



Brussels, 17 January 2022

Final Report of the Hearing Officer¹

Case M.10262 – Meta (formerly Facebook) / Kustomer

1. On 25 June 2021, the Commission received a notification of a proposed concentration, by which Meta Platforms, Inc., formerly Facebook, Inc. ('Meta (formerly Facebook)' or 'Facebook')² would acquire, within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004³ ('the Merger Regulation'), sole control of Kustomer, Inc. ('Kustomer') (the 'Proposed Transaction'). For the purpose of this report, Meta (formerly Facebook) and Kustomer are together referred to as 'the Parties'.
2. On 2 August 2021, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation, as the Commission's first phase investigation raised serious doubts as to the compatibility of the Proposed Transaction with the internal market.
3. On 3 August 2021, the Commission issued a decision to Facebook pursuant to Article 11(3) of the Merger Regulation, requiring Facebook to supply certain information not later than 10 August 2021.
4. On 6 August 2021, following a formal request by Facebook dated 5 August 2021, the Commission extended the time-period pursuant to Article 10(3), first subparagraph, of the Merger Regulation set for the adoption of a decision pursuant to Article 8 of the Merger Regulation in relation to the Proposed Transaction by five working days, as requested, pursuant to Article 10(3), second subparagraph, of the same regulation.
5. On 24 August 2021, in agreement with Meta (formerly Facebook), the Commission extended the period for taking a decision pursuant to Article 8 of the Merger Regulation by ten working days in accordance with Article 10(3), second subparagraph, third sentence of the Merger Regulation.
6. On 18 October 2021, the Commission adopted a Statement of Objections addressed to Facebook (the 'SO'). The SO was formally notified to Facebook on the same day and Facebook was granted a deadline to submit its observations until 3 November

¹ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ('Decision 2011/695/EU').

² On 28 October 2021, Facebook, Inc. changed its name to Meta Platforms, Inc.

³ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1.

2021. On 19 October 2021, Kustomer was also informed of the adoption of the SO and offered the opportunity to request a non-confidential version, should it want to submit (separate) observations pursuant to Article 13(2) of Commission Regulation (EC) 802/2004.⁴

7. In the SO, the Commission came to the preliminary view that it is likely, and there is even a strong probability, that the Proposed Transaction would significantly impede effective competition within the meaning of Article 2(3) of the Merger Regulation. This would be the result of vertical non-coordinated effects on the EEA or worldwide market for customer service and support customer relationship management ('CRM') software, as well as on the broader market for CRM software overall, and possible segments of each such market.
8. On 19 October 2021, Facebook obtained access to the accessible documents in the Commission's case file. Subsequent access to the file was provided on 21 October 2021, 29 October 2021, 6 December 2021, 8 December 2021 and 10 December 2021.
9. I have not received any complaint or further request from the Parties regarding access to the file.
10. On 3 November 2021, Meta (formerly Facebook) replied to the SO. The Parties did not request a formal oral hearing.
11. On 24 November 2021, Meta (formerly Facebook) submitted commitments in accordance with Article 8(2) and 10(2) of the Merger Regulation, with a view to rendering the Proposed Transaction compatible with the internal market and the functioning of the EEA Agreement. The Commission launched a market test of these commitments on 26 November 2021.
12. On 3 December 2021, the Commission addressed Meta (formerly Facebook) a letter of facts, where it pointed out additional factual elements in support of the preliminary conclusions reached in the SO. Some of these were already present in the file at the time of the SO, while others were obtained by the Commission only after adopting the SO. Upon further analysis of the file, the Commission concluded that these elements were potentially relevant to substantiate its final decision.
13. On 13 December 2021, Meta (formerly Facebook) submitted a written response to the letter of facts.
14. On 17 December 2021, in agreement with Meta (formerly Facebook), the Commission extended the period for taking a decision pursuant to Article 8 of the Merger Regulation by five working days in accordance with Article 10(3), second subparagraph, third sentence of the Merger Regulation.
15. On 20 December 2021, having received feedback from the Commission on the commitments submitted earlier, Meta (formerly Facebook) submitted revised and final commitments, in accordance with Article 8(2) and 10(2) of the Merger Regulation, with a view to rendering the Proposed Transaction compatible with the

⁴ Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 33, 30.4.2004, p.1.

internal market and the functioning of the EEA Agreement (the ‘Final Commitments’).

16. The draft decision declares the Proposed Transaction compatible with the internal market and the functioning of the EEA Agreement, subject to full compliance with the Final Commitments.
17. I have reviewed the draft decision pursuant to Article 16(1) of Decision 2011/695/EU and I conclude that it deals only with objections in respect of which the Parties have been afforded the opportunity of making their views known.
18. In view of the above, I consider that the effective exercise of procedural rights has been respected in this case.

Dorothe DALHEIMER
Hearing Officer