, would apply to Facebook Dating.

⁸⁷ [3<].

- **Tying:** Two respondents⁸⁸ submitted that Meta’s conduct of tying⁸⁹ Facebook Marketplace with its dominant personal social network is anti-competitive. These two respondents submitted that the Commitments do not address this practice, and they proposed additional remedial measures to address this.⁹⁰
- **Non-advertising data:**
 - One respondent⁹¹ submitted that the Commitments should extend beyond advertising data and also include non-OCA third party advertising customer data coming from Meta’s dominant social network, and it proposed additional remedial measures to address this.⁹²
 - Another respondent submitted that the Commitments, in particular the definition of Relevant Data, should cover data provided by Advertisers through Facebook Login, regardless of whether it is provided for the purposes of Meta’s advertising service.⁹³ The respondent further submitted that Facebook Login data is typically not provided for the purposes of advertising services and that all Facebook Login data should therefore be protected without qualifying such protection to scenarios where competitors use Facebook Login ‘for the purposes of’ advertising.

6.18 The CMA has assessed the appropriateness of any commitments based on the scope of the CMA’s competition concerns which, as summarised in chapter 4 of this Decision, do not include other practices such as tying, or the use of data other than Advertising Data,⁹⁴ given that the focus of this investigation was on conduct stemming from Meta’s suspected dominance in

⁸⁸ [redacted].

⁸⁹ Tying is the offering of products together as a package and in this context refers to the allegation by the respondents that users of Facebook Blue automatically have access to Facebook Marketplace through Facebook Blue.

⁹⁰ [redacted].

⁹¹ [redacted].

⁹² [redacted].

⁹³ [redacted]. For reference, the CMA notes that the definition of Relevant Data in the Commitments includes ‘*data shared by Advertisers with Meta for the purposes of Meta’s Advertising Service including through Ads Manager and Meta Business Suite and all other existing and future equivalent Meta Business Tool services including Pixel, SDKs, the Conversions API, Offline Conversions, Facebook Login, or Social Plugins*’ (clause 1.1(ff) of the Commitments).

⁹⁴ The CMA’s initial investigation also looked into Meta’s use of data obtained from its single sign-on, Facebook Login. However, after conducting limited evidence gathering in respect of Facebook Login data not provided for the purposes of advertising services, further evidence gathering was paused on administrative priority grounds.

DDA/DDASM. The CMA therefore considers that the Commitments do not require modification to address the above points.

- 6.19 As set out below in paragraph 6.112, the Commitments do not preclude the CMA from taking further action in the future (if considered appropriate) in relation to any concerns not addressed by the Commitments either under the Act or pursuant to new powers proposed under the Digital Markets, Competition and Consumers Bill, if applicable.

Assessment of whether the Commitments address the competition concerns that the CMA has identified

- 6.20 In this section, the CMA sets out its assessment of whether the Commitments address its competition concerns, summarised in chapter 4, including taking into account representations received by the CMA in response to the Consultation.

- 6.21 Overall, the majority of respondents either did not make any substantive comment⁹⁵ or generally welcomed the Commitments. In particular, one such respondent noted that the Commitments would address the CMA's competition concerns by implementing technical systems to prevent the use of certain competitor advertising data in Facebook Marketplace, and addressing unfair trading conditions in Meta's terms and conditions.⁹⁶ Another respondent acknowledged the progress that the Commitments would bring in improving competition within the limited competition concerns identified by the CMA that they address.⁹⁷

- 6.22 Of the ten respondents to the Consultation, three disagreed⁹⁸ that the Commitments would fully address the CMA's competition concerns or would be effective in preventing the CMA's competition concerns, and proposed modifications.

Commitments to address use of Advertising Data in Facebook Marketplace from Advertisers that compete with Facebook Marketplace

- 6.23 The Commitments allow Advertisers which consider that they compete with Meta's Facebook Marketplace a choice about whether or not their advertising data is used by Meta for Facebook Marketplace, giving Advertisers the opportunity to 'opt-out' of their advertising data being used. Those Advertisers

⁹⁵ Some respondents made no substantive comments on the Commitments but responded as to whether they would expect to be included in Appendix 1 to the Commitments.

⁹⁶ [redacted].

⁹⁷ [redacted].

⁹⁸ (1) [redacted], (2) [redacted], (3) [redacted].

who choose to opt-out will not be able to advertise on Facebook Marketplace (but will still be able to advertise on Meta's other ad-supported surfaces⁹⁹).

- 6.24 In addition, Meta will not use certain advertising data of Advertisers which it has proactively identified as competitors of Facebook Marketplace in the provision of online classified ads, unless they agree in writing to their data being used to improve Facebook Marketplace.¹⁰⁰ Similarly, those Advertisers which are automatically opted out by Meta will not be able to advertise on Facebook Marketplace (but will still be able to advertise on Meta's other ad-supported surfaces).
- 6.25 Meta will implement technical controls to restrict the use of data of 'opted out' Advertisers in respect of (a) the operation of Facebook Marketplace, and (b) the use of data to develop or improve Facebook Marketplace (Marketplace Analytics). These systems and technical controls are also supported by a package of compliance measures, including mandatory training for relevant employees who will also sign personal acknowledgments and agreements.

Provisions governing the opt-out of data use in Facebook Marketplace

- 6.26 The Commitments provide that Meta will inform Advertisers, in a prominent manner to be agreed with the CMA following consultation with the Monitoring Trustee, of the ability for Advertisers to opt-out of the use of their advertising data within Facebook Marketplace or to be excluded from the list of Advertisers Meta has identified as competitors (which are included in Appendix 1 to the Commitments).¹⁰¹
- 6.27 Where an Advertiser considers itself to be a competitor of Facebook Marketplace and chooses to opt-out of its data being used in Facebook Marketplace, or where Meta has identified that Advertiser as a competitor of Marketplace in the provision of OCA (having first notified the Advertiser to that effect, and only where the Advertiser has not elected to permit the use of its advertising data in Facebook Marketplace), Meta commits to identifying and excluding certain advertising data of that Advertiser so that the data is not incorporated within Facebook Marketplace systems (by way of a technical solution set out below in paragraphs 6.40 to 6.49) or used by employees who interrogate and use data to develop or improve Facebook Marketplace (by

⁹⁹ Clause 1.1(s) of the Commitments sets out that Meta's ad-supported surfaces are Facebook Service and Instagram and any future ad-supported social media services developed or provided by Meta.

¹⁰⁰ Appendix 1 to the Commitments contains a list of Advertisers that Meta considers competitors of Facebook Marketplace in the provision of OCA, in relation to whom Meta will automatically take steps to ensure that data will not be used.

¹⁰¹ Clause 3.1(a) of the Commitments.

way of technical restrictions and supporting compliance measures set out in paragraphs 6.51 to 6.57 below).¹⁰²

- 6.28 One respondent¹⁰³ sought clarification as to whether Advertisers which are identified by Meta as competitors in the provision of online classified ads need to take any positive action in order to benefit from the protection of the opt-out mechanism. In the event that Advertisers are automatically identified by Meta as competitors of Facebook Marketplace in the provision of OCA, they will not need to take any further form of positive action to benefit from the protection of the Commitments. Positive action by an Advertiser is only required if, as stated in paragraph 6.24 above, that Advertiser does not wish to be included in Appendix 1, in which case it will need to inform Meta in writing of its request to not be included.
- 6.29 Another respondent¹⁰⁴ sought clarification as to whether Advertisers are able to 'opt-out' at any point within the duration of the Commitments and benefit from the terms set out in the Commitments, in particular retaining the ability to advertise on Meta's platforms except for Facebook Marketplace, without needing to enter into separate negotiations with Meta. In fact, the position is that Advertisers can choose to opt-out of permitting Meta to use their advertising data within Facebook Marketplace at any point within the duration of the Commitments under the conditions set out in the Commitments without needing to enter into separate negotiations with Meta.¹⁰⁵ Meta confirmed to the CMA that an Advertiser's Relevant Data which can identify that Advertiser will be excluded from any new interrogation by analysts relating to the development and optimisation of Facebook Marketplace from the moment of the Advertiser's opt-out and will not be used in new Marketplace Operations models and data sets after the date of the opt-out.
- 6.30 One respondent¹⁰⁶ raised concerns that the Commitments' provisions governing the opt-out of data use in Facebook Marketplace were detrimental to the Commitments' effectiveness, submitting that (i) they would still allow Meta to take unfair advantage of its dominant position in DDA/DDASM by using Relevant Data from non-opted out Marketplace competitors, and (ii) if an individual competitor chose not to opt-out, that would affect not only that individual competitor, but all competitors and thus competition in the market,

¹⁰² See clauses 2 and 3 of the Commitments, and Appendix 1 to the Commitments.

