

Notice of intention to vary the
commitments offered by Meta on its
use of data obtained through digital
display advertising

Case number AT 51013

24 May 2024

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Contents

	Page
1. Introduction	2
2. The Competition Concerns and the Current Commitments	4
3. The Proposed Variation and the CMA's Preliminary Assessment of the Proposed Variation.....	6
4. The CMA's Intentions and Invitation to Comment.....	10

1. Introduction

Background

- 1.1 On 3 June 2021, the Competition and Markets Authority (the **CMA**) opened an investigation under section 25 of the Competition Act 1998 (the **Act**) into the conduct of the undertaking comprising Meta Platforms, Inc.¹ and its group companies, including Meta Platforms Ireland Ltd and Facebook UK Ltd (together, **Meta**).
- 1.2 The CMA was concerned that Meta had engaged in conduct which abused, and continued to abuse, its dominant position in the market for digital display advertising services² (**DDA**) or, alternatively, in a narrower relevant product market, such as digital display advertising services on social media (**DDASM**).
- 1.3 Following a public consultation on 26 May 2023, the CMA concluded that Meta's commitments (the **Current Commitments**), offered under section 31A of the Act, addressed its competition concerns and decided to accept the Current Commitments on 3 November 2023 (the **Decision**).³ Accordingly, the CMA closed its investigation, with no decision made on whether or not the Act was infringed.

Meta's proposal to vary the Current Commitments

- 1.4 Subsequently, on 25 April 2024, Meta requested a variation of the Current Commitments under section 31A of the Act (the **Proposed Variation**).
- 1.5 As described further in section 3, the Proposed Variation would give Meta the possibility to implement the technical controls as they apply to Facebook Marketplace to cover data from all advertising customers, rather than only data from Facebook Marketplace's competitors as under the Current Commitments, and all advertisers would retain the ability to place advertisements on Facebook Marketplace. Meta's current intention is to take this wider approach. For the reasons set out in section 3, the CMA's preliminary assessment is that the Proposed Variation would address the CMA's current competition concerns by giving Meta the choice to exceed the requirements of the Current Commitments and would also not make any advertisers worse off. Therefore, subject to consultation responses and views

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

² This includes services in respect of DDA on and off Meta's platforms.

³ [Decision to accept commitments \(publishing.service.gov.uk\)](#) and the Commitments annexed to the Decision [Meta_Final_Commitments_PDFA.pdf \(publishing.service.gov.uk\)](#).

from Ofcom as concurrent regulator,⁴ the CMA proposes to accept the Proposed Variation, pursuant to section 31A of the Act.

- 1.6 The consolidated text of the Commitments as varied by the Proposed Variation is set out in full in **Annex 1** to this Notice. **Annex 2** to this Notice details the changes to the Current Commitments under the Proposed Variation.
- 1.7 Unless otherwise indicated, capitalised defined terms have the meaning assigned to them in Annex 1 to this Notice.

The legal regime

- 1.8 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.
- 1.9 Section 31A(3) of the Act also provides that at any time when commitments are in force, the CMA may accept from the person(s) who gave the commitments, a variation of the commitments if it is satisfied that the commitments as varied will address its current competition concerns.
- 1.10 Under Schedule 6A of the Act, before the CMA accepts any variation of commitments, other than a variation which is not material in any respect, it must give notice and consider any representations made in accordance with the notice and not withdrawn.
- 1.11 Having considered the Proposed Variation, and having had regard to section 31A read with Schedule 6A of the Act, the CMA's provisional view is that, for the reasons set out in Chapter 3, the Proposed Variation will address the CMA's current competition concerns and it is appropriate for the CMA to accept the Proposed Variation.

⁴ In accordance with the [Guidance on concurrent application of competition law to regulated industries \(CMA10\)](#), page 25, paragraph 3.49.

2. The Competition Concerns and the Current Commitments

The CMA's competition concerns

- 2.1 The CMA's competition concerns remain unchanged from the competition concerns outlined in the Decision,⁵ namely:
- (a) the trading conditions on which Meta provides the Services,⁶ which in most cases Advertising Customers⁷ wishing to use the Services have little choice in practice but to agree to. The trading conditions give Meta the ability to use Advertising Data⁸ in the development and improvement of existing and new Meta products or services in Adjacent Markets;⁹ 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.
- 2.2 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.

The Current Commitments

- 2.3 The main elements of the Current Commitments are:¹⁰
- (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

⁵ Decision, paragraph 4.10

⁶ *Services* means Meta's DDA and business tool services which include application programming interface services.

⁷ *Advertising Customers* means Meta's DDA customers.

⁸ *Advertising Data* means (i) data shared by, or otherwise obtained from, Advertising Customers when using the Services, such as event data; (ii) data relating to or derived from Advertising Customers' use of the Services, including interactions of Meta's individual end-users with its social media services displaying advertisements; and (iii) data otherwise pertaining to Advertising Customers which is generated in the course of providing the Services.

