

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

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

20 August 2024

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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**) hereby accepts a variation of 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**) that had been accepted by the CMA on 3 November 2023.² The variation is to take immediate effect and the commitments accepted by the CMA on 3 November 2023 (the **Original Commitments**) are varied as shown in **Annex 1A** with the variation (additions and deletions against the Original Commitments) shown in redline (the **Varied Commitments**). The consolidated text of the Original Commitments as varied is set out at **Annex 1B** to this Decision.
- 1.2 On 25 April 2024, Meta requested a variation of the Original Commitments under section 31A of the Act. On 24 May 2024, the CMA gave notice under paragraph 2 of Schedule 6A to the Act, that it provisionally intended to accept the Varied Commitments (the **Notice**) and invited representations from third parties by 14 June 2024 (the **Consultation**). The response received to this Consultation, and the CMA's assessment of it, are detailed in Section 3 of this Decision.
- 1.3 As described further in section 3, the Varied Commitments 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 Original Commitments, and advertisers would retain the ability to place advertisements on Facebook Marketplace. Meta's current intention is to take this wider approach.
- 1.4 The CMA has therefore concluded, for the reasons set out in this Decision, that the Varied Commitments would continue to address the CMA's current competition concerns and has decided to accept a variation of the Original Commitments pursuant to section 31A of the Act.
- 1.5 Unless otherwise indicated, capitalised defined terms have the meaning assigned to them in the Varied Commitments annexed to this Notice.

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

² [Decision to accept commitments \(publishing.service.gov.uk\)](#) and the Commitments annexed to the Decision [Meta_Final_Commitments_PDFA.pdf \(publishing.service.gov.uk\)](#).

2. The Competition Concerns and the Original Commitments

The CMA's competition concerns

- 2.1 The CMA has concerns that Meta engaged in conduct which abused, and continued 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**).
- 2.2 The CMA's competition concerns remain unchanged from the competition concerns outlined in the decision⁴ that led to the Original Commitments being accepted, namely:
- (a) the trading conditions on which Meta provides the Services,⁵ which in most cases Advertising Customers⁶ wishing to use the Services have little choice in practice but to agree to. These trading conditions give Meta the ability to use Advertising Data⁷ in the development and improvement of existing and new Meta products or services in Adjacent Markets;⁸ 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.
- 2.3 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.

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

⁴ [Decision to accept commitments \(publishing.service.gov.uk\)](#), paragraph 4.10

⁵ Services means Meta's DDA and business tool services which include application programming interface services.

⁶ Advertising Customers means Meta's DDA customers.

⁷ 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.

⁸ 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.

The Original Commitments

2.4 The main elements of the Original Commitments are:⁹

- (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). Advertisers which 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 surfaces).¹⁰
- (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.

⁹ [Decision to accept commitments \(publishing.service.gov.uk\)](https://publishing.service.gov.uk), paragraph 1.6

¹⁰ *Ibid*, paragraph 6.23

3. The Varied Commitments and the CMA's Assessment of the Varied Commitments

The Varied Commitments

- 3.1 The variation only affects the Facebook Marketplace Technical Solution aspect of the Original Commitments (set out in Clauses 2 and 3 of the Original Commitments). Under the Varied Commitments, Meta is now able to comply with either the terms of the Original Commitments or alternatively to exceed the Original Commitments by applying the terms introduced by the variation as set out in the Varied Commitments. This is achieved through the inclusion of new Clauses 1.1(jj) and 2, which also define either option as a Technical Controls Plan.
- 3.2 In particular, under the Varied Commitments, Meta has 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 advertisements on Facebook Marketplace.
- 3.3 More specifically under the Varied Commitments, 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 (Clause 3.2 of the Varied Commitments).
 - (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 (Clause 4.2 of the Varied Commitments).
- 3.4 The practical effect of the new option described at paragraphs 3.2 and 3.3 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 advertisements on Facebook Marketplace. As such:
- (a) there is now 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 is unnecessary for Meta to inform Advertisers of the ability to do so, as previously envisioned by Clause 3.1(a) of the Original Commitments; and

(b) there is now no initial need for Advertisers who are included in Appendix 1 of the Original Commitments to inform Meta that they do not wish to be so included – and therefore it is unnecessary for Meta to inform such Advertisers of the ability to do so, as previously envisioned by Clause 3.1(a) of the Original Commitments.

3.5 Meta is now required to notify the CMA and the Monitoring Trustee within one month from the date of this Decision, 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 Original Commitments or to exceed the Original Commitments by applying the Facebook Marketplace Technical Solution more widely as set out in the Varied Commitments.

3.6 At any time that the Varied Commitments are in force, if Meta decides to change its election of Technical Controls Plan, it must notify the CMA and the Monitoring Trustee in writing, at least one calendar month before making any such change (Clause 9.3 of the Varied Commitments). 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 4.1(a) of the Varied Commitments), where applicable.

3.7 Under the Varied Commitments, 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 Original Commitments under Clauses 3.1 and 4.1 of the Varied Commitments, the employees will have to sign the acknowledgement in Appendix 2A; or

(b) If Meta chooses to adopt the alternative Technical Controls Plan under Clauses 3.2 and 4.2 of the Varied Commitments, the employees will have to sign the new acknowledgement in new Appendix 2B.

3.8 These employees will be trained annually and will sign acknowledgements only once per calendar year, regardless of whether Meta decides to change its election of the Technical Controls Plan. However, where Meta does elect to change its Technical Controls Plan, Marketplace Analytics Employees will 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 (Clause 4.3 of the Varied Commitments).

- 3.9 The Varied Commitments do not change any part of the Product Development Principle set out in the Original Commitments. Other unchanged aspects include: (a) the appointment and work of the Monitoring Trustee; and (b) the timing of the Marketplace Implementation Period and the Product Development Implementation Period. These remain the same as under the Original Commitments.

CMA's assessment of the Varied Commitments

- 3.10 For the reasons set out below, the CMA is satisfied that its current competition concerns will continue to be addressed by the Varied Commitments.
- 3.11 Under the Varied Commitments, Meta has the option to implement the Facebook Marketplace Technical Solution more widely to prevent the use of Relevant Data from all Advertisers in 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 Original Commitments. This means that the Varied Commitments would extend the scope of the Advertisers covered by the Facebook Marketplace Technical Solution to:
- (a) Competitors of Facebook Marketplace who would not have opted out under the Original Commitments; and
 - (b) Advertisers who are not competitors of Facebook Marketplace.
- 3.12 Therefore, the variation exceeds the requirements of the Original Commitments. The CMA therefore considers that the additional option under the Varied Commitments addresses its competition concerns.
- 3.13 Further, the CMA considers that the Varied Commitments would not leave any Advertisers worse off, since no Advertisers would be prevented from placing advertisements on Facebook Marketplace under the option introduced by the Varied Commitments.

CMA's assessment of the response to the Consultation

- 3.14 The CMA received one response¹¹ to the Consultation. The respondent reiterated two points previously made in response to the CMA's notice of

¹¹[redacted].

intention to accept binding commitments issued on 26 May 2023: (a) that the CMA should extend the scope of the Marketplace Technical Solution beyond Facebook Marketplace to include all of Meta's other ecommerce services; and (b) that Advertisers should be granted a direct audit right to provide them clarity and confidence. These submissions were addressed in the CMA's decision to accept Meta's commitments on 3 November 2023 at paragraphs 6.88, 6.89¹² and 6.106.¹³ Given that the CMA's competition concerns have not changed and the Varied Commitments do not amend the scope of services covered by the Marketplace Technical Solution nor the reporting and compliance provisions in the Original Commitments, the CMA concludes that the Varied Commitments continue to address its current competition concerns for the reasons set out at those paragraphs.

- 3.15 The respondent also requested clarity and commitments that specified Advertisers would not be worse off whether or not they opted out and that the option to opt-out would be available to advertisers on a continuous basis. The CMA clarified to the respondent that under the new option of compliance introduced by the Varied Commitments (described at paragraphs 3.2 and 3.3 above), Relevant Data pertaining to all Advertisers would be subject to the Facebook Marketplace Technical Solution automatically with no possibility to opt out, and no Advertisers would be prevented from placing advertisements on Facebook Marketplace. The CMA also notes that the Technical Controls Plan involving the opt-out is unamended by the variation and given that the CMA has already found it to address its competition concerns, it sees no reason to amend that part of the Original Commitments.
- 3.16 Following the CMA's clarification, the respondent indicated that its concern related to [redacted]. However, the respondent did not indicate that it would be left worse off by the Varied Commitments, nor did it provide any other information or evidence for the CMA to assess its concern in further detail. Nevertheless, the CMA assessed [redacted]. For these reasons and those set out above at paragraph 3.13, the CMA has concluded that no advertiser would be left worse off by the Varied Commitments.
- 3.17 The CMA therefore concludes that the Varied Commitments continue to address its current competition concerns and should accordingly, be accepted.

¹² In particular the decision noted that beyond Facebook Marketplace, the CMA has not found evidence of actual data use.

¹³ The decision noted that a Monitoring Trustee is a well-established means of ensuring compliance is effectively monitored and checked. On 20 December 2023, the CMA approved Meta's appointment of Grant Thornton UK LLP as the Monitoring Trustee.

4. The CMA's Decision

- 4.1 For the reasons set out in this Decision, the CMA has concluded that the Varied Commitments set out in Annex 1A will address its current competition concerns and that it is appropriate to accept a variation of commitments under section 31A of the Act.
- 4.2 Accordingly, the CMA has decided to accept the variation as shown in the Varied Commitments by means of this Decision.

Signed:

[✂]

Will Hayter

Senior Responsible Officer and Executive Director, Digital Markets

For and on behalf of the Competition and Markets Authority

Date: 20 August 2024

Annexes: See Separate Documents

Annex 1A: The Varied Commitments (with the variation against the Original Commitments shown in redline)

Annex 1B: Consolidated text of the Original Commitments as varied