

## **Meta's response to CMA consultation: Changes to CMA mergers guidance**

### **1. Overview**

- 1.1 Meta welcomes the opportunity to comment on the draft revised guidance on the CMA's jurisdiction and procedure in relation to mergers (the "**Draft Revised Guidance**").
- 1.2 Meta believes that most of the proposed changes have the potential to bring about notable improvements to the Phase 2 inquiry process. Meta believes that the Draft Revised Guidance ought to have a positive impact on the quality of UK merger control if implemented appropriately.
- 1.3 Meta continues to believe that there are specific aspects of the Draft Revised Guidance that ought to be reconsidered in order to enhance the robustness of the UK merger control system. The most important of these is providing access to evidence on the CMA's file.

### **2. Positive developments**

- 2.1 Meta believes that more - and earlier - engagement between merging parties and the Panel is important to ensure a thorough interrogation of the evidence and analysis in any Phase 2 case.
- 2.2 Therefore, Meta welcomes:
  - (i) The introduction of the Initial Substantive Meeting;
  - (ii) Replacing Provisional Findings with an earlier Interim Report;
  - (iii) Changing the nature of the main Hearing to enable an interactive discussion based on the Interim Report; and
  - (iv) The introduction of additional opportunities for the parties to discuss remedy options with the Panel.
- 2.3 Meta believes that achieving the full benefit of these changes in reality will require an open, cooperative attitude from both the CMA and the merging parties. With respect to the CMA's position, for example, the new Interim Report and main Hearing will be most beneficial if the Interim Report (and relevant evidence) are provided sufficiently in advance of the Hearing to allow for a fully informed discussion of the facts. For its part, Meta is also committed to adopting an open and cooperative approach.

### **3. Other opportunities for improvement**

- 3.1 Certain suggestions made by Meta have not been reflected in the Draft Revised Guidance. Of these, the key omission is the lack of access to file for the merging parties. The Draft Revised Guidance proposes to continue with the current approach whereby the parties must rely on the CMA's summary of the underlying evidence.
- 3.2 Meta's experience is that access to file typically results in an important and fruitful exchange between the parties and the agency. Given the merging parties' knowledge of their industry, the parties can often provide useful input on the significance of evidence that may not otherwise be immediately obvious. Moreover, the need to protect third parties' confidential information is not unique to the UK and other jurisdictions have been able to respect confidentiality while protecting access to file.
- 3.3 Meta therefore urges the CMA to reconsider providing full access to file so as to place it on the same footing as comparable agencies (such as the EC) as regards transparency and fair process.