⁹ *Adjacent Markets* means markets other than DDA, DDASM or social media in which Advertising Customers compete with Meta, either at present or in the future.

¹⁰ Decision, paragraph 1.6

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).

- (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. 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.
- (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.

3. The Proposed Variation and the CMA's Preliminary Assessment of the Proposed Variation

Proposed Variation

- 3.1 The Proposed Variation only affects the Facebook Marketplace Technical Solution aspect of the Current Commitments (ie Clauses 2 and 3 of the Current Commitments). Under the Proposed Variation, Meta would be allowed to comply with either the original terms of the Current Commitments or alternatively to exceed the Current Commitments by applying the terms introduced by the Proposed Variation (through the inclusion of new Clauses 1.1(jj) and 2 which also define either option as a Technical Controls Plan as shown in paragraphs 5 and 6 of Annex 2 to this Notice). In particular, under the Proposed Variation, Meta would have the possibility to implement the Commitments by exceeding the requirements of the Facebook Marketplace Technical Solution and extending the Facebook Marketplace Technical Solution to Relevant Data from all Advertisers as opposed to only Specified Relevant Data ie Relevant Data from opted out Facebook Marketplace competitors. In that case, advertisers would not be prevented from placing ads on Facebook Marketplace.
- 3.2 More specifically under the Proposed Variation, Meta can:
- (a) With respect to Marketplace Operations, implement the Facebook Marketplace Technical Solution to identify and exclude Relevant Data from all Advertisers from within the Data Control Boundary of Facebook Marketplace. This is reflected by the amendment to Clause 2 of the Current Commitments as shown in paragraph 7 of Annex 2 to this Notice.
 - (b) With respect to Marketplace Analytics, implement the Facebook Marketplace Technical Solution that will prevent relevant employees or contractors from using any Identifiable Relevant Data for the purpose of Marketplace Analytics (ie to develop and/or improve the product design layout and/or functionality of Facebook Marketplace). This is reflected by the amendment to Clause 3 of the Current Commitments as shown in paragraph 8 of Annex 2 to this Notice.
- 3.3 The practical effect of the scenario described at paragraphs 3.1 and 3.2 above is that Relevant Data pertaining to Facebook Marketplace competitors would be subject to the Facebook Marketplace Technical Solution automatically, and no Advertisers would be prevented from placing ads on Facebook Marketplace. As such:

- (a) there would be no initial need for Advertisers who consider themselves to be competitors of Facebook Marketplace to opt-out of the use of their Relevant Data for the purposes of Marketplace Operations and Marketplace Analytics – and therefore it would be unnecessary for Meta to inform Advertisers of the ability to do so, as envisioned by Clause 3.1(a) of the Current Commitments; and
 - (b) there would be no initial need for Advertisers who are included in Appendix 1 of the Current Commitments to inform Meta that they do not wish to be so included – and therefore it would also be unnecessary for Meta to inform such Advertisers of the ability to do so, as envisioned by Clause 3.1(a) of the Current Commitments.
- 3.4 In practice, Meta would be required to notify the CMA and the Monitoring Trustee within one month from the Variation Decision Date, as to which Technical Controls Plan it intends to implement, ie whether it intends to apply the Facebook Marketplace Technical Solution as envisaged in the Current Commitments or to exceed the Current Commitments by applying the Facebook Marketplace Technical Solution more widely as set out in the Proposed Variation.
- 3.5 At any time that the Proposed Variation would be in force, if Meta decides to change its election of Technical Controls Plan, ie to amend the scope of the Facebook Marketplace Technical Solution, it would need to notify the CMA and the Monitoring Trustee in writing, at least one calendar month before making any such change. This is reflected by amendments to Clause 8 of the Current Commitments as shown in paragraph 11 of Annex 2 to this Notice. However, the Technical Controls Plan will not be changed before the CMA approves the timeframes for Meta to notify Advertisers of their ability to opt-out of the use of their data within Facebook Marketplace or to be excluded from Appendix 1 (pursuant to Clause 3.1(a) of the Current Commitments), where applicable.
- 3.6 The Current Commitments set out compliance requirements for the technical solution for Marketplace Analytics, in particular the requirement for Marketplace Analytics Employees to complete mandatory annual training and to sign a written acknowledgement on completion of the first annual training (see clause 3.1(c) of the Current Commitments). Similar requirements remain in place for the Proposed Variation ie Marketplace Analytics Employees will have to sign the required acknowledgements and complete an annual training, regardless of which Technical Controls Plan Meta intends to implement:

- (a) If Meta chooses to adopt the Technical Controls Plan that implements the Current Commitments under new Clauses 3.1 and 4.1, the employees will have to sign the acknowledgement in Appendix 2A; or
 - (b) If Meta chooses to adopt the Technical Controls Plan that implements the Proposed Variation under new Clauses 3.2 and 4.2, the employees will have to sign the new acknowledgement in Appendix 2B.
 - (c) These amendments are reflected in paragraphs 7, 8 and 13 of Annex 2 to this Notice.
- 3.7 These employees will be trained annually and will sign acknowledgements only once per calendar year, regardless of whether Meta decided to change its election of the Technical Controls Plan. However, Marketplace Analytics Employees would be notified and the change explained to them in a manner and timeframe to be agreed with the CMA, prior to the implementation of such change. These amendments are reflected by the insertion of a new Clause 4.3 of the Proposed Variation, as shown in paragraph 8 of Annex 2 to this Notice.

CMA's provisional assessment of the Proposed Variation

- 3.8 The CMA understands that Meta intends to implement the Facebook Marketplace Technical Solution more widely to prevent the use of Relevant Data from all Advertisers in the case of Marketplace Operations, or in the case of Marketplace Analytics, Identifiable Relevant Data from all Advertisers, rather than only excluding the Specified Relevant Data of Facebook Marketplace competitors as identified pursuant to the Current Commitments. This means that the Proposed Variation would extend the scope of the Facebook Marketplace Technical Solution to: (a) competitors of Facebook Marketplace who would not have opted out under the Current Commitments; and (b) Advertisers who are not competitors of Facebook Marketplace. Therefore, the Proposed Variation would exceed the requirements of the Current Commitments. The CMA provisionally considers that the Proposed Variation would not leave any Advertisers worse off.
- 3.9 The CMA is of the provisional view that the additional means of compliance under the Proposed Variation therefore address the CMA's current competition concerns by exceeding the requirements of the Current Commitments:
- (a) Meta would implement and maintain technical controls to ensure that relevant advertising data (not just relevant advertising data from those identified as Facebook Marketplace competitors pursuant to the Current

Commitments) will not be used in the operation of Facebook Marketplace; and

- (b) Meta would implement and maintain technical controls to prevent relevant Meta employees and contractors from using relevant advertising data which explicitly identifies individual advertisers (not just relevant advertising data from those identified as Facebook Marketplace competitors pursuant to the Current Commitments) for the purposes of developing and/or improving Facebook Marketplace (be it product design, layout and/or functionality).
- (c) It would be redundant to implement the opt-out mechanism including the publication requirement of the Current Commitments, as: (i) no Advertiser would be prevented from placing advertisements on Facebook Marketplace and (ii) relevant Facebook Marketplace competitor advertising data would automatically be captured through the Facebook Marketplace Technical Solution identified above.

The remaining terms of the Current Commitments

- 3.10 The Proposed Variation does not change the Product Development Principle set out in the Current Commitments. Further, any provisions of the Current Commitments that are not affected by the Proposed Variation will remain in effect and are not subject to this Notice.
- 3.11 For the avoidance of doubt, the Marketplace Implementation Period and the Product Development Implementation Period will remain unchanged as per the Current Commitments and are not within the scope of the changes envisaged in the Proposed Variation.

4. The CMA's intentions and invitation to comment

The CMA's intentions

4.1 For the reasons set out above, the CMA provisionally considers that the Current Commitments as varied in the manner set out in Annex 1 to this Notice will address the CMA's current competition concerns as set out in Chapter 2 above. Therefore, subject to consultation responses and views from Ofcom as concurrent regulator,¹¹ the CMA proposes to accept the Proposed Variation, pursuant to section 31A of the Act.

Invitation to comment

4.2 Under section 31A of the Act, read with paragraph 2 of Schedule 6A to the Act, the CMA hereby gives notice that it proposes to accept the Proposed Variation, invites representations on the Proposed Variation and will consider any such representations before making a final decision on whether to accept the Proposed Variation.

4.3 The consultation period is 14 working days from the date of this Notice. Any person wishing to comment on the Proposed Variation should submit written comments by email to Youssef Girgis and Tom Nurick at 51013-consultation@cma.gov.uk by **14 June 2024 at 11:59 pm**.

Confidentiality

4.4 The CMA does not intend to publish the responses to this Notice. However, the information contained in the responses may be used or summarised on an anonymous basis, including in any notice of a decision to accept the Proposed Variation. If there is particular information in the response which respondents consider to be confidential, they should highlight this in their response with an explanation as to why they consider it confidential.

4.5 In the event that the Proposed Variation is not accepted, and the CMA is considering disclosing any information contained in the responses, it will revert to the provider of that information to obtain further representations on confidentiality.

4.6 The CMA will consider confidentiality representations with reference to Part 9 of the Enterprise Act 2002 and relevant guidance.¹²

¹¹ In accordance with the [Guidance on concurrent application of competition law to regulated industries \(CMA10\)](#), page 25, paragraph 3.49.

¹² [CMA6 Transparency and disclosure: Statement of the CMA's policy and approach \(publishing.service.gov.uk\)](#). See in particular, paragraphs 4.11 to 4.34 of the guidance.