

October 11, 2019

Chairman David Cicilline
Ranking Member Jim Sensenbrenner
Committee on the Judiciary
Subcommittee on Antitrust, Commercial and Administrative Law
Attn: Joseph Van Wye
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Cicilline and Ranking Member Sensenbrenner, and Members of the Subcommittee:

Thank you for your questions for the record from the July 16, 2019 hearing entitled Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship. Per your request, attached are the answers for the record for your questions.

Sincerely,

Facebook, Inc.

Questions from Chairman Cicilline

- 1. According to your testimony, Facebook faces intense competition for all the products and services that it provides. You identified Twitter, Snapchat, Apple, iMessage, Pinterest, Skype, Telegram, Viber, Google, YouTube, and Amazon as examples of its competitors. Do any of the individual companies cited by Facebook as competitors offer the full range of features and services that Facebook offers?**

We face stiff competition for every product and service that we offer—including photo and video sharing, messaging, and advertising. We have many competitors, both domestically and internationally, with hundreds of millions, if not billions, of users. For example, if you are looking to share pictures, videos, or a live stream, you might use Snapchat (over 200 million daily users), Vimeo (240 million monthly viewers), Twitter (326 million monthly users), Amazon’s Twitch (nearly a million people watching at any given time), YouTube (over 1.8 billion monthly users), Google Photos (1 billion users), or Pinterest (over 250 million monthly users), among others. For messaging, you might use Telegram (200 million monthly users), WeChat (1 billion monthly users), Microsoft’s Skype (300 million monthly users), or Line (164 million monthly active users), among others. And SMS is the most used data service in the world; according to MBA Online, more than 4.2 billion people are texting worldwide. To connect with colleagues or people in a professional network, you might go to Microsoft’s LinkedIn (630 million registered users and over 30 million companies) or Slack (over 10 million daily active users), among others.

We work hard to innovate and to differentiate our products and services because we understand that consumers have many choices and can leave Facebook if they’re not happy. For example, the average smartphone user has more than 80 apps on their phone, and they use close to 40 of those apps every month. And because so many services are low-priced or free, users are able to try new technologies as often as they like. If a user does not enjoy a product or experience, they can—and do—abandon it and explore the myriad other options available. This creates strong competition for every product and service Facebook offers, as well as pressure to develop new features to attract and retain users.

Given the highly competitive landscape, we are proud that Facebook offers a set of products and services that billions of people enjoy. This constant competition keeps us on our toes and acts as a powerful force that drives us to innovate.

- 2. In May 2007, Facebook launched Facebook Platform, inviting developers to build apps on top of Facebook’s social graph. In explaining its platform policy, Facebook stated that “we’ve made it so that any developer can build the same application that we can.” In a published FAQ, Facebook stated, “We welcome developers with competing applications, including developers whose applications might compete with Facebook-built applications.” How does Facebook reconcile this representation with its subsequent Platform Policy section 4.1, which stated that developers should “add something unique to the community, don’t replicate core functionality that Facebook already provides”?**

Facebook Platform was designed to support third-party developers to create their own new and innovative social products. Allowing this type of third-party access was a unique and

transformative step in the industry and created a foundation for small developers to grow up around the Facebook platform. The rationale for the policy known as section 4.1 of the Platform Policy was to incentivize developers to use Facebook's technology and data to create new and innovative products, to protect and enhance the user experience, and to preserve the value of Facebook Platform. The provision was designed to preserve the significant investment and innovation that Facebook made in its product by seeking to limit duplicative free-riding on Facebook's investment and innovation. The provision was also designed to avoid creating potentially confusing experiences for users, who may otherwise have had inconsistent experiences while obtaining the same core services. Provisions like section 4.1 are common in the industry when companies open up a platform for third parties to build on, and without it, Facebook's incentives to take the bold step of developing Facebook Platform for the benefit of third-party developers would likely have been significantly reduced.

- 3. Facebook dropped Platform Policy section 4.1 in December 2018, shortly before the U.K. Parliament released documents revealing e-mails between Facebook employees discussing rival apps. Please identify and describe all the reasons that Facebook decided to drop section 4.1 at this time.**

The decision to remove the provision was taken as part of a review of the Platform Policy. Our policies are intended to balance a variety of considerations, including protecting the user experience and protecting our investment in our product. We reevaluate those policies over time and update them to fit the evolving nature of the industry in which we exist and to respond to feedback we hear from users, developers, third-party experts, and policymakers.