¹⁰³ [redacted].

¹⁰⁴ [redacted].

¹⁰⁵ Clause 7.5 of the Commitments provides that the commitments relating to the Marketplace Technical Solution will remain in effect for a period of the shorter of five years from expiry of the Marketplace Implementation Period or for as long as Meta offers the Facebook Marketplace feature to Users in the UK. Those Advertisers who choose to opt-out within the duration of the Commitments will still be able to advertise on Meta's ad-supported surfaces other than Facebook Marketplace.

¹⁰⁶ [redacted].

as Facebook Marketplace would continue to artificially strengthen its position by benefiting from market intelligence that is unobtainable for its competitors.

- 6.31 The respondent also submitted that Meta's 'value exchange' rationale for the opt-out¹⁰⁷ is irrational and disingenuous, given that (in the view of that respondent) the aim of the Commitments is to stop Facebook Marketplace's use of its direct competitors' sensitive commercial data.
- 6.32 The respondent further submitted that allowing competitors the choice not to opt-out was difficult to reconcile with competition rules prohibiting the exchange or receipt of competitively sensitive information as the advertising data shared with Meta (Specified Relevant Data in clause 2.1(a) of the Commitments) would be competitively sensitive.
- 6.33 Following a careful assessment of these submissions, the CMA remains of the view that the Commitments are sufficient to address the CMA's competition concerns in relation to data use in Facebook Marketplace.
- 6.34 Regarding the first concern put forward by that respondent, namely, that the use by Meta of data from competitors which are not opted out will continue to be unfair and the opt-out provisions will provide Meta with the ability to continue strengthening its position which would distort the OCA market and affect opted out OCA Customers, the CMA remains of the view that the Commitments address its competition concerns, for the following reasons.
- 6.35 First, in the Notice the CMA invited views on whether the opt-out offered Advertisers which compete with Facebook Marketplace a genuine and effective choice concerning Meta's use of their advertising data in Facebook Marketplace.¹⁰⁸ None of the respondents said that the opt-out would not offer a genuine and effective choice. In addition, based on the evidence provided by Meta, the CMA understands that advertising on Facebook Marketplace represents a minimal proportion of the OCA Customers' average advertising spending on Meta platforms in the UK, suggesting it is not a significant advertising channel for most OCA Customers. Accordingly, the fact that, in making the choice to opt-out, competitors forgo the right to advertise on Facebook Marketplace does not, in the CMA's view undermine this choice; when they opt-out, OCA Customers continue to be able to advertise on all other Meta platforms, representing the overwhelming majority of advertising

¹⁰⁷ See paragraph 6.17 of the Notice: 'Meta has proposed that any "opted out" Advertisers will be excluded from placing advertising on Facebook Marketplace, on the basis that it considers there is an expected value exchange in that Advertisers contribute their advertising data to improve the advertising system available on Meta's platforms for everyone, such that Meta considers it reasonable that an Advertiser who does not want to be part of this value exchange in respect of Facebook Marketplace will not be able to advertise on the Facebook Marketplace surface'.

¹⁰⁸ See paragraph 6.18 of the Notice.

currently undertaken on Meta platforms. The CMA therefore considers that the opt-out offers Advertisers which compete with Facebook Marketplace a genuine and effective choice. Given the above, and that only one respondent,¹⁰⁹ which Meta identifies as a competitor to Facebook Marketplace in Appendix 1, specifically requested to be excluded from Appendix 1, the CMA is of the view that a large number of advertisers would opt-out or choose not to opt-in where they have been automatically opted out through Appendix 1.

6.36 Second, under clause 4.1 of the Commitments Meta will use all reasonable endeavours to ensure that relevant Meta employees refrain from using or interrogating Relevant Data, which explicitly identifies individual Advertisers, for Product Development Analytics,¹¹⁰ namely to inform decisions on material development or improvement of Meta Products in competition with specific products or services offered by Advertisers made available to users in the UK (the Product Development Principle). This provides further protections which apply to all Advertisers, regardless of whether they have opted out of their Relevant Data being used for Facebook Marketplace. It therefore provides further assurances that, following the adoption of the Commitments, Relevant Data which explicitly identifies individual OCA Customers, opted out or not, will be covered by Clause 4.1 of the Commitments under which Meta commits to use all reasonable endeavours to ensure that Product Development Analytics Employees refrain from using Identifiable Relevant Data for Product Development Analytics of Facebook Marketplace (or other Meta Products) with respect to Meta Products made available to users in the UK.

6.37 The CMA therefore considers that, in the circumstances of this case, the opt-out provides a genuine choice for Advertisers which compete with Facebook Marketplace to prevent Meta from using certain of their advertising data for Marketplace Operations and Analytics, and that even if some of those competitors elect not to opt-out, Meta's use of their advertising data for Product Development Analytics of Facebook Marketplace would still be covered by the reasonable endeavours obligation in Clause 4.1. In addition, Advertisers have the ability to adjust the type of advertising data they share with Meta. In that context, the CMA considers that the Commitments (with the opt-out) are sufficient to address its competition concerns.

6.38 The CMA notes, but is not in a position to comment on, the legitimacy of, the value exchange rationale put forward by Meta for excluding 'opted out' Advertisers from placing advertising on Facebook Marketplace¹¹¹ (nor does it

¹⁰⁹ [redacted].

¹¹⁰ See Clause 1.1.(bb) of the Commitments.

¹¹¹ See paragraph 6.31 above.

consider it necessary to do so). Whether the rationale is correct or not, the CMA is satisfied that the Commitments, with the opt-out, are sufficient to address the competition concerns it has expressed in chapter 4 about use of data on Facebook Marketplace.

- 6.39 Regarding the concern that the exchange of advertising data with Meta could amount to an anti-competitive exchange of information, the CMA has given serious and careful consideration to the representation we received that made this point and has sought Meta's views. The CMA considers that, based on the evidence available to it in this case, it would not be correct to form a general blanket view that the continued use of data shared by OCA Customers who choose not to opt-out would necessarily give rise to an infringement of the competition law prohibition on anti-competitive agreements (the Chapter I prohibition, in section 2(1) of the Act) given the different types of data that could be shared and the varying circumstances and significance of any such data. In particular, Meta provides optional tools to Advertisers, allowing Advertisers to share data with Meta. Advertisers can choose whether to use these tools and choose how to configure them. Any assessment of whether there is an anti-competitive exchange of information would need to be made on a case-by-case basis. It is important to note that the Commitments apply alongside Meta's existing legal obligations – including under competition law – and the Commitments evidently do not absolve the parties of the need to comply with the Chapter I prohibition (as with all other legal obligations) and to self-assess to ensure such compliance, depending on the particular types of data and the circumstances in each case.¹¹²

Technical controls for Marketplace Operations

- 6.40 Meta will implement and maintain systems and technical controls designed to identify and remove within the '**Data Control Boundary**'¹¹³ of Facebook Marketplace any Relevant Data that contributes to the operation of Facebook Marketplace from an Advertiser that has either:
- (a) been identified by Meta as a competitor of Facebook Marketplace in the provision of OCA and has not elected to permit the use of its advertising data in Facebook Marketplace after having been notified by Meta; or

¹¹² When carrying out this assessment, please refer to the CMA's *Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to horizontal agreements* (CMA184), and in particular section 8 thereof.

¹¹³ See the definition of 'Data Control Boundary' at clause 1.1(e) of the Commitments.

(b) notified Meta in writing that it considers itself to be a competitor to Facebook Marketplace and that its data should not be incorporated within Meta's systems.

