



**Media Release
For Immediate Release
14 March 2022**

FACEBOOK PROSECUTED FOR ABUSING ITS DOMINANCE

The Competition Commission (the Commission) has referred to the Competition Tribunal for prosecution the social media giant, Meta Platforms Inc (previously known as Facebook Inc), and its subsidiaries, WhatsApp Inc and Facebook South Africa (collectively referred to as Facebook) for abuse of dominance.

The Commission alleges that Facebook, in the first instance, has decided in or about July 2020 and expressed an ongoing intention to offboard Gov Chat and #LetsTalk, a technology start-up that connects government and citizens, from the WhatsApp Business Application Programming Interface (WhatsApp Business API). In the second instance, Facebook has imposed and/or selectively enforced exclusionary terms and conditions regulating access to the WhatsApp Business API, mainly restrictions on the use of data.

This is in contravention of the Competition Act, sections 8(1)(d)(ii), alternatively 8(1)(c) and in the further alternative 8(1)(b). The Act prohibits a dominant firm from abusing its dominance by engaging in exclusionary conduct geared at preventing competitors or potential competitors from entering into, participating, and expanding in a market.

The WhatsApp Business API enables medium and large businesses (and government) to, among other things, message at scale, makes use of advanced automation, integrations with existing eCommerce, building chatbots and tracking metrics.

GovChat launched a platform in 2018 called the GovChat which enables the public to engage with all spheres of government – national, provincial, and local – to report a wide variety of issues such as pothole location and other service delivery requirements.

GovChat also enables government to disseminate critical information to the public *en masse* such as information related to Covid-19 system tracking, testing and vaccination. GovChat has also enabled the poor to apply on-line for social relief and distress grants. The GovChat has provided government with unprecedented insight into service delivery issues *in real time* and provides government with the ability to provide targeted solutions more efficiently.

The GovChat is dependent on its continued access to the WhatsApp Business API. The intended offboarding of GovChat from the WhatsApp Business API will harm consumer welfare by removing the efficiency of the GovChat which allows the public to communicate with multiple government bodies through a single platform and will also deprive government of the current services (and future services such as mobile payment solutions) offered by the GovChat.

To illustrate the point, the GovChat messaging traffic comprises of hundreds of thousands of messages daily, the vast majority of which relates to queries from the public to the Department of Social Development relating to social welfare grants provided for children, disabled and indigent members of society, and a significant portion of the traffic on the GovChat relate to Covid-19 information.

The Commission found that the harm to the competitive process is also clear because the decision to off-board GovChat from the WhatsApp Business API and the exclusionary terms for access to the WhatsApp Business API, including restrictions on the use of data, limits innovation and the development of new products and services.

This is in a context in which WhatsApp Messenger enjoys significant economies of scale and network effects advantages. Consequently, the Commission also found that the terms and conditions governing access to the WhatsApp Business API are designed to shield and insulate Facebook from potential competition, such as the potential competition presented by the GovChat and enormous data it has been able to harvest which enables it to develop new services and products.

The Commission has asked the Tribunal to impose a maximum penalty against Meta Platforms, WhatsApp and Facebook South Africa which is 10% of their collective turnover. In addition, the Commission has requested the Tribunal to interdict Facebook from off-boarding GovChat from the WhatsApp Business API and to declare void certain exclusionary terms and conditions for access to the WhatsApp Business API.

The Competition Commissioner, Tembinkosi Bonakele said: "Access to digital markets has now become indispensable. In turn, access to digital markets is dependent on access to digital platforms including, as in this case, access to an important digital communication platform - the WhatsApp Business API. Over and above, data is everything in digital platform markets. In view of the important services provided by GovChat, which provides real time interface between government and the public, and the benefits to competition presented by its business model, Facebook's decision to off-board GovChat from the WhatsApp Business API and its exclusionary terms of data usage are untenable."

NB. Please see background below.

[ENDS]

Issued by:

Sipho Ngwema, Head of Communication

On behalf of: The Competition Commission of South Africa

Tel: 012 394 3493 / 081 253 8889

Email: SiphoN@compcom.co.za

Find us on the following social media platforms:

Twitter: @CompComSA

Instagram: Competition Commission SA

Facebook, LinkedIn, and YouTube: The Competition Commission South Africa

Background

On 20 November 2020 GovChat and #LetsTalk (**complainants**) filed a complaint with the Commission against Facebook alleging, among other things, that the respondents threatened to terminate the complainants' access to the WhatsApp Business Application Programming Interface (**WhatsApp Business API**) due to alleged violation of the terms and conditions.

GovChat alleged that the termination from the WhatsApp Business API will inhibit its ability to continue offering WhatsApp messaging services to its customers, such as government departments. On 8 October 2021 the Commissioner initiated a further complaint against the respondents (**Commission Complaint**). The Commission Complaint, essentially, alleges that certain terms and conditions imposed by the respondents on market participants operating on the WhatsApp Business API value chain result amounts to anti-competitive conduct and in breach of the sections 8(1)(b), 8(1)(c) and/or 8(1)(d)(ii) of the Act.

Facebook operates in the social media market through the **Facebook App**, and a photo and video-sharing platform and social networking app called *Instagram* (**Instagram App**). In 2014 Facebook acquired and obtained sole control of WhatsApp, the firm that provides the *WhatsApp Messenger* messaging app (**WhatsApp Messenger**).

WhatsApp Messenger provides increasingly essential channels for users to communicate and for businesses and government to access customers and citizens respectively. WhatsApp Messenger provides these services using data over the internet which goes over-the-top of normal telecommunication services (**OTT**). It allows users on different mobile network operators, handset operating systems, and devices, to interact seamlessly on one platform that is essentially free outside of any data costs.

GovChat created a citizen-centric engagement platform (**GovChat**).

The GovChat provides South African citizens with a solution for engagement with the South African national government, government departments, and local government. GovChat integrated government communications to provide online real-time escalation and reporting services, creating a platform which allows government and citizens to connect and engage, with a view to improving service delivery and active citizenry.

Through the GovChat citizens can report civic issues (e.g. potholes) and the complainants are able to compile and provide insights in real time to the relevant government department or municipality. Government utilising the GovChat can visually map the specific locations of reported incidences (e.g. potholes) and can also monitor these complaints in real time via the GovChat.

In addition, by utilising the GovChat, government can disseminate critical information to citizens *en masse*. The COVID-19 symptom tracking and testing, as well as the provision of related information, is illustrative of this function. Among other things, during the 2020 COVID-19 related lockdown, to date, the GovChat has enabled citizens to digitally apply for social relief and distress grants. GovChat relies on the WhatsApp Business API to provide these services.

On 14 November 2020 GovChat applied to the Competition Tribunal for interim relief in terms of section 49C of the Competition Act. On 11 March 2021 the Competition Tribunal granted the interim order in favour of GovChat interdicting Facebook from offboarding GovChat from the WhatsApp Business API pending the Commission's investigation of the GovChat complaint. The interim order lapsed on 11 March 2022, and on the same date the Commission filed its referral against Facebook.