- 4. The documents released by the U.K. Parliament include an e-mail from a Facebook employee noting that Twitter had just launched Vine, a video-making app that was competing with Facebook's video product. The employee wrote, "Unless anyone raises objections, we will shut down [Vine's] friends API access today." Mark Zuckerberg responds with: "Yup, go for it." Please identify and describe all the reasons that Facebook cut off Vine's API access.**

In January 2013, Facebook restricted Vine's access to friends data via Facebook Platform APIs; Facebook did not restrict all access to its Platform APIs, as the question suggests. Vine was restricted on the basis of the Facebook Platform Policy section 4.1 in operation at that time (which has since been deprecated and is not contained in the current Facebook Platform Policy). This provision enabled Facebook to restrict access to users' friends data for third-party apps that replicated the core functionality of Facebook. Facebook considered Vine to be an app that replicated Facebook's core News Feed functionality.

- 5. Please specify each Facebook product or service that competed with the following apps or services:**
 - a. Phhhoto;**
 - b. MessageMe;**
 - c. Voxer; and**
 - d. Stackla.**

Facebook does not restrict access to its Platform APIs simply because an app competes

with a Facebook product or service, but Facebook will restrict apps that violate its policies governing the Platform APIs. For example, Facebook previously had a policy, Platform Policy Section 4.1 (along with an analogous provision for Instagram), that prohibited apps from using the Platform APIs to closely replicate core functionalities of Facebook or Instagram. Apps that did so were: (i) free-riding on Facebook's investment and innovation; and/or (ii) potentially creating confusing experiences for users, who may otherwise have inconsistent experiences while obtaining the same services. Facebook restricted the API access of apps that were found to be violating this policy.

Stackla's access to Facebook Platform is the subject of ongoing litigation, but Stackla's access was not terminated because it competed with or was a competitor to Facebook's products or services. Stackla's access was terminated due to data scraping, which violates our policies.

6. Please describe the timing and exact circumstances that led Facebook to cut off the following apps' or services' access to Facebook's platform:

- a. Phhphoto;**
- b. MessageMe;**
- c. Voxer; and**
- d. Stackla.**

Facebook does not restrict access to its Platform APIs simply because an app competes with a Facebook product or service; but Facebook will restrict apps that violate its policies governing the Platform APIs. For example, Facebook previously had a policy, Platform Policy Section 4.1 (along with an analogous provision for Instagram), that prohibited apps from using the Platform APIs to closely replicate core functionalities of Facebook or Instagram. Apps that did so were: (i) free-riding on Facebook's investment and innovation; and/or (ii) potentially creating confusing experiences for users, who may otherwise have inconsistent experiences while obtaining the same services. Facebook restricted the API access of apps that were found to be violating this policy.

Stackla's access to Facebook Platform is the subject of ongoing litigation, but Stackla's access was not terminated because it competed with or was a competitor to Facebook's products or services. Stackla's access was terminated due to data scraping, which violates our policies.

7. Has Facebook ever cut off access to Facebook's platform for any app or service because that app or service did not purchase sufficient ads on Facebook? If yes, please describe the relevant circumstances.

No. Facebook does not currently, and has not previously, linked the access or use by third parties of Facebook data and/or Facebook Platform to spending on advertising with Facebook.

8. Has Facebook ever conditioned access to Facebook APIs on the purchase of ads (desktop or mobile) on Facebook? If yes, please describe the relevant circumstances.

No. Facebook does not currently, and has not previously, linked the access or use by third parties of Facebook data and/or Facebook Platform to spending on advertising with Facebook.

9. Has Facebook ever required that apps or services provide Facebook with access to user data in order to gain access to Facebook APIs? If yes, please describe the relevant circumstances.

No. Facebook does not and has not required developers that use the Facebook Platform to share user data back with Facebook. Rather, we have a principle that when a developer uses the Facebook Platform APIs to build a social experience built on Facebook data within their apps, that they should offer users the option (not a requirement) to share their social experiences back into their Facebook News Feeds. For example, if an app allows users to edit their photos from Facebook to create new content, it should give them the chance to post those creations back to Facebook. This is about offering users the choice to share their experiences back into their Facebook profiles, not about requiring developers to share data directly.

10. Public reporting and internal Facebook documents describe how Facebook used Onavo to monitor users' mobile activity, including their usage of competing apps. Please identify and describe all uses by Facebook of Onavo data since 2013.

The Onavo service allowed Facebook to improve its products and better meet consumers' needs. Onavo (which provided a few different apps) did not collect proprietary data of any competitor—it collected data from users that made the choice to share data about their usage of their own devices with Onavo. For example, when people downloaded the Onavo Protect VPN app to help secure their connection, they were informed about the information that would be collected and how it would be used. This type of industry research is common and central to improving our products and services. Onavo was not the only source of this type of user data—firms can get equivalent data from market research firms like App Annie, Nielsen, and Comscore. Also, the platforms that distribute apps and the operating systems on which apps run can access and collect the same type of data.

11. Please identify which categories of employees or teams within Facebook has or had access to Onavo data, specify the types of data or information to which each has or had access, and describe where in Facebook's organization chart the teams or employees are or were located.

The specific user-level data received by Onavo was not made widely available across the company, but generally was limited to the team that handles market research. Aggregated data that included Onavo data as well as data from external sources (e.g., App Annie, Comscore, Applause, Verto Analytics, IDC, and Ovum) was accessible more broadly for analysis purposes.

12. Please identify all product decisions made by Facebook that were informed by Onavo data. Please explain how the use of Onavo data informed each decision.

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firms can get equivalent data from market research firms like App Annie, Nielsen, and Comscore. Also, the platforms that distribute apps and the operating systems on which apps run can access and collect the same type of data.

13. Please identify all acquisition decisions made by Facebook that were informed by Onavo data. Please explain how the use of Onavo data informed each decision.

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14. Please describe (a) “Project Atlas”; and (b) how Facebook has collected and used data obtained through Project Atlas.

Description

Like many companies, we invite people to participate in research that helps us identify things we can do better. Project Atlas, also known as the Facebook Research app (FBR app) was part of our research efforts. Launched in September 2016 as an “in-app action panel” (IAAP) app, the FBR app supported a panel-based research study designed to gather “in-app action” insights, which would enable Facebook to gain a deeper understanding about how certain types of users used their mobile devices. The study was designed to be restricted to Android and iOS users in the United States and India, and the FBR app was only made available to users who confirmed that they were from those countries. Facebook discontinued its collection of data from the Facebook Research app early in 2019.

Collection and Use of Data

The FBR app was not available for public download in the Apple App Store or Google Play Store. Instead, the FBR app was made available for download only to a panel comprised of a small group of certain types of users who agreed to be part of the study. This panel was selected and engaged by well-known third-party research vendors. As is customary in this type of market research, participants were paid by the vendors in exchange for their participation in the research panels.

Participants went through a transparent introductory process administered by the third-party vendors, which informed users, through clear consent flows and disclosures, of the nature and purpose of the program, including that it would involve providing user data to Facebook. As part of their introduction to the app, users were informed that this data would be shared for the purpose of (i) analyzing aggregate user behavior and engagement to understand how different user segments used specific apps and how they spent their time on those apps; and (ii) evaluating areas

of improvement for Facebook products so that Facebook could better serve its community of users. Throughout this process, potential participants were repeatedly informed and required to acknowledge that this was a Facebook app, that their data would be collected by Facebook, and that they could withdraw from the project and uninstall the FBR app at any time. After completing the research program sign-up process, participants would receive a link to download the FBR app and install it on their mobile device. The download page for the app was branded as a Facebook application.

The research conducted using the FBR app was focused on the sorts of actions or activities users engaged in in certain apps, so that Facebook could better understand what functionality was important to users.

FBR data was not widely used by Facebook. The insights were essentially used for operational and technical decisions on how to improve performance and user experience.

15. In June 2019, Facebook launched “Study from Facebook,” an app that compensates users for allowing Facebook to monitor users’ mobile usage. Please identify all types of data and information that Facebook collects through “Study from Facebook” and explain how each is used.

Through the Study from Facebook app, Facebook collects and analyzes data regarding participants’ app usage, including (i) apps installed on participants’ phones, (ii) time spent using apps, (iii) country, device, and network type, and (iv) app activity names, which may show the names of app features a participant is using. The Study from Facebook app does not collect content information, such as: emails, text messages, usernames, passwords, payment information, any field into which users write text, photos and videos on users’ devices or that they upload or share with others, websites that users visit through a browser, or the contents of user purchases.

Facebook uses this data to learn which apps people value and how they’re used, allowing Facebook to better understand its community to improve its products and services, including general improvement of ad targeting at an aggregated level. Facebook does not sell data from this app to third parties or use it to target ads to individual users.

All registered participants have agreed to share their app usage data with Facebook, and they are compensated for taking part in the program. We explain how to participate during registration, before participants accept the terms of Study from Facebook. Participants can leave the program at any time.

16. Please indicate, with a “yes” or “no,” whether “Study from Facebook” enables Facebook to track any of the following activity:

- a. Which apps are on a user’s phone;
- b. The amount of time a user spends on a non-Facebook app;
- c. The purchases a user makes within a non-Facebook app;
- d. The content of a user’s text messages; and

e. The websites a user visits through a browser.

Through the Study from Facebook app, Facebook collects and analyzes data regarding participants' app usage, including (i) apps installed on participants' phones, (ii) time spent using apps, (iii) country, device, and network type, and (iv) app activity names, which may show the names of app features a participant is using. The Study from Facebook app does not collect content information, such as: emails, text messages, usernames, passwords, payment information, any field into which users write text, photos and videos on users' devices or that they upload or share with others, websites that users visit through a browser, or the contents of user purchases.