6.41 Relevant Data¹¹⁴ for the purposes of the Commitments means the following types of advertising data:

(a) data shared by Advertisers with Meta for the purposes of Meta's advertising services that are made available by Meta through all of its existing Business Tools including its Ads Manager interface,¹¹⁵ the Meta Business Suite,¹¹⁶ Pixel,¹¹⁷ SDKs,¹¹⁸ the Conversions API,¹¹⁹ Offline Conversions,¹²⁰ Facebook Login,¹²¹ Social Plugins,¹²² and any future equivalents;

(b) data derived by Meta from Product Catalog Data¹²³ provided by Advertisers for the purpose of advertising;

(c) ad creative data¹²⁴ shared by Advertisers with Meta; and

(d) data generated by or derived from impressions¹²⁵ and clicks on advertising delivered on the Facebook Service, Instagram and any future ad-supported social media services developed or provided by Meta.

6.42 It does not include data generated by, or derived from, boosted listings from individual sellers on Facebook Marketplace.

6.43 In order to constitute data that falls within the Data Control Boundary, it must either meet both of the conditions in paragraphs (a) and (b) below, or in the

¹¹⁴ See the definition of 'Relevant Data' at clause 1.1(ff) of the Commitments.

¹¹⁵ Ads Manager means the variety of ad management tools through which Advertisers can buy ad inventory.

¹¹⁶ The Meta Business Suite is a facility where Meta's Advertising Customers can manage their business activity. See: <https://www.facebook.com/business/tools/meta-business-suite>.

¹¹⁷ Pixel means the piece of Meta code which can be installed by an Advertiser on its website to enable it to measure, optimise, and build audiences for its advertising campaigns on Meta.

¹¹⁸ SDKs means the Meta software components which an Advertiser can include in its mobile app to understand how users use its app, run optimised advertising campaigns and enable Facebook Login and social sharing.

¹¹⁹ Conversions API means the Meta application programming interface which can be used by an Advertiser to connect its marketing data to Meta to support ad personalisation, optimisation and measurement on Meta.

¹²⁰ Offline Conversions means the Meta conversion tracking tool which can be used by an Advertiser to attribute its offline data to ads on Meta Ad Supported Surfaces.

¹²¹ Facebook Login means the Meta tool which can be used by an Advertiser to provide its users with the option of using their Facebook account to log in to an Advertiser's website or mobile app.

¹²² Social Plugins means the Meta plugins which can be incorporated in an Advertiser's website or mobile app to enable it to provide Meta social experiences (e.g., like and share buttons).

¹²³ Product Catalog Data means the product information which an Advertiser can provide to Meta through Meta's product catalog feature (such as product identifier, title, link, description, type, condition, brand, size, colour and image link). The terms of the product catalog feature are set out in the [Product Catalogue Terms](#).

¹²⁴ This refers to the data that is necessary to render and display the advert.

¹²⁵ 'Ad impressions' means the number of times an ad is shown to Users.

alternative, be data that falls under paragraph (a) which contributes directly to the type of data described in paragraph (b) below:

- (a) a data asset, meaning individual items, such as code modules, or data objects including features to machine learning models, that are involved in acquiring, processing, storing and/or accessing data;
- (b) a Marketplace data asset, meaning data that is internally owned and managed by Marketplace Employees, meaning all employees or contractors with direct responsibility for the management of Marketplace data assets which are used to:
 - (i) determine which Marketplace listings are surfaced to a User of the Marketplace Feature¹²⁶ on the Marketplace feed; and
 - (ii) determine which Marketplace listings are surfaced to a User following the User entering a search query into the search bar within the Marketplace Feature.

- 6.44 Under the Commitments, data contributes to the operation of Facebook Marketplace where it constitutes a Marketplace data asset, as described in paragraph 6.43(b) above and is used in the operation of Facebook Marketplace.
- 6.45 Meta's proposals cover the entire user-facing Marketplace experience from the point at which a User has entered the Marketplace surface (i.e. Marketplace Feed and Search surfaces where Users discover relevant products). This includes any Marketplace machine learning models which are used for feed and search for UK Users (contributing respectively to determining which items to display to a User in the Marketplace Feed and which items to display in response to a User's search on Marketplace) and the vast majority of models which are used in all Marketplace systems for UK Users.¹²⁷
- 6.46 One respondent¹²⁸ submitted that the Commitments should ensure that OCA Customers' data is not used directly or indirectly by Meta for the benefit of Facebook Marketplace. As set out in paragraph 6.43 above, the scope of the Marketplace Technical Solution covers both direct, as well as indirect, use of data within the Data Control Boundary, meaning that it covers any

¹²⁶ This means the "Facebook Marketplace" surface on the Facebook Service on which Users of the Facebook Services can connect with one another to buy and sell items.

¹²⁷ Meta has confirmed that the limited number of models used in all Marketplace systems for UK Users that are out of scope are used for integrity purposes, such as identifying bad actors on Marketplace or listings breaching the Meta Commerce Policy (e.g., sale of weapons or alcohol).

¹²⁸ [redacted].

Marketplace data asset, irrespective of how many 'levels' removed these data assets are from the initial server entry point, as well as any non-Marketplace data asset to the extent it is directly used to produce Marketplace data assets. As further developed at paragraphs 6.70 *et seq.* below, the CMA notes for completeness that clause 4 of the Commitments which sets out the Product Development Principle covers both direct and indirect use of Identifiable Relevant Data for Product Development Analytics.

- 6.47 Any Marketplace models not currently within the scope of the Commitments (because they are not used for UK Users) will therefore still be subject to Meta's proposed technical controls to the extent they directly contribute to any data assets that are in scope of the Commitments (i.e. data assets used in Marketplace and operated by Marketplace). Specifically, where data generated by those out-of-scope Marketplace models is then directly consumed by other data assets which are within the scope of the Commitments, such data will be subject to Meta's proposed technical controls (just like any other Marketplace data assets). Should any of those Marketplace models later be introduced to UK Users, these would be included within the scope of the Commitments.
- 6.48 Meta has explained that the infrastructure to implement these technical controls will include not only all Marketplace data assets sitting within Facebook Marketplace, but will go beyond this by also including data assets internally owned and managed by non-Marketplace teams in Meta which directly feed into Marketplace data assets.
- 6.49 The technical means by which these controls will be implemented within Meta's systems would be agreed by the CMA in consultation with the Monitoring Trustee in accordance with clause 3.2 of the Commitments. Meta has indicated that this will involve the development of a data flow control system to accurately identify and control the data used in Facebook Marketplace. This will be based on a combination of technical infrastructure and engineer review and investigation to identify and control the use of Relevant Data of opted out Advertisers in the UK.
- 6.50 The CMA is satisfied that the scope of the Marketplace Technical Solution is sufficient to address its competition concerns.

Technical controls for Marketplace Analytics

- 6.51 In addition to the technical controls for Marketplace Operations set out in paragraphs 6.40 to 6.49 above, Meta will implement and maintain systems and technical controls within Meta's systems that prevent relevant employees or contractors using Relevant Data (as listed in paragraph 6.41 above) from

(a) Advertisers who consider themselves competitors of Facebook Marketplace and have opted out of their advertising data being used or (b) Advertisers that Meta considers competitors of Facebook Marketplace in the provision of OCA, where it can specifically identify them¹²⁹ for Marketplace Analytics (i.e. to develop and/or improve the product design, layout and/or functionality of the Marketplace Feature).

