Anticipated acquisition by Fintrax Group Holdings Limited of GB TaxFree Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6707-17

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 14 November 2017. Full text of the decision published on 1 December 2017.

Please note that [✂] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. Fintrax Group Holdings Limited (**Fintrax**) has agreed to acquire GB TaxFree Limited (**GB TaxFree**) (the **Merger**). Fintrax and GB TaxFree are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that, accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. Overseas tourists from outside the European Union (**EU**) can reclaim Value Added Tax (**VAT**) on purchases made when visiting the United Kingdom (**UK**) and other EU countries. The Parties overlap in the supply of outsourced VAT refund services to retailers in the UK, which involves the administering and processing of VAT refunds on behalf of retailers. These services are often provided to retailers on a payment terminal, integrated alongside other services such as Dynamic Currency Conversion (**DCC**). Both Parties can supply VAT refund services on an integrated basis, but only Fintrax is active in supplying additional services, including DCC services and payment

terminals directly itself. GB TaxFree does not supply DCC services but partners with DCC services providers to allow these services to be provided jointly with its VAT refund services.

4. In relation to potential horizontal unilateral effects in the supply of outsourced VAT refund services to retailers, the CMA believes that the Merger will not give rise to concerns, primarily because the evidence available to the CMA indicates that GB TaxFree is not a strong competitive constraint on Fintrax. Specifically:

   (a) The CMA found that, although Fintrax is the second largest player and GB TaxFree the third, GB TaxFree is significantly smaller and adds only [0-5]% to Fintrax's existing market share. The leading supplier, Global Blue, will continue to be significantly larger than the merged entity.

   (b) For retailers seeking a VAT refund offering that is integrated with other retailer solutions (eg payment systems), evidence from the Parties indicates differentiation in the way the Parties win customers and therefore the attractiveness of their individual propositions. Although both Parties operate with partners (eg acquirers, Payment Service Providers (**PSPs**), till or Electronic Point of Sale (**EPOS**) providers) to provide integrated solutions, Fintrax is able to offer a wider range of services and solutions, and partners with a wider range of related suppliers, to sell directly to customers. In contrast, GB TaxFree partners principally with Global Payments, which integrates GB TaxFree's VAT refund services into its package of other payment services, which it then sells to customers. As such, GB TaxFree has a limited ability to engage customers directly itself. Evidence from the Parties and third parties indicates that GB TaxFree has a limited ability to offer integrated services directly or through other partnerships.

   (c) For retailers that require multinational presence, GB TaxFree does not have sufficient international presence to compete with Fintrax.

   (d) For small retailers, or those not looking for integrated services, there are several credible alternative suppliers in the UK who pose a constraint on the Parties.

5. In relation to potential vertical effects in the supply of DCC services, the CMA believes that the Merger will not create the ability for the Parties to foreclose rivals in the provision of DCC services (who may seek to partner with VAT refund service suppliers) because of the small scale of GB TaxFree.

6. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a

substantial lessening of competition (**SLC**) as a result of horizontal unilateral, or vertical, effects.

7. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

8. Fintrax is part of a private-equity held group, which operates across the UK, Europe and worldwide supplying VAT refund services, DCC, credit card processing and EPOS technology to retailers. The turnover of Fintrax in 2016 was £[✄] billion worldwide, with £[✄] million generated in the UK, primarily through its subsidiary Premier Tax Free (**Premier**).

9. GB TaxFree is a privately-held company active in the supply of VAT refund services to retailers in the UK. It also has limited operations in Germany, the Netherlands and Ireland through a wholly owned subsidiary, EU TaxFree. The turnover of GB TaxFree in its financial year 2016/17 was £[✄] million worldwide, almost all generated in the UK.

Transaction

10. The Transaction is the acquisition by Fintrax of the entire issued share capital of GB TaxFree under the terms of a sale and purchase agreement signed on 31 July 2017.

Jurisdiction

11. As a result of the Merger, the enterprises of Fintrax and GB TaxFree will cease to be distinct.

12. The Parties overlap in the supply of VAT refund services to retailers in the UK, with a combined share of supply of [20-30]% (increment [0-5]%), based on gross commission earned (see paragraph 44 for market share details). The CMA therefore believes that the share of supply test in section 23 of the Act is met.

13. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

14. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 27 September 2017 and the statutory 40 working day deadline for a decision is therefore 21 November 2017.

Counterfactual

15. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.[1]

16. The Parties submitted that Her Majesty's Revenue and Customs (**HMRC**) is planning to digitise the VAT Refund Export Scheme and that the appropriate counterfactual is one in which the administration of the scheme is digitised.[2] The Parties submitted that the digitisation will increase competition by lowering barriers to entry, encourage growth of existing 'digital-only' suppliers, and expand the market by allowing retailers to identify eligible transactions more effectively.

17. The Parties submitted that these changes are foreseeable given the timetable HMRC has released, [✂], and that the future effects can be reliably anticipated by looking at the effects of the recent digitisation in France.

18. The HMRC team responsible for digitisation [✂].[3][4][i]

19. As the details of the implementation of digitisation and its effects are still very uncertain, and difficult to estimate, the CMA does not believe that the prospect of the current conditions of competition continuing is unrealistic. Therefore, the CMA believes that it is appropriate to assess the Merger by reference to the prevailing conditions of competition.