17. Please identify the revenue Facebook derived from the Facebook Audience Network (FAN) for each of the last three years.

A growing number of mobile app publishers have found success—better returns and more relevant advertising—through FAN and the people-based marketing approach that powers it. In Q4 2016, we reached a \$1 billion annual run rate for advertising spend through the Audience Network, with the bulk of that value being passed to publishers, and the remainder being recorded as net revenue for Facebook. In 2018, Audience Network paid out more than \$1.5 billion to publishers and developers.

18. Please identify the net revenue Facebook derived from FAN for each of the last three years.

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19. Please identify the average and median clearing price of Facebook inventory by browser (e.g., Brave, Chrome, Edge, Mozilla, and Safari) for each month since July 2018.

Prices are determined by an auction system and therefore vary not only from month to month, but from moment to moment. All advertising on Facebook and the Facebook Audience Network is delivered through Facebook's ad delivery system and priced through Facebook's ad auction, regardless of which interface an advertiser used to place the ad.

Facebook's ad delivery system is designed to show people ads they find relevant while maximizing value to drive an advertiser's business objectives. We do this by holding an auction in which both interests are represented. Our goal is to match the right ad to the right person at the right time. An auction takes place whenever someone is eligible to see an ad. When an ad enters the Facebook auction, it competes with ads from other advertisers who target the same people who are eligible to see the ad.

In Facebook's auction process, the winner of an auction is not necessarily the advertiser that bids the highest dollar amount, but rather the advertiser whose ad has the highest "total value," taking into account (1) the estimated likelihood and rate at which the

user will take the advertiser’s desired action, (2) the ad’s quality and relevance to the user, and (3) the advertiser’s bid amount. This means that the auction process explicitly takes consumer benefit into account—ensuring that the attractiveness of an advertisement to consumers is factored into the process and allowing a very relevant ad to win the auction over a less relevant ad even when the less relevant ad is associated with a higher monetary bid.

20. Please identify the average and median clearing price of FAN ad inventory by browser (e.g., Brave, Chrome, Edge, Mozilla, and Safari) for each month since July 2018.

Prices are determined by an auction system and therefore vary not only from month to month, but from moment to moment. All advertising on Facebook and the Facebook Audience Network is delivered through Facebook’s ad delivery system and priced through Facebook’s ad auction, regardless of which interface an advertiser used to place the ad.

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21. Does Facebook arbitrage, or has Facebook ever arbitrated, ad space that it acquires for, then sells to, marketers running ads on FAN? If yes, please describe the relevant circumstances.

Facebook’s model is not to arbitrage, but rather to bid on the publisher’s inventory of ad space, and if Facebook wins, to deliver an ad. Facebook does not pre-purchase and resell ad space.

22. Does Facebook ever acquire ad space on a “cost-per-mille” (CPM) basis from FAN participant sites or apps and sell this ad space on a “cost-per-click” (CPC) basis to marketers? If yes, please describe the frequency of this practice and the relevant circumstances.

Facebook does not pre-purchase and resell ad space. When a publisher provides Facebook Audience Network the chance to bid on an ad opportunity, Facebook uses its

auction system to value that opportunity and place a commensurate bid in “real-time.” Should a publisher’s auction system decide that Facebook’s is the winning bid, Facebook places an advertisement in that unit of ad space. The publisher charges Facebook on a CPM basis, Facebook then charges the advertiser in a manner consistent with the advertisers’ objectives, including potentially on a cost-per-click basis. The majority of the revenue from each ad placed is provided to the publisher.

23. What is the prevalence of ad fraud in digital advertising markets?

We’re unable to comment on the prevalence of fraud across digital advertising markets. Based on industry research, we understand that ad fraud on Facebook as well as across our Facebook Audience Network platform has been found to occur at substantially lower rates than occurs across the broader internet.

24. What specific steps does Facebook take to detect ad fraud?

Fraudulent ads are not allowed on Facebook. They are in breach of our advertising policies, and we will remove them when we find them. Our abuse-fighting team builds and constantly updates a combination of automated and manual systems that help us catch suspicious activity at various points of interaction on Facebook, Instagram, and Audience Network, including creating an account, sending friend requests, setting up ads payments, and creating or editing ads or ad placements.

Facebook has also been certified by the Trustworthy Accountability Group’s “Certified Against Fraud” program for Direct and Intermediary ad sales: <https://www.tagtoday.net/certified-against-fraud-programcompliantcompanies/>. TAG is an industry organization focused on eliminating fraudulent digital advertising traffic, combating malware, fighting ad-supported Internet piracy to promote brand integrity, and promoting brand safety through greater transparency. Our certification has been determined by independent validation, not just self-attestation (like most companies that are TAG-certified).