- 6.52 Meta will implement technical controls for Relevant Data which explicitly identifies an Advertiser for Marketplace Analytics, on the basis that it is only in these circumstances that Meta would be able to conduct targeted searches for, and identify, data relating to specific competitors (or groups of competitors). One respondent¹³⁰ submitted that the Commitments should require Meta to be able to identify OCA Customers' Relevant Data at all times in order to ensure that such data is not used for the benefit of Facebook Marketplace. Based on a publicly available document,¹³¹ the respondent expressed doubt about Meta's ability to identify the source of the data it is using or to limit its usage from different teams within Meta. Against that context, the respondent was concerned that clause 3.2 of the Commitments (regarding the technical controls for Marketplace Analytics) only applies to Relevant Data which explicitly identifies an Advertiser. The respondent submitted that in the absence of commitments that improve the traceability of OCA competitors' data, Meta would in practice continue to use Relevant Data from opted out Advertisers for Marketplace Analytics.
- 6.53 The CMA understands from Meta that Identifiable Relevant Data will cover any known means of identifying an individual Advertiser attached to the Relevant Data, such as the name of the Advertiser, account number or the ID that is attached to the data by Meta when the data first enters its systems. From a practical perspective, the CMA accepts that it would only be in these circumstances that Meta would be able to, as part of its Marketplace Analytics, conduct targeted searches for, and identify, data relating to specific competitors (or groups of competitors).
- 6.54 In addition, the non-circumvention clause (clause 8.2 of the Commitments) explicitly prohibits Meta from circumventing or attempting to circumvent the Commitments either directly or indirectly by any act or omission. It would prevent, in particular, the aggregation or anonymisation of Relevant Data that explicitly identifies an Advertiser (the use of which would otherwise be restricted), where such action is a deliberate attempt to circumvent the Commitments. Meta has also explained that underlying policy and training

¹²⁹ Identifiable Relevant Data means Relevant Data which explicitly identifies individual Advertisers, as defined in clause 1.1(i) of the Commitments.

¹³⁰ [redacted].

¹³¹ [Facebook Data Lineage Internal Document - DocumentCloud](#).

materials (which will be approved by the Monitoring Trustee) would include detail to ensure that staff did not seek to deliberately circumvent the Commitments.

- 6.55 The technical means by which these controls will be implemented within Meta's systems will be agreed by the CMA in consultation with the Monitoring Trustee in accordance with clause 3.2 of the Commitments. Meta has indicated to the CMA that this would be by the creation of access controls to automatically block any query which does not meet minimum specified conditions, whereby relevant employees seeking access to datasets that may include Relevant Data that explicitly identifies an opted out Advertiser would be automatically required to specify why they are seeking such access on a case-by-case basis and would be required to confirm that such Relevant Data would be excluded. These relevant employees would have received training regarding the use of data in Marketplace Analytics and would have agreed in writing to act in accordance with the training they received which explained the Commitments to them. The technical controls will also include detection mechanisms to identify and remediate any inadvertent use of such Relevant Data for Marketplace Analytics.
- 6.56 Relevant employees in this context include all employees or contractors that have a relevant or decision-making role in relation to the interrogation and use of Relevant Data of opted out Advertisers in Meta's systems to develop and/or improve the product design, layout and/or functionality of Facebook Marketplace.¹³²

Further compliance measures

- 6.57 In addition, Meta will implement the following compliance measures for all such relevant employees:¹³³
- (a) **Compliance training:** All relevant employees will be required to complete mandatory annual training in relation to the operation and purpose of the technical controls for the purposes of Marketplace Analytics. The training material, which will be updated regularly as necessary, will be approved and monitored by a Monitoring Trustee to ensure that it accurately reflects the restrictions on data use set out in the Commitments.
 - (b) **Acknowledgments and agreements:** On completion of the first annual training, all relevant employees will be required to acknowledge in writing (in the form attached to the Commitments at Appendix 2) that they agree to abide by the data use limitations in Marketplace Analytics set forth in the

¹³² 'Marketplace Analytics Employees' in the Commitments at clause 1.1(l).

¹³³ See clause 3.1(c) of the Commitments.

training (pursuant to the Commitments), and report any knowledge of data use contrary to this to a member of Meta's legal or compliance teams. All relevant employees will also acknowledge that these requirements are part of Meta's Code of Conduct and that any breaches may result in disciplinary action, up to and including termination of employment.

CMA's views on the Marketplace Technical Solution

- 6.58 The CMA considers that the Marketplace Technical Solution proposed by Meta addresses the CMA's competition concerns because the Commitments ensure that where competitors so choose:
- (a) their advertising data, in so far as it would otherwise have been included within data assets internally owned and operated by Marketplace Employees, will be removed and therefore not be used within the operation of Marketplace; and
 - (b) where employees have access to Marketplace competitor advertising data for interrogation or use to develop and/or improve Marketplace (be it the product design, layout and/or functionality), they will be restricted from using such data where it identifies the competitor or a group of competitors. This is also supported by mandatory compliance training for relevant employees, who will also be required to sign a personal acknowledgment and agreement.
- 6.59 In so doing, the Commitments address the two key means by which competitor advertising data may be used by Meta in Facebook Marketplace, namely within the Marketplace day-to-day operations and when considering developments and improvements to Marketplace.
- 6.60 Unlike with respect to other Meta products covered by the Commitments addressing unfair trading concerns (where the Product Development Principle applies), the Commitments with respect to Facebook Marketplace also include a technical solution for the analytics, increasing the robustness of the commitment, given the identification of actual uses of data in Marketplace. As an additional guarantee, this is further supported and underpinned by compliance training and an acknowledgement with clear consequences for relevant individuals if breached.
- 6.61 The CMA's view is that the Marketplace Technical Solution covers the types of data where the CMA identified concerns over past use of Advertising Data in Facebook Marketplace, namely Event Data, ad click data and product catalogue data. It also covers all data supplied by Advertisers through relevant tools such as the Ads Manager interface and Meta Business Tools including via the Meta Business Suite.

- 6.62 As noted above at paragraph 6.45, the Commitments in relation to identifying and removing Relevant Data from opted out Advertisers from use in Marketplace Operations covers the entire user-facing Marketplace experience from the point at which a User has entered the Marketplace surface. More specifically, the Commitments focus on the data assets internally owned and managed by Marketplace Employees which are used in Marketplace Feed and Search surfaces, including to determine which Marketplace listings are surfaced to Users. The CMA considers the data used to show listings to be key to how OCA competitors compete, as this enables relevant and targeted content to be surfaced to Users.
- 6.63 One respondent proposed that, to address the CMA's competition concerns, additional remedial measures would be required. The respondent submitted that Meta should be required to implement greater organisational separation between Facebook Marketplace and (i) Meta's personal social network and (ii) Meta's DDA services¹³⁴ and for Meta to treat rival OCA providers in the same way as it treats its own Facebook Marketplace, namely that any commercial relationships between Facebook Marketplace and Meta's other services should be held at arm's length. In addition, Meta should ensure that confidential information received from OCA providers in the context of Facebook's personal social network is held in strict confidence, and that Meta does not use such OCA confidential information except for the conduct of personal social network services. Another respondent¹³⁵ similarly submitted that Meta should be required to have separate and dedicated teams for Facebook Marketplace who do not have access to OCA Customers' data at any time.
- 6.64 As noted at paragraph 6.18 above, the competition concerns summarised in chapter 4 are limited to Advertising Data, and do not extend to any use of data other than Advertising Data. The CMA therefore considers that the submissions relating to Meta's social network or data obtained in relation to Meta's social network are outside the scope of the CMA's competition concerns.
- 6.65 As to the additional proposed remedies to implement greater organisational separation between Facebook Marketplace and Meta's DDA services, the CMA considers that the Marketplace Technical Solution which covers data obtained from Meta's DDA services and business tool services is sufficient to

¹³⁴ [redacted]. The organisational separation proposed included ensuring the organisation separation with different managers, not allowing any movement of employees subject to certain conditions, ensuring separate storage and hardware access systems, ensuring data is separated through a logistical separation of networks and committing adequate resources to educating staff about the requirements of the organisational separation.

¹³⁵ [redacted].

address the CMA's concerns for the reasons set out above, such that any additional organisational separation measures would not be necessary.

- 6.66 In terms of relevant employees whose access to advertising data will be restricted (and who will also complete mandatory training and be required to sign personal acknowledgments and agreements to the restrictions on the use of Advertisers' data for Marketplace Analytics explained to them in the training pursuant to the Commitments), the CMA considers that the Commitments relating to Marketplace Analytics cover the relevant individuals, since they include anyone, whether employees or contractors, who has a relevant or decision-making role in relation to Marketplace Analytics. This includes data scientists, engineers, managers or other employees or contractors whose primary responsibilities include conducting and overseeing Marketplace Analytics.
- 6.67 As mentioned above in paragraphs 6.26 to 6.35, the CMA considers that an opt-out, allowing competitors of Facebook Marketplace to choose whether or not their advertising data is used in the operation and development of Facebook Marketplace, is appropriate and empowers Advertisers by offering them a genuine choice.
- 6.68 The Marketplace Technical Solution is focused on restrictions on use of competitors' data, rather than data from Advertisers more generally. The CMA's investigation, which followed the CMA's market study on digital advertising, focused initially on concerns regarding Meta's ability to use data provided by or obtained in respect of competitors, of which the CMA then found evidence in respect of Facebook Marketplace. In this context, the CMA is of the view that the Marketplace Technical Solution is sufficient to address the CMA's competition concerns in relation to actual data use in Facebook Marketplace.

Conclusion on whether the Commitments address the concerns in relation to Facebook Marketplace

- 6.69 For the reasons set out above, the CMA is of the view that the Commitments address its competition concerns with respect to use of data within Facebook Marketplace.

Commitments to address unfair trading conditions concerns

- 6.70 Meta is committing to use all reasonable endeavours to ensure that relevant employees (i.e. those employees who have access to the data and who have a relevant or decision-making role in the interrogation and use of that data for product development) refrain from using relevant advertising data for the

purposes of the development and improvement of Meta products and services that are made available in the UK in competition with specific products or services offered by Advertisers. To this end, Meta will also insert a statement to reflect this principle in its public-facing Code of Conduct.

- 6.71 The CMA sets out below its assessment of whether the Commitments address its unfair trading conditions concerns (as set out in chapter 4 above), including taking into account representations received by the CMA in response to the Consultation.

The Commitments cover advertising data where its use for product development in competition with Advertisers would raise concerns

- 6.72 The CMA is of the view that the Commitments cover:

- (a) the type of advertising data that is currently available to Meta by virtue of providing the Services and which are referred to in Meta's terms and conditions. This includes advertising data which is available to Meta from digital advertising displayed on all advertising surfaces currently offered by Meta (Facebook, Messenger and Instagram, including features available on Facebook Blue such as Facebook Marketplace, Reels or Stories) including via the Meta Business Tools, as well as data which is currently available to Meta from digital advertising displayed on off-Meta surfaces via the Meta Audience Network; and
- (b) the type of advertising data which, if it were to be used to develop or improve products in competition with the Advertisers, would be capable of affording Meta an unfair competitive advantage, or of disadvantaging Advertising Customers. For example, ad click data could provide Meta with knowledge as to whether a User is interested in a particular product such as trainers, which could then in turn feed into a decision to show listings for shoes to that same User when it opens the Facebook Marketplace tab.

- 6.73 The types of advertising data covered by the proposals to address the unfair trading conditions concerns (referred to as 'Relevant Data' in the Commitments¹³⁶) are the same as set out in relation to the Marketplace Technical Solution in paragraph 6.41 above.

- 6.74 Based on its investigation to date, the CMA has not identified any other type of advertising data that is currently available to Meta by virtue of providing the Services which the CMA considers that, if used to develop and improve products in competition with the Advertisers, would be capable of affording

¹³⁶ See the definition of 'Relevant Data' at clause 1.1(ff) of the Commitments.

Meta an unfair competitive advantage or of disadvantaging Advertising Customers.

- 6.75 Meta will use all reasonable endeavours to refrain from using such Relevant Data where it explicitly identifies an Advertiser, on the basis that it would only be in these circumstances that Meta would be able to, as part of its Product Development Analytics, conduct targeted searches for, and identify, data relating to specific competitors (or groups of competitors). As noted above in relation to Marketplace Analytics at paragraph 6.52, one respondent¹³⁷ said that the Relevant Data covered by the technical solution for Marketplace Analytics should not be restricted to Identifiable Relevant Data. Although the respondent did not directly express similar concerns with regards to clause 4 of the Commitments, the CMA notes for completeness, that the reasons set out at paragraphs 6.53 to 6.55 apply equally to clause 4. Meta has explained that this would cover any known means of identifying an individual Advertiser attached to the Relevant Data, such as the name of the Advertiser, account number or the ID that is attached to the data by Meta when the data first enters its systems.
- 6.76 As noted in paragraph 6.54 above, the Commitments include non-circumvention provisions that would prevent, for example, the deliberate aggregation or anonymisation of Relevant Data that explicitly identifies an Advertiser (the use of which would otherwise be restricted).
- 6.77 The Commitments also provide that Meta will refrain from using any such Relevant Data that is obtained from any future ad-supported social media services developed or provided by Meta.¹³⁸ The CMA considers this sufficient to address its competition concerns given that, with respect to on-Meta advertising, Meta currently only displays advertising on social media platforms (including on features available on its social media platform Facebook Blue such as Facebook Marketplace). If Meta were to offer, in the future, digital display advertising on any additional surfaces, including for example WhatsApp, the CMA would consider at that time whether or not such surface constituted a social media service such that relevant advertising data derived therefrom would fall within the Commitments. In addition, as set out later in paragraph 6.112, the Commitments do not preclude the CMA from taking further action (if considered appropriate) in relation to any future ad-supported surfaces not covered by the Commitments either under the Act or pursuant to

¹³⁷ [redacted].

¹³⁸ These provisions also apply in relation to the Marketplace Technical Solution. Meta has clarified that Threads (which is not currently ad-supported) constitutes part of the Instagram social media service for the purposes of the Commitments.

new powers proposed under the Digital Markets, Competition and Consumers Bill, if applicable.

Product Development Analytics

- 6.78 Meta will use all reasonable endeavours to ensure that relevant employees refrain from using for Product Development Analytics relevant advertising data that explicitly identifies an Advertiser.
- 6.79 Product Development Analytics in this context means the interrogation and use of such data in Meta's systems to inform material decisions on the development or improvement of Meta products and services (or features or functionalities thereof) in competition with specific products or services offered by Advertisers, from inception to roll out. This covers the end-to-end process of product development, including the original inception of an idea, product design, opportunity sizing, beta testing and decisions as to whether to ultimately launch or abandon a specific product or improvement of an existing product or feature.¹³⁹
- 6.80 'Relevant employees' in this context means employees conducting and overseeing product development through the interrogation and use of data.¹⁴⁰ It includes anyone, whether employees or contractors, who has a relevant or decision-making role in relation to Product Development Analytics. This includes data scientists, engineers, managers or other employees or contractors whose primary responsibilities include conducting and overseeing Product Development Analytics.
- 6.81 The Commitments therefore mean that relevant advertising data directly or indirectly derived from Advertisers' use of Meta's advertising services (and which identify an Advertiser) will not be used by Meta in the development or improvement of any of its products made available in the UK in competition with those Advertisers.
- 6.82 The CMA considers that the scope of the Commitments therefore cover use of Advertising Data in the development activities that are referred to in Meta's terms and conditions which, on the basis of its investigation in this case, the CMA has identified as going beyond what is necessary in providing the Services and that are capable of affording Meta an unfair competitive advantage when developing products in Adjacent Markets that it would not

¹³⁹ See the definitions of 'Product Development' and 'Product Development Analytics' at clauses 1.1(aa) and 1.1(bb) of the Commitments respectively.

¹⁴⁰ See the definitions of 'Product Development Analytics Employees' at clause 1.1(cc) of the Commitments.

otherwise have obtained purely by competing on the merits and/or otherwise disadvantaging Advertising Customers.

