

CMA welcomes Tribunal judgment in Facebook and Giphy case

The Competition and Markets Authority (CMA) is currently investigating Facebook's purchase of Giphy, which completed on 15 May 2020.

On 9 June, 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.

After the CMA issues an IEO, merging companies can request a 'derogation'. This is a reprieve from part of the IEO and gives the business consent to do certain things that would have been banned as part of the IEO. This can often involve sharing information or appointing personnel.

Facebook requested a derogation asking for a large part of Facebook's business to be released from the 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.

Today's judgment from the Competition Appeal Tribunal dismissed all of Facebook's grounds of appeal, and endorses the CMA's cautious approach to assessing derogation requests at an early stage in its investigation, and stresses the importance for merging companies to engage with the CMA when seeking a derogation.

The judgment importantly confirms that "The corollary of the voluntary regime is that the CMA is given wide powers to suspend the integration of merging companies and it is for merging parties to satisfy the CMA that the relaxation of any interim measures imposed by the CMA is justified. It is therefore incumbent upon merging parties to co-operate with the CMA, particularly when making derogation requests".

CMA Chief Executive Andrea Coscelli said:

This is an important judgment from the Competition Appeal Tribunal and sends a clear message – initial enforcement orders are an essential part of the CMA's merger toolkit, enabling it to protect both market competition and consumers as it undertakes merger reviews.

Companies seeking a reprieve from an IEO must provide sufficient information to the CMA before a decision can be made to release them from parts of it – it is therefore vital that they engage with the CMA as early as possible.

We look forward to engaging further with Facebook in our ongoing review of this case.

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

Media queries should be directed to press@cma.gov.uk or 020 3738 6460.