25. What specific steps does Facebook take to prevent ad fraud?

Fraudulent ads are not allowed on Facebook. They are in breach of our advertising policies, and we will remove them when we find them. Our abuse-fighting team builds and constantly updates a combination of automated and manual systems that help us catch suspicious activity at various points of interaction on Facebook, Instagram, and Audience Network, including creating an account, sending Friend requests, setting up ads payments, and creating or editing ads or ad placements.

Facebook has also been certified by the Trustworthy Accountability Group’s “Certified Against Fraud” program for Direct and Intermediary ad sales: <https://www.tagtoday.net/certified-against-fraud-programcompliantcompanies/>. TAG is an industry organization focused on eliminating fraudulent digital advertising traffic, combating malware, fighting ad-supported Internet piracy to promote brand integrity, and promoting brand safety through greater transparency. Our certification has been determined by independent validation, not just self-attestation (like most companies that are TAG-

certified).

- 26. Under what circumstances does Facebook inform advertisers that their ad spend has been affected by ad fraud? Please describe the relevant circumstances.**

When we have detected invalid traffic, we have provided refunds to advertisers we determine to have been affected. When we have detected that a publisher using Facebook Audience Network is responsible for invalid traffic, we have taken enforcement action, including terminating their ability to use Facebook Audience Network.

- 27. What processes does Facebook have in place to provide refunds to advertisers affected by ad fraud through Facebook?**

When we have detected invalid traffic, we have provided refunds to advertisers we determine to have been affected. When we have detected that a publisher using Facebook Audience Network is responsible for invalid traffic, we have taken enforcement action, including terminating their ability to use Facebook Audience Network.

- 28. Please identify the non-Facebook services that advertisers can use to:**

- a. Assess the success of their ad campaigns on Facebook; and**

Advertisers work with a variety of vendors for ad effectiveness measurement, and we offer integrations with many of these partners. We have agreements with various third parties, including measurement partners for measuring lift in sales, viewability of ads, and attribution of ads to sales objectives. For example, we have long partnered with Nielsen to provide third-party measurement services that advertisers can use to calibrate their advertising across the many options available to them (including TV ads, etc.).

- b. Identify ad fraud on Facebook.**

Advertisers have access to a variety of partners and services that seek to study ad fraud on Facebook and across the internet. The viewability measurement partners described above also help identify ad fraud, in addition to measuring ad effectiveness.

- 29. Please identify the specific steps that an advertiser can take to report suspected ad fraud to Facebook.**

Advertisers can work with their Facebook client contacts and other available support channels, such as our call center, to report suspicious activity to Facebook.

- 30. WhatsApp was launched in 2009 and gained swift popularity in part due to the company's commitment to strong user privacy. This commitment was reflected in WhatsApp's rejection of in-app advertising and its decision not to collect or store users' data. On February 19, 2014, Facebook announced that it was purchasing WhatsApp. In light of significant user skepticism that Facebook would continue to honor WhatsApp's privacy commitments, both Facebook and WhatsApp promised that the acquisition would not result in less privacy for WhatsApp users. A**

statement published by WhatsApp on February 19, 2014, stated, “Here’s what will change for you, our users: nothing.” A letter to Facebook and WhatsApp from Jessica Rich, Director of the Bureau of Consumer Protection at the Federal Trade Commission, noted that Facebook’s acquisition of WhatsApp would not legally nullify the privacy promises WhatsApp had made to users. The letter added, “[I]f you choose to use data collected by WhatsApp in a manner that is materially inconsistent with the promises WhatsApp made at the time of collection, you must obtain consumers’ affirmative consent before doing so.” On August 25, 2016, WhatsApp announced it would subsequently transfer user information to Facebook, enabling Facebook to use the data of WhatsApp users as part of its digital advertising business. WhatsApp did not obtain opt-in consent from users before implementing this new policy. How does WhatsApp reconcile its February 2014 assurance to users that the Facebook acquisition would change “nothing” for users with its August 2016 decision to share WhatsApp users’ information with Facebook?

WhatsApp’s prior statements are consistent with its sharing of information with Facebook after the acquisition. WhatsApp’s long-standing commitment to honoring user privacy has remained a priority for the company. As we continue to innovate in order to improve our products and services to consumers, some change in services is to be expected. When we do make changes in how data is used, however, we ensure that our actions comply fully with FTC guidance and with our users’ expectations.

In 2016, we improved WhatsApp in a number of ways, and because we understood that this resulted in a change in WhatsApp’s privacy practices, we provided clear, prominent notice about the change and provided control mechanisms to users. On August 25, 2016, we updated the WhatsApp Privacy Policy to explain to our users that WhatsApp is part of the Facebook Family of Companies, and as part of the larger Facebook Companies, WhatsApp receives information from, and shares information with, this family to help improve, customize, support, and market WhatsApp Services and the other companies’ offerings. See WhatsApp Privacy Policy, “Affiliated Companies,” <https://www.whatsapp.com/legal?eea=0#privacy-policy-affiliated-companies>. We also updated the Policy to make clear that “Facebook and other companies in the Facebook family also may use information from us to improve your experiences within their services such as making product suggestions (for example, of friends or connections, or of interesting content) and showing relevant offers and ads.” *Id.* We included clear and prominent explanations of these changes.

In addition to the updated Privacy Policy, Facebook provided descriptive in-product notices to existing users that described the change and the choices that users had. The notices first told users that the WhatsApp Privacy Policy and Terms had changed. The notices then highlighted the “Key Updates” as to what had changed, including how WhatsApp and Facebook would work together going forward to improve the services offered to consumers, including “making product suggestions, and showing relevant offers and ads on Facebook.”

Users were then presented with a control over whether to “share [their] WhatsApp account information with Facebook to improve their Facebook ads and product experiences.” WhatsApp then ensured that its privacy practices for a given user aligned with that user’s choice.

31. How does Mark Zuckerberg reconcile his February 2014 statement promising that “We are absolutely not going to change plans around WhatsApp and the way it uses user data,” with Facebook’s August 2016 decision to let Facebook access the information of WhatsApp users, thereby changing how WhatsApp uses user data?

Mark Zuckerberg’s prior statements are consistent with WhatsApp’s sharing of information with Facebook after the acquisition. WhatsApp’s long-standing commitment to honoring user privacy has remained a priority for the company. As we continue to innovate in order to improve our products and services to consumers, some change in services is to be expected. When we do make changes in how data is used, however, we ensure that our actions comply fully with FTC guidance and with our users’ expectations.

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Users were then presented with a control over whether to “share [their] WhatsApp account information with Facebook to improve their Facebook ads and product experiences.” WhatsApp then ensured that its privacy practices for a given user aligned with that user’s choice.

32. How does Facebook reconcile its February 2014 statement, “As we have said repeatedly, WhatsApp will operate as a separate company and will honor its commitments to privacy and security,” with Facebook’s August 2016 decision to let Facebook access the information of WhatsApp users, thereby changing how WhatsApp uses user data?

Facebook’s prior statements are consistent with WhatsApp’s sharing of information with Facebook after the acquisition. WhatsApp’s long-standing commitment to honoring user privacy has remained a priority for the company. As we continue to innovate in order to improve our products and services to consumers, some change in services is to be expected. When we do make changes in how data is used, however, we ensure that our actions comply fully with FTC

guidance, and with our users' expectations.

In 2016, we improved WhatsApp in a number of ways, and because we understood that this resulted in a change in WhatsApp's privacy practices, we provided clear, prominent notice about the change and provided control mechanisms to users. On August 25, 2016, we updated the WhatsApp Privacy Policy to explain to our users that WhatsApp is part of the Facebook Family of Companies, and as part of the larger Facebook Companies, WhatsApp receives information from, and shares information with, this family to help improve, customize, support, and market WhatsApp Services and the other companies' offerings. See WhatsApp Privacy Policy, "Affiliated Companies," <https://www.whatsapp.com/legal?eea=0#privacy-policy-affiliated-companies>. We also updated the Policy to make clear that "Facebook and other companies in the Facebook family also may use information from us to improve your experiences within their services such as making product suggestions (for example, of friends or connections, or of interesting content) and showing relevant offers and ads." *Id.* We included clear and prominent explanations of these changes.

In addition to the updated Privacy Policy, Facebook provided descriptive in-product notices to existing users that described the change and the choices that users had. The notices first told users that the WhatsApp Privacy Policy and Terms had changed. The notices then highlighted the "Key Updates" as to what had changed, including how WhatsApp and Facebook would work together going forward to improve the services offered to consumers, including "making product suggestions, and showing relevant offers and ads on Facebook."

Users were then presented with a control over whether to "share [their] WhatsApp account information with Facebook to improve their Facebook ads and product experiences." WhatsApp then ensured that its privacy practices for a given user aligned with that user's choice.

33. In March 2019, Mark Zuckerberg announced that Facebook was reorienting itself to be a privacy-focused platform. When testifying before the Senate last year, Mr. Zuckerberg said, "Every piece of content that you share on Facebook, you own, and you have complete control over who sees it and how you share it, and you can remove it at any time." He further testified, "I think we need to take a broader view of our responsibility around privacy than just what is mandated in the current law." Does this still accurately reflect Facebook's position?

Yes. Facebook takes privacy seriously and is committed to providing users with the best possible experience. Our approach to privacy centers around our commitment to transparency and control. We believe that it is important to communicate with people about the information that we collect and how people can control it. That is why we work hard to provide this information to people in a variety of ways, including in our Data Policy (<https://www.facebook.com/policy>) and in Privacy Basics (<https://www.facebook.com/about/basics>), which provides walkthroughs of the most common privacy questions we receive. And we are always looking for additional steps we can take to put people more in control of their privacy.

34. Facebook is involved in litigation in the Northern District of California, in the matter of *In Re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 18-MD-02843 VC. During oral argument on May 29, 2019, Facebook argued that

“there is no privacy interest” on Facebook and that the mere act of sharing information on Facebook “negated any reasonable expectation of privacy.” Given that Facebook has communicated to users that it is a privacy-focused platform while arguing in federal district court that there “is no privacy interest” on Facebook, is Facebook misleading users or is Facebook misleading the court?

We take privacy seriously. Recent media reports have distorted and taken out of context the exchange between our lawyer and the judge during the hearing. The statements referenced in media reports stem from a hypothetical presented by the judge during a hearing that required our attorney to apply a specific set of legal doctrines based on the counter-factual assumption that Facebook had not honored users’ privacy settings. In particular, the questioning was focused on applying common-law claims to the modern context of social media. The relevant portion of the exchange is reflected below:

Judge Chhabria: “[L]et’s assume, for the sake of argument, that Facebook suggested to its users that if your settings are to share stuff with friends only, only your hundred friends – let’s say a user has 100 friends – and you adjust your settings so that your posts and your likes and whatnot, your photographs are shared only with your friends, we, Facebook, will make sure not to give anyone else access to that information. Okay? And let’s say that in contravention of that assurance, Facebook actually disseminated the photographs and the likes and the posts to hundreds of companies. Wouldn’t that be a really serious privacy violation?” (Tr. 4:12–22)

Facebook Attorney: “The answer, Your Honor, is no ... this is not serious enough to give rise to a claim of invasion of privacy or any other privacy [tort]” because **“the gravamen, obviously, of any [common-law] privacy tort, including any invasion of privacy tort, is a reasonable expectation of privacy, whether it’s seclusion upon intrusion, whether it’s public disclosure of private facts, or any constitutional privacy right that may exist under California law.”** (Tr. 4:23–5:18)

Judge Chhabria: “Forget about what the plaintiffs are alleging right now” and assume “there are no other disclosures under this hypothetical.... [I]s that a serious privacy invasion by Facebook?” (Tr. 6:12–7:4)

Facebook attorney: “No. There is no privacy interest, because by sharing with a hundred friends on a social media platform, which is an affirmative social act to publish, to disclose, to share ostensibly private information with a hundred people, you have just, **under centuries of common law, under the judgment of Congress, under the SCA,** negated any reasonable expectation of privacy.” (Tr. 7:5–11.) “[T]he hypothetical [Judge Chhabria] gave ... of course, bears no resemblance to the facts of this case at all.” (Tr.

12:13–15)

The Facebook attorney closed the hearing by saying, “let me be very, very clear. **Facebook scrupulously honors and respects privacy on its platform, but in accordance with users’ privacy settings.** And that’s the part they want to elide over. Users had the absolute right to control who saw what. And to the extent a user made that privacy designation, Facebook scrupulously honored it. And what’s clear from this lengthy Complaint ... is that **at no time did Facebook take any action in excess of those privacy settings....**” (Tr. 134:23–135:10)

35. **There is a case pending in California state court between Facebook and Six4Three, LLC. During the course of this litigation, Facebook has produced documents that are relevant to the House Judiciary Committee’s investigation into digital markets. At the July 16, 2019 hearing, Facebook committed “to cooperate to the fullest extent possible and to act in good faith to respond to the Committee request in a timely and complete manner.”**
- a. **In light of this commitment, will Facebook agree to voluntarily share with the Committee the documents produced in Six4Three, LLC v. Facebook, Inc., Case No. CIV533328, and any related cases in federal or state court?**
 - b. **In light of this commitment, will Facebook refrain from taking any actions that would impede the Committee’s efforts to obtain any documents produced in Six4Three, LLC v. Facebook, Inc., Case No. CIV533328, and any related cases in federal or state court?**

Facebook will continue to engage with the Committee to provide responsive information and documents.