Package of measures relating to the UK to address the CMA's competition concerns in respect of unfair trading conditions

- 6.83 Meta has not offered to amend its standard terms and conditions which, it has explained, apply globally, to address the CMA's concerns which focus on the UK. Instead, Meta commits to use all reasonable endeavours not to use certain advertising data in the development of Meta products and services made available in the UK (as set out in clause 4.1 of the Commitments). To this end, there will in particular be a public commitment in Meta's public-facing Code of Conduct, setting out the principles underpinning the UK commitments (as set out in clause 4.1(a) of the Commitments and summarised in paragraph 6.87(b) below).
- 6.84 One respondent contended that the Commitments fail to address the CMA's competition concerns in respect of unfair trading conditions as they do not include any amendment of Meta's standard terms and conditions.¹⁴¹ That respondent commented that amending Meta's Code of Conduct is insufficient to address the CMA's concerns; in its view, relying on Meta's goodwill not to engage in similar conduct in the future while its standard terms and conditions still provide it with the possibility to pursue the conduct the Commitments aim to prevent is inadequate. Further, the respondent argued that the Commitments would not provide Advertisers with a clear judicial recourse against Meta in case of breach of its Code of Conduct.¹⁴²
- 6.85 The CMA does not agree with the above and considers that the Commitments offered by Meta are sufficient to address its concerns in respect of products and services offered or launched by Meta in the UK during the period of the Commitments. The public commitment in Meta's public-facing Code of Conduct will provide Advertisers with clarity and transparency in relation to Meta's use of the data they share for the purposes of advertising. Moreover, the CMA's decision to accept the Commitments is public and will therefore alert Meta's Advertising Customers that there are, in effect, UK-specific data use provisions and therefore, despite the wording in its global terms, Meta will conduct itself differently in respect of the UK.

¹⁴¹ [redacted].

¹⁴² For completeness, the CMA notes that the respondent also cited a previous decision to accept commitments by the CMA in the vehicle service case, where the CMA required that the dominant undertaking's future contracts comply with certain principles to address its concerns. The CMA notes that commitment packages are specific to each case, and the fact that future contracts were required to be amended in the vehicle service commitments does not impact the CMA's conclusion in this case that the Commitments are sufficient to address the CMA's competition concerns concerning unfair trading for the reasons set out in this Decision.

6.86 Further, Meta is not solely committing to amending its Code of Conduct but also to use all reasonable endeavours to ensure that relevant employees refrain from using Identifiable Relevant Data for the purposes of the development and improvement of Meta products and services in competition with specific products or services offered by Advertisers that are made available in the UK.

6.87 These Commitments are also supported by compliance training and monitoring through an independent Monitoring Trustee so as to ensure that Meta complies with its commitments and that Meta's relevant employees are clear on what is required of them:

(a) **Monitoring of Meta's commitment to use all reasonable endeavours:**

as set out in more detail in paragraphs 5.18 to 5.20 above, the Commitments set up a Monitoring Trustee as the key monitoring and reporting mechanism rather than relying on Advertisers, who only have access to more limited information, to detect any potential breach of the Commitments. However, despite the existence of the Monitoring Trustee, nothing in the Commitments would prevent Advertisers from reporting to the Monitoring Trustee and/or CMA if they were made aware of a breach of Meta's Code of Conduct. The Commitments grant the Monitoring Trustee, assisted by a Technical Expert, access to appropriate data to ensure that Meta's compliance with the commitments can be effectively monitored (see paragraph 9 of Appendix 5 to the Commitments). Importantly, in clause 8.1(c) of the Commitments, Meta undertakes to provide the CMA with 'any information and documents' required for the CMA to 'monitor and review the operation of these Commitments or for the purposes of their enforcement'. If the CMA is made aware of a breach, the CMA may apply to the court for an order requiring, among other matters, the default to be made good.¹⁴³

(b) **Code of Conduct:**¹⁴⁴ The principles underpinning Meta's commitment not to use relevant advertising data that identifies Advertisers for product development and improvement in competition with those Advertisers will be inserted in Meta's public-facing Code of Conduct, in the form attached to the Commitments at Appendix 3. Meta's Code of Conduct currently includes several other key principles and sets out Meta's expectations for how Meta employees should act and make decisions. In addition, the Code of Conduct explains some of the legal rules that Meta must abide by, and makes clear the standards to which Meta holds itself. Meta has further

¹⁴³ Section 31E of the Act.

¹⁴⁴ Clause 4.1(a) and Appendix 3 of the Commitments. This applies to advertising which is displayed to individual end-users based in the United Kingdom and DDA provided to customers based in the United Kingdom.

confirmed that all Meta employees and contractors are required to abide by, and uphold, the Code of Conduct. Potential violations of the Code of Conduct will trigger an internal investigation. In addition, as set out in the Commitments and in the Code of Conduct, any violations may result in disciplinary action, up to and including termination of employment or assignment. The Code of Conduct makes the restriction on data use subject to the exception that data use may be approved in advance by Meta's in-house legal team. Meta has explained that the exception is necessary to account for the fact that the Code of Conduct applies globally, whereas the focus of the Commitments is the UK, and to account for the permitted data use cases outlined in clause 5 of the Commitments, and summarised at paragraphs 5.13 above and 6.98 below.

- (c) **Compliance training:**¹⁴⁵ All relevant employees will be required to attend mandatory annual compliance training in relation to the Product Development Principle. This will be devised with the input of the Monitoring Trustee who will ensure that the training, which will be updated regularly as necessary, accurately reflects the restrictions on data use set out in the Commitments, including by approving the training material and monitoring completion of the training by all relevant employees referred to in paragraph 5.12 above.
- (d) **Personal acknowledgments and agreements:**¹⁴⁶ On completion of the first annual training, all relevant employees will be required to acknowledge in writing (in the form attached to the Commitments at Appendix 4) that they agree to abide by the data use limitations for product development set out in the training (pursuant to the Commitments) and report any knowledge of data use contrary to this to a member of Meta's legal or compliance teams. The personal acknowledgments and agreements mirror the obligations placed upon all relevant employees by the Product Development Principle which is reflected in the Code of Conduct. They give additional comfort that Meta employees involved in the development of products offered in the UK will be aware of the restrictions. The acknowledgments and agreements also make clear the severe consequences of breach (which may result in disciplinary action, up to and including termination of employment).

6.88 One respondent submitted that the CMA should extend the scope of the Marketplace Technical Solution beyond Facebook Marketplace to include all of Meta's other ecommerce services including Instagram, WhatsApp, Facebook Messenger, Quest 2 and Facebook Feeds on the basis that it

¹⁴⁵ Clause 4.1(b)(i) of the Commitments.

¹⁴⁶ Clause 4.1(b)(ii) and Appendix 4 to the Commitments.

cannot be predicted how Meta will use advertising data for the purposes of supporting or extending its ecommerce services.¹⁴⁷ Another respondent¹⁴⁸ submitted that any data-related remedy should extend to any data relating to other Meta services, including non-OCA third party data obtained in relation to DDA services.¹⁴⁹

- 6.89 The CMA disagrees and does not consider that a technical solution beyond Facebook Marketplace is needed to address its competition concerns concerning unfair trading. As set out at paragraph 6.60, the commitments with respect to Facebook Marketplace are complemented by a technical solution for Marketplace Analytics, increasing the robustness of the Commitments for Facebook Marketplace, given the identification of actual uses of Relevant Data from competitors of Facebook Marketplace which the CMA suspects was used to develop, improve and operate Facebook Marketplace in ways which Meta would not otherwise have been able to do. Beyond Facebook Marketplace, the CMA has not found evidence of actual data use but has concerns that Meta's trading conditions could give it the ability to use Relevant Data in the development and improvement of existing and new Meta products or services in Adjacent Markets.
- 6.90 In relation to the submission regarding non-OCA third party data obtained in relation to DDA services, clause 4.1 of the Commitments (the Product Development Principle) applies to certain advertising data which explicitly identifies Advertisers whether these are OCA Advertisers or non-OCA Advertisers, providing further protections to all Advertisers as set out at paragraphs 5.7 to 5.12 above.
- 6.91 The CMA is therefore satisfied that the above-described measures are sufficient to address its unfair trading concerns without the need to extend the scope of the Marketplace Technical Solution.
- 6.92 For completeness the CMA notes that the Commitments do not preclude the CMA from taking further action (if considered appropriate) in relation to concerns covered or not by the Commitments (subject to the application of clause 7.2 of the Commitments) pursuant to new powers proposed under the Digital Markets, Competition and Consumers Bill, if applicable.
- 6.93 The CMA's view is that this package of commitments addresses the CMA's identified concerns in respect of Meta's terms and conditions.

¹⁴⁷ [redacted].

¹⁴⁸ [redacted].

¹⁴⁹ As set out at paragraph 6.17, the respondent also argued that to address the CMA's competition concerns any data-related remedy should also include non-OCA third party data obtained in relation to Meta's personal social network.

Conclusion on whether the Commitments address the concerns about unfair trading conditions

- 6.94 The CMA concludes that the Commitments address the CMA's concerns that Meta has the ability to use Advertising Data in the development and improvement of existing and new Meta products and services, and that this conduct is capable of affording Meta an unfair competitive advantage that it would not otherwise have obtained purely by competing on the merits; and/or otherwise disadvantaging Advertising Customers which, either at present or in the future, compete with Meta in Adjacent Markets.

Permitted Uses in the Commitments

- 6.95 The Commitments set out some exceptions where use of Relevant Data is not restricted.
- 6.96 One respondent¹⁵⁰ submitted that these exceptions are inappropriate as there would be no conceivable scenario in which Meta's use of Relevant Data would not be anti-competitive. The respondent further stated that even if there were genuinely legitimate uses of Relevant Data, these would naturally fall outside the scope of any commitments. Clause 5.1 would therefore offer no additional value and potentially provide Meta with a route to circumvent the Commitments.
- 6.97 In response to this submission, the CMA makes the following points, namely:
- (a) given clause 5.1 sets out exceptions, it is to be construed narrowly;
 - (b) these exceptions are also to be read alongside the non-circumvention clause 8.2 of the Commitments, which explicitly prohibits Meta from circumventing or attempting to circumvent the Commitments either directly or indirectly by any act or omission, such that they cannot be interpreted so as to circumvent the Commitments; and
 - (c) the purpose behind these exceptions is to clarify the scope of Meta's obligations in relation to its use of data obtained from Advertising Customers. Given that the Commitments apply to future conduct, it is appropriate and desirable for the Commitments to provide greater certainty by explicitly setting out the instances where Meta's use of such data is not prohibited by the Commitments. The CMA considers these exceptions to either fall outside the scope of the CMA's competition concerns or not to undermine the effectiveness of the Commitments.

¹⁵⁰ [redacted].

6.98 The CMA further considers below each of the permitted data uses listed in clause 5.1 in turn:

- (a) Ensure the safety, security and integrity of Meta's services and guarantee essential system functionality as well as support the delivery of tools to facilitate navigation of Facebook.

Meta has confirmed that it will put in place technical safeguards designed to ensure that no Relevant Data that might be used in integrity and security models could be directly used within the Data Control Boundary of Facebook Marketplace such that the CMA is satisfied that use for these purposes would not undermine the restrictions on data use in the Commitments. Similarly, in relation to Marketplace Analytics, Meta has explained that if the system automatically determines that a query is within scope and includes Relevant Data of opted out Advertisers, the tool would automatically block the query from being run, regardless of whether that Relevant Data is otherwise used in Meta's security and integrity models. The CMA does not consider that using Relevant Data to ensure essential system functionality or to facilitate navigation of Facebook will undermine the effectiveness of the Commitments.

- (b) Fulfil its legal or regulatory obligations and protect user content or privacy.

The CMA considers that in line with a narrow interpretation and the non-circumvention clause, fulfilling legal or regulatory obligations refers to legal obligations under common law and statute. The CMA is of the view that these, including protecting user privacy, are legitimate aims, the fulfilment of which do not undermine the effectiveness of the Commitments.

- (c) fulfil Meta's contractual obligations to individual Advertisers as well as develop Meta's Advertising Service¹⁵¹ and monetization products, for example in developing tools which allow creators to monetize their content.

The CMA's concerns are limited to the use of Relevant Data beyond the provision of DDA. This clause is intended to confirm, for the avoidance of doubt, that providing DDA is a legitimate use of the Relevant Data as is by extension improving Meta's Advertising Service for DDA customers.

- (d) use Relevant Data for any other legitimate use (not for the purposes of Product Development,¹⁵² Marketplace Operations¹⁵³ or Marketplace

¹⁵¹ See the definition of 'Meta's Advertising Service' at clause 1.1(r) of the Commitments.

¹⁵² See the definition of 'Product Development' at clause 1.1(aa) of the Commitments.

¹⁵³ See the definition of 'Marketplace Operations' at clause 1.1(q) of the Commitments.

Analytics¹⁵⁴) where specific consent is provided in writing by the CMA and the Monitoring Trustee.

The CMA considers this exception does not undermine the Commitments given (i) it cannot be used for the purposes of Product Development, Marketplace Operations or Marketplace Analytics, (ii) it should only apply to a 'legitimate use' and (iii) it would only be provided with CMA consent and such consent would only be granted if the CMA considered that the use did not undermine the effectiveness of the Commitments.

(e) use Identifiable Relevant Data in Product Development where a competitor explicitly consents for its data to be used (such as beta agreements where Advertisers may agree to test a product before the final launch to uncover issues with it and to share their advertising data as part of that).

With respect to this exception, the respondent mentioned at paragraph 6.96 stated that it was of particular concern as the consent given under Meta's terms and conditions could be interpreted as 'explicit consent' thereby allowing Meta to use Identifiable Relevant Data in Product Development.

In view of the above concern regarding the last sentence of clause 5.1, Meta confirmed that this permitted use would only apply when advertisers provide their explicit consent to their data being shared for the purposes set out in these agreements. Meta offered to make a clarificatory addition to specify that *'For the purposes of this provision, a competitor's acceptance of Meta's standard terms and conditions shall not be construed as explicit consent for the use of Identifiable Relevant Data in Product Development.'*

The CMA is satisfied that this addition is sufficient to clarify the notion of 'explicit consent' and that this permitted use does not undermine the overall effectiveness of the Commitments in addressing the CMA's competition concerns. Meta confirmed to the CMA that this last sentence is designed primarily to capture beta agreements and that it will be applied narrowly. Meta explained that beta agreements are typically entered into when businesses are part of testing groups for new Meta products or features, or in the context of bespoke partnerships with Meta. Any data sharing under those agreements is instrumental to that testing, typically to measure the impact of the new product or feature and its benefits to the business in question.

6.99 Given the above, the CMA considers that clause 5.1 of the Commitments does not undermine the overall effectiveness of the Commitments in

¹⁵⁴ See the definition of 'Marketplace Analytics' at clause 1.1(k) of the Commitments.

addressing the CMA's competition concerns and indeed clarifies their scope which in turns facilitates compliance and the monitoring of such compliance.

The Commitments can be implemented effectively and, if necessary, within a short period of time

6.100 The CMA considers that the Commitments can be implemented effectively and within a reasonable period of time.

6.101 Meta has undertaken to act in accordance with the Commitments from the date the CMA publishes this Decision with the following implementation periods:

(a) **Marketplace Technical Solution** (including informing Advertisers of the ability to opt-out of the use of their advertising data, implementing and maintaining systems and technical controls in relation to Marketplace Operations and Marketplace Analytics and requiring relevant staff to attend compliance training and sign personal acknowledgments and agreements on completion of the first annual training) **within 12 months from the date of this Decision**. For the duration of the commitments, newly employed relevant employees will be required to complete their first annual training and sign a personal acknowledgment and agreement within two months of beginning their role.¹⁵⁵

(b) **The commitments to address the unfair trading conditions** (including publication of a provision reflecting the Product Development Principle in Meta's Code of Conduct and Meta's commitments to use all reasonable endeavours to ensure that relevant employees refrain from using relevant advertising data for the purposes of the development and improvement of Meta products and services in competition with specific products or services offered by Advertisers that are made available in the UK) **within six months from the date of this Decision**. The first mandatory annual training must be completed within two months of this¹⁵⁶ with personal acknowledgments and agreements signed on completion of the first annual training. For the duration of the commitments, newly employed relevant employees will be required to complete their first annual training

¹⁵⁵ Where this is not possible in light of an employee's specific circumstances, a further two-month grace period will be allowed for that employee to complete the training, allowing for long-term absence or leave. See clause 3.1(c) of the Commitments.

