



Computer & Communications Industry Association (CCIA) Comments to the CMA on FACEBOOK, INC / GIPHY, INC REMITTAL 29 July 2022

The Computer & Communications Industry Association (CCIA) welcomes the opportunity to provide comments on the Competition and Markets Authority Notice of provisional findings on remittal in Facebook, Inc (now Meta Platforms, Inc) / GIPHY, Inc.¹ CCIA was allowed to intervene in the case in front of the Competition Appeals Tribunal (CAT), and raised concerns therein on the CMA's finding of a Substantial Lessening of Competition (SLC).

In particular, in para. 39 of our Statement in Intervention, we wrote "... the CMA and, indeed, the Tribunal, must have particular regard as to whether such prospective elements of an SLC are adequately supported by the evidence. Failure to do so risks leading to disproportionate error-costs that could hamper competition and harm consumers, particularly in the presence of likely pro-competitive benefits for ecosystem to ecosystem competition", and in para. 10 of our Reply we stated: "At the very least, the presence of plausible pro-competitive benefits for Ecosystem Competition means that the evidence supporting a finding of an SLC resulting from a reduction of dynamic competition in one narrow sub-segment of that ecosystem should be sufficiently compelling." In other words, in our view, the CMA's finding of an SLC, as explained in its Final Report,² failed to sufficiently account for existing evidence that the proposed transaction would increase ecosystem-to-ecosystem competition by allowing vertical and conglomerate integration of Meta's services and those of GIPHY's, in competition with, what has now been revealed to be, more than one vertically integrated social media rival.

The CAT in its judgment supported our position, stating: "*We accept that assessment of impairments of dynamic competition involve difficult questions of judgement. Given these difficulties, we consider that - for the future - where questions of dynamic competition arise, the CMA should undertake a "cross-check" in relation to its conclusions. It should ask itself (as it has done here) "What are the disbenefits of the Merger, given the statutory tests?", but also "What are the disbenefits of intervention". The fact is that competition authorities like the CMA are in an unenviable position when it comes to assessing the lawfulness of mergers. Intervention may well be necessary, and must occur, where the statutory tests are met. But, equally, intervening where it is unnecessary, where the statutory tests may not be met, can be as damaging.*" (emphasis in original).³ The CAT went on to note that "*In short, and*

¹ CMA "FACEBOOK, INC / GIPHY, INC REMITTAL Conduct of the remittal (18 July 2022), available [here](#).

² CMA "Completed acquisition by Facebook, Inc (now Meta Platforms, Inc) of Giphy, Inc. Final report" (30 November 2021), available [here](#).

³ Case No: 1429/4/12/21 Meta Platforms v Competition and Markets Authority (14 June 2022), available [here](#), para. 127.

as we have considered, acquisition by a larger undertaking may allow the smaller (acquired) undertaking to flourish and, on that basis, be considered as procompetitive.”⁴

CCIA submits that the CMA is legally bound to consider the pro-competitive benefits of the transaction in promoting ecosystem-to-ecosystem competition when identifying an SLC, and that it has not done so sufficiently in its Phase 2 Final Report. Accordingly, the Phase 2 Final Report is insufficient as a basis to be adopted as the Remittal Provisional Findings, and should be supplemented with a thorough consideration of the pro-competitive benefits deriving from the concentration.

CCIA further submits that a thorough consideration of these elements may lead the CMA to conclude that allowing the transaction to proceed subject to some behavioural remedies may better preserve these pro-competitive benefits while sufficiently addressing any concerns related to anti-competitive effects. This is particularly the case given the newly revealed existence of several vertically integrated social media competitors, and the continued and reinforced evidence of the significant competitive constraints that Meta is facing from these and other rivals.⁵

Sincerely,
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⁴ *Ibid.*

⁵ The Verge “Facebook is Changing its Algorithm to Take on TikTok, Leaked Memo Reveals: TikTok redefined the idea of a social media feed – can Facebook play catch-up before it’s too late?” (15 June 2022), available [here](#).