36. **Please identify the percentage of Facebook users that are subject to a mandatory arbitration clause and/or class action waiver in their agreement with Facebook, describe the relevant provisions, and identify any types or categories of Facebook user contracts that do not contain a mandatory arbitration clause and/or class action waiver.**

Facebook’s Terms of Service, applicable to all Facebook users, do not include a mandatory arbitration clause or a class action waiver. As indicated in our Terms of Service (available at <https://www.facebook.com/terms>), certain users may be subject to Facebook’s Commercial Terms. Facebook’s Commercial Terms apply to users residing in the U.S. or businesses located in the U.S. that access or use Facebook’s products for business or commercial purposes, such as buying ads, selling products, managing a group or Page for a business, or using our measurement services. The Commercial Terms include arbitration and class action terms. These terms are available in the “Disputes” section of Facebook’s Commercial Terms: https://www.facebook.com/legal/commercial_terms.

Because the Commercial Terms apply to a defined set of activities (for example, purchasing an ad) and not a defined set of users, Facebook cannot provide a percentage of users that are subject to those terms.

37. **Since 2014, how many Facebook users have initiated arbitration proceedings to**

adjudicate a legal claim against Facebook, in total and broken down by type of legal claim?

Facebook's Commercial Terms, which contain an arbitration provision, became effective in May 2018. We are not aware of any Facebook users who have initiated an arbitration proceeding pursuant to this provision to adjudicate a legal claim against Facebook since that time. Between 2014 and May 2018, Facebook's terms of service for users did not have an arbitration clause.

38. Please identify the percentage of Facebook employees that are subject to a mandatory arbitration clause and/or class action waiver in their agreement with Facebook, describe the relevant provisions, and identify any types or categories of Facebook employee contracts that do not contain a mandatory arbitration clause and/or class action waiver.

Since November 2013, the vast majority of Facebook employees have signed a mutual arbitration agreement with the company. The current version of the arbitration agreement contains a variety of provisions, including, but not limited to, a description of claims covered/not covered, a class action waiver (which employees can opt out of), and other procedural items. Although not documented in the agreement, we have an internal policy stating that for any sexual harassment claims, employees have the option to bring either an action in arbitration or court of law.

39. Since 2014, how many current or former Facebook employees have initiated arbitration proceedings to adjudicate a legal claim against Facebook, in total and broken down by type of legal claim?

Five current or former Facebook employees have initiated arbitration proceedings since 2014. The cases raised a range of claims including false representations, discrimination, retaliation, harassment, an alleged violation of state wage law, failure to provide reasonable accommodations, and failure to engage in interactive process.

40. Please identify the percentage of Facebook contractors that are subject to a mandatory arbitration clause and/or class action waiver in their agreement with Facebook, describe the relevant provisions, and identify any types or categories of Facebook contractor contracts that do not contain a mandatory arbitration clause and/or class action waiver.

We are not aware of Facebook entering into arbitration agreements with contingent workers. We generally do not have visibility into agreements that contingent workers enter into with our vendors or other third parties.

41. Since 2014, how many current or former Facebook contractors have initiated arbitration proceedings to adjudicate a legal claim against Facebook, in total and broken down by type of legal claim?

As discussed above, we are not aware of Facebook entering into arbitration agreements with contingent workers, and we are not aware of any contingent worker initiating arbitration proceedings against Facebook.

- 42. Please identify the percentage of developers that do business with Facebook that are subject to a mandatory arbitration clause and/or class action waiver in their agreement with Facebook, describe the relevant provisions, and identify any types or categories of Facebook’s contracts with developers that do not contain a mandatory arbitration clause and/or class action waiver.**

Facebook’s Commercial Terms apply to all users that reside in the U.S. and to businesses located in the U.S. that access or use Facebook’s products for business or commercial purposes, including app developers. These terms are available in the “Disputes” section of Facebook’s Commercial Terms: https://www.facebook.com/legal/commercial_terms.

- 43. Since 2014, how many current or former developers have initiated arbitration proceedings to adjudicate a legal claim against Facebook, in total and broken down by type of legal claim?**

We are not aware of any developers that have initiated arbitration proceedings to adjudicate a legal claim against Facebook.

- 44. Please identify the percentage of Facebook employees and contractors that are subject to a non-compete clause in their agreement with Facebook, describe the relevant provisions, and identify any types or categories of Facebook employees and contractors that are not subject to a non-compete clause.**

Facebook does not enter into non-competition agreements with employees or contractors.

- 45. Since 2014, how many former Facebook employees and contractors has Facebook sued or initiated arbitration proceedings against in connection with an alleged breach of a non- compete clause? Please break down this number by type of legal relationship (e.g., employee or contractor) and describe the relevant circumstances that gave rise to each suit or arbitration.**

None. Facebook does not enter into non-competition agreements with employees or contractors.