

CMA welcomes Court judgment in Facebook and Giphy case

The Court of Appeal criticised Facebook's conduct, saying the "central problem in this case was entirely of Facebook's own making", and agreeing with the Tribunal's finding that the company "sat on its hands" and "did not properly engage" with the Competition and Markets Authority (CMA) following its derogation request.

CMA Chief Executive Andrea Coscelli said:

Today's judgment reinforces an important and unequivocal message – initial enforcement orders are key to the CMA's ability to protect UK consumers while carrying out its merger reviews.

Both the Court of Appeal and Competition Appeal Tribunal have now endorsed our approach and our handling of this issue.

Our investigation into Facebook's merger with Giphy is ongoing, and we look forward to working with the companies further as we progress the inquiry.

The CMA is currently investigating the merger of Facebook and Giphy, which completed on 15 May 2020.

On 9 June 2020, the CMA imposed an initial enforcement order (IEO) on both companies, which prevents Facebook and Giphy from further integrating their businesses while the CMA's investigation is ongoing.

Facebook requested a partial lifting of the IEO, formally known as a 'derogation'.

Derogations give a business consent to do certain things that would be otherwise banned under an IEO. The CMA was unable to grant this request because it believed it did not have the necessary information from Facebook to reach a decision.

This led to Facebook applying for a review of the CMA's position at the Competition Appeal Tribunal. In November 2020, the Tribunal dismissed Facebook's appeal in its entirety and the company appealed this decision to the Court of Appeal.

Today's judgment from the Court of Appeal dismissed all of Facebook's grounds of appeal and upheld the decision of the Competition Appeal Tribunal, stressing the importance of merging companies engaging with the CMA when seeking a derogation.

It further confirmed that "Facebook did not properly engage with the CMA. It

put in its Carve-Out Requests and then sat on its hands, refusing to answer the CMA's questions".

The Court approved of the CMA's use of initial enforcement orders, which are intended to "hold the ring" while the CMA obtains the information it needs from businesses requesting derogations. The Court noted however, that "this process breaks down if those against whom Initial Enforcement Orders are made refuse to cooperate as happened in this case."

The Master of the Rolls, Chancellor of the High Court, and Lord Justice Philips unanimously agreed that there was no error in the Tribunal's reasoning and that Facebook's challenges to the CMA's conduct were without merit.

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

For media enquiries, contact the CMA press office on 020 3738 6460 or press@cma.gov.uk.