¹⁵⁶ Where this is not possible in light of an employee's specific circumstances, a further two-month grace period will be allowed for that employee to complete the training, allowing for long-term absence or leave. See clause 4.1(b)(i) of the Commitments.

and sign a personal acknowledgment and agreement within two months of beginning their role.¹⁵⁷

6.102 The CMA's view is that the time periods for implementation are reasonable in the circumstances, noting:

- (a) they include time for the appointment of a Monitoring Trustee (who will then need time to consider and approve the technical means by which the Marketplace Technical Solution is to be implemented, as well as the package of compliance training to be provided);
- (b) reflect the different level of technical input and resource involved in different elements – with a shorter implementation period for the commitments to address concerns in relation to unfair trading conditions than for the more complex Marketplace Technical Solution;
- (c) in relation to the publication in Meta's Code of Conduct reflecting the Product Development Principle, the implementation period allows time for Meta to prepare a package of staff training (to be approved by the Monitoring Trustee) so that it is ready by the time the Code of Conduct wording is updated, to cover questions which staff may have regarding the new wording and the commitments more generally.

6.103 The CMA's view is that the Commitments are capable of being implemented effectively for the reasons set out below:

- (a) The Commitments provide for appropriate training as well as the signing of personal acknowledgments and agreements by relevant employees, which identify that any violations may result in disciplinary action, up to and including termination of employment or assignment. Meta's training package will be monitored, including approval of training materials and completion of the training by the relevant individuals.
- (b) Between the CMA, the Monitoring Trustee, the Technical Expert and any other advisers, there should be sufficient knowledge and expertise to be able to monitor the effective implementation and compliance with the Commitments.
- (c) The Commitments provide for the technical means by which Meta implements the Marketplace Technical Solution to be approved by the CMA in consultation with the Monitoring Trustee. Any material changes will be notified to the Monitoring Trustee and subject to CMA approval (see

¹⁵⁷ Where this is not possible in light of an employee's specific circumstances, a further two-month grace period will be allowed for that employee to complete the training, allowing for long-term absence or leave. See clause 4.1(b)(ii) of the Commitments.

clause 3.2 of the Commitments and paragraph 10 of Appendix 5 to the Commitments).

- (d) The Commitments provide for the Monitoring Trustee having access to appropriate data to ensure that Meta's compliance with the commitments can be effectively monitored (see paragraph 9 of Appendix 5 to the Commitments). Importantly, in clause 8.1(c) of the Commitments, Meta undertakes to provide the CMA with 'any information and documents' required for the CMA to 'monitor and review the operation of these commitments or for the purposes of their enforcement'. This clause ensures that the CMA will be able to request any data it considers reasonably necessary to monitor and review Meta's compliance with the commitments. The CMA considers that the access to information and documents granted to the Monitoring Trustee, Technical Expert and other potential advisers is sufficient to ensure independent verification and oversight of Meta's compliance with the commitments.
- (e) In addition, the CMA will receive regular reports from the Monitoring Trustee on compliance with the commitments, the first of which will include a detailed work plan setting out how the Monitoring Trustee intends to monitor compliance with the commitments.
- (f) The Commitments also include an anti-circumvention provision at clause 8.2 to ensure the commitments are effectively implemented.

6.104 In the light of the above considerations, the CMA considers that the Commitments are capable of being implemented effectively within a reasonable period of time.

Compliance with and the effectiveness of the Commitments would not be difficult to discern

6.105 The CMA's view is that compliance with the commitments and their effectiveness would not be difficult to discern.

6.106 One respondent¹⁵⁸ said that, although it recognised that the Commitments would be monitored by the CMA and a Monitoring Trustee, it considered that Advertisers should be granted a direct audit right to make the Marketplace Technical Solution a sustainable long-term solution.¹⁵⁹ The CMA notes that the respondent did not submit that Meta's compliance with the Commitments could not be monitored effectively by a Monitoring Trustee and the CMA, such

¹⁵⁸ [redacted].

¹⁵⁹ The same respondent also noted that audit rights would allow Advertisers to monitor information security standards. However, this does not relate to the CMA's competition concerns and the CMA considers this out of scope of its investigation.

that it would be necessary to modify the Commitments so as to provide Advertisers any such direct auditing rights. The CMA considers that the reporting and compliance provisions in the Commitments including having a Monitoring Trustee, which is a well-established means of ensuring that compliance is effectively monitored and checked, will allow the CMA to monitor Meta's implementation of the Commitments and its ongoing compliance.

6.107 The CMA notes that the arguments made by another respondent¹⁶⁰ concerning the need for the opt-out mechanism to be removed from the Commitments (see paragraphs 6.30 to 6.32), improve Meta's data traceability (see paragraph 6.52) and amend Meta's terms and conditions (see paragraph 6.84) were also put forward by that respondent on the basis that compliance and effectiveness of the Commitments would be difficult to discern.

6.108 As noted above, the CMA considers that the reporting and compliance provisions in the Commitments as described at paragraphs 5.18 to 5.20 above will allow the CMA to monitor Meta's implementation of the Commitments and its ongoing compliance. The CMA therefore does not consider it necessary for the Commitments to be modified.

Acceptance of the Commitments would not undermine deterrence

6.109 One respondent¹⁶¹ stated that Meta's conduct constitutes a serious abuse of a dominant position as it is inherently likely to result in serious exploitative effects (with a reference to the CMA's Procedural Guidance which states that *'the CMA is very unlikely to accept commitments in cases involving (...) a serious abuse of dominant position'*¹⁶²) and that the CMA would be justified in insisting on commitments that adequately overcome the serious nature of Meta's abuse, but that the Commitments do not suffice to address Meta's serious abusive conduct.

6.110 The CMA has a broad discretion in determining which cases are suitable for commitments and considers that acceptance of the Commitments in this case will not undermine deterrence against infringements of the Act.

6.111 The CMA considers that the fact that it has investigated Meta's conduct can in itself have a deterrent effect, and that obtaining binding commitments to address its competition concerns should help to provide guidance to any undertakings that may be considering similar conduct. The CMA further considers that the Commitments will amount to a significant deterrent given

¹⁶⁰ [redacted].

¹⁶¹ [redacted].

¹⁶² Paragraph 10.19 and footnote 97 of the Procedural Guidance.

the resources that Meta will need to commit to implementation and monitoring of the Commitments. Separately, the CMA disagrees with the submission that Commitments are not sufficient to address its competition concerns for the reasons set out at paragraphs 6.23 to 6.94.

- 6.112 It should also be noted that the Commitments accepted by the CMA under section 31A of the Act will be legally binding and that the CMA may apply for a court order if Meta should fail, without reasonable excuse, to adhere to the Commitments¹⁶³ or continue the investigation if it has reasonable grounds for suspecting that Meta has failed to adhere to one or more of the terms of the Commitments.¹⁶⁴ Acceptance of the Commitments would also not preclude the CMA from taking further enforcement action in relation to other suspected breaches of competition law. Nor are the Commitments intended to restrict the ability of the CMA to use powers under new legislation in the future. In particular, any future conduct by Meta or other undertakings would be subject to competition law and may be subject to enforcement action either under the Act or pursuant to new powers proposed under the Digital Markets, Competition and Consumers Bill, if applicable, as noted in paragraph 5.17 above.
- 6.113 The CMA therefore considers that acceptance of the Commitments would not undermine deterrence.

¹⁶³ Section 31E of the Act.

¹⁶⁴ Section 31B(4)(b) of the Act.

7. The CMA's Decision

- 7.1 For the reasons set out in this Decision, the CMA has concluded that the Commitments set out in the Annex to this Decision address the competition concerns it has identified arising from Meta's conduct (as set out in chapter 4 above) and that it is appropriate to accept the Commitments for the purposes of addressing those competition concerns.
- 7.2 The Commitments accepted by the CMA contain one minor addition to the commitments set out in the Annex to the Notice issued on 26 May 2023. This modification is to add clarity within the Commitments, and has been described in this Decision (see paragraph 6.98(e)). The CMA is satisfied that this modification is not material in any respect such that no further consultation is required.¹⁶⁵
- 7.3 Accordingly:
- (a) The CMA has decided to accept the Commitments by means of this Decision; and
 - (b) The CMA will discontinue its investigation with effect from the date of this Decision.

Signed:

Michael Grenfell

Senior Responsible Officer and Executive Director, Enforcement

For and on behalf of the Competition and Markets Authority

Date: 3 November 2023

¹⁶⁵ Paragraph 5 of Schedule 6A to the Act.

Annex: The Commitments offered by Meta

See separate document.