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[1] *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).
[2] After digitisation, the intention is that retailers and third party suppliers will be able to register customers, send refund forms and obtain approval from HMRC digitally. This automatic process removes the need for manual stamping ([✂]).
[3] [✂]
[4] The Retail Export Scheme is based on EU VAT law, and it is mandatory for Member States to offer the Scheme for goods exceeding €175. It is optional for retailers to offer the Scheme.

Background

VAT refund scheme

20. The VAT Refund Export Scheme allows tourists from outside the EU to reclaim VAT paid on purchases in the UK and other EU countries. The process of claiming a VAT refund in the UK requires both the customer and the retailer (or VAT refund services company) to provide necessary documents confirming the eligibility of the refund to HMRC. Given that offering VAT refunds is voluntary, not all retailers offer this service as the administration of VAT refunds is an additional business burden. However, some retailers choose to offer VAT refunds as: (i) retailers can keep a portion of the refund in return for offering the service, which provides an additional income stream and (ii) offering VAT refunds can increase sales to tourists by offering lower effective prices.

21. Retailers who decide to participate in the VAT refund scheme can choose to offer VAT refund services themselves or to outsource it to a third-party provider, who will take responsibility for processing the relevant receipt and refunds on behalf of the retailer. A VAT refund company will typically take a share of the refund reclaimed by the customer (**gross commission**), and will share this commission with the retailer in the form of a **rebate**. A VAT refund company may also share the commission with other parties as well, such as PSPs, as a result of partnership agreements. The 'net' commission is the main revenue source for VAT refund suppliers.

Methods of supplying VAT refund services

22. VAT refund services can be provided in the following ways:

    (a) Manual (paper pad);

    (b) Standalone VAT refund form printing terminal;

    (c) Tablet/mobile apps and online;

    (d) VAT services integrated into the payment terminal (including acquiring and/or DCC services); or

    (e) VAT refund services integrated into the wider EPOS system.

23. The first three methods, while different in terms of technological sophistication, can be carried out independently by the VAT refund services provider without wider integration into the retailers' payment or EPOS system. As such, they can be offered directly to retailers by VAT refund suppliers.

24. The latter two methods represent integrated solutions, which allow interaction with other services that retailers may want to offer to their customers (eg DCC payment services) or services that retailers may need for monitoring their own sales and business performance (eg EPOS). More integrated solutions can increase ease of purchase and processing for customers but can also deliver benefits to retailers (eg by providing them with analytics on the role of VAT refunds in sales performance etc). In order to deliver these integrated solutions, VAT refund suppliers will partner with PSPs, acquirers, till/ EPOS suppliers and suppliers of other products such as DCC to offer retailers integrated solutions (eg through payment terminals) that combine these services. The Parties submitted that the importance of VAT refund services is significantly outweighed by the importance of the other services, which are more business critical, and, therefore, when considering an integrated solution, a retailer's choice of VAT refund supplier will often be determined by their choice of supplier for the other services.

25. Partners, when choosing to work with VAT refund service suppliers, can either:

(a) operate a preferred partner model, ie they primarily work with preferred partners and these services may be included by default into their integrated offering but they will still work with other partners at the retailer's request; or

(b) do not operate a preferred partner model, ie they work with multiple VAT refund suppliers depending on retailer demand, without offering one as a default when selling their integrated services.

26. Therefore, there are two main routes by which VAT refund services providers can attract retailers: (i) a direct offering of VAT refund services to retailers; and (ii) an integration of VAT refund services into payment systems and other technology required by retailers, whereby the retailers are reached through partners. This in turn generates (i) direct competition for retailers and (ii) competition for partnerships and relationships with PSPs, DCC and/or till/EPOS providers.

Frame of reference

27. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important

than others. The CMA will take these factors into account in its competitive assessment.[5]

Product scope

28. Fintrax and GB TaxFree overlap in the supply of VAT refund services, which can be delivered to retailers in the ways outlined in paragraph 22. Fintrax is able to offer all of the five solutions described; though GB TaxFree is not able to offer tablet/ mobile apps or online solutions, and only offers limited integration into wider EPOS systems. GB TaxFree also does not supply its own payment terminals, and instead has its services integrated onto its preferred partners' terminals; whereas Fintrax is able to supply the payment terminals onto which services can be integrated.

29. The supply of VAT refund services has previously been considered in the merger between Exponent Private Equity LLP (who owned Fintrax) and Tax Free Worldwide UK Limited (**Exponent/ TFW**).[6] In that case, the OFT assessed the transaction on the basis of the outsourced supply of VAT refund services by VAT refund companies to UK retailers that operate the scheme, although it did not consider it necessary to conclude on the precise product scope given no competition concerns arose.

Self-supply

30. The Parties submitted that the frame of reference should be the supply of VAT refund services in the UK, including self-supply by retailers. The Parties provided some examples of retailers switching from using a VAT refund supplier to self supply. In addition, the Parties noted that, in *Exponent/ TFW,* the OFT found that self-supply could provide some constraint on the merging parties. However, the OFT did not see any examples of retailers switching from using a VAT refund company back to providing services in-house. In that case, most retailers indicated to the OFT that it would be too difficult and costly.[7]

31. The CMA believes that the evidence available in the present case indicates that the frame of reference should not be widened to include self-supply for the following reasons:

    (a) Of the retailