

CMA fines Facebook over enforcement order breach

It is standard practice to issue an initial enforcement order (IEO) at the start of an investigation into a completed acquisition. This ensures that companies continue to compete with each other as they would have without the merger, and prevents the companies involved from integrating further while a merger investigation is ongoing. The Competition and Markets Authority (CMA) imposed this type of order on Facebook in June 2020 in relation to its purchase of Giphy.

Facebook is required, as part of the process, to provide the CMA with regular updates outlining its compliance with the IEO. Facebook significantly limited the scope of those updates, despite repeated warnings from the CMA. It was also criticised last year by the [Competition Appeal Tribunal](#) and [Court of Appeal](#) for its lack of cooperation with the CMA and “what might be regarded as a high-risk strategy” in relation to not complying with the IEO and not keeping the CMA updated as the IEO required.

The compliance reports are crucial to ensure that the CMA has oversight of the companies’ behaviour, including whether Facebook has been taking any action which might prejudice the outcome of its investigation.

This is the first time a company has been found by the CMA to have breached an IEO by consciously refusing to report all the required information. Given the multiple warnings it gave Facebook, the CMA considers that Facebook’s failure to comply was deliberate. As a result, the CMA has issued a fine of £50 million for this major breach, which fundamentally undermined its ability to prevent, monitor and put right any issues.

Separately, the CMA has fined Facebook £500,000 for changing its Chief Compliance Officer on two separate occasions without seeking consent first.

Joel Bamford, Senior Director of Mergers at the CMA, said:

Initial enforcement orders are a key part of the UK’s voluntary merger control regime. Companies are not required to seek CMA approval before they complete an acquisition but, if they decide to go ahead with a merger, we can stop the companies from integrating further if we think consumers might be affected and an investigation is needed.

We warned Facebook that its refusal to provide us with important information was a breach of the order but, even after losing its appeal in two separate courts, Facebook continued to disregard its legal obligations.

This should serve as a warning to any company that thinks it is above the law.

The CMA's investigation into Facebook's merger with Giphy is ongoing and it will work constructively with the companies as things progress further. No decision has yet been reached in relation to the merger.

For more information, visit the [Facebook, Inc / Giphy, Inc merger inquiry page](#).

1. The purpose of merger control is to regulate, in advance, the impact of mergers on competition in markets. As companies do not need to voluntarily notify a merger in the UK, interim measures are particularly important for completed mergers to avoid the companies integrating ahead of any investigation taking place. The CMA has set out further detail on this in its published guidance [Interim measures in merger investigations](#).
2. [Administrative penalties: Statement of Policy on the CMA's approach](#) provides information on the factors that the CMA considers when deciding whether to impose a penalty, including for IEO breaches.
3. Paragraph 37 of the [Court of Appeal's judgment](#), made in May 2021, noted that 'Facebook had undesirably chosen to take "what might be regarded as a high-risk strategy" not to comply with outstanding IEO requirements and not to inform the CMA of the actions it was taking or the changes it was making to its business that might fall within the scope of the IEO'.
4. For media enquiries, contact the CMA press office on 020 3738 6460 or press@cma.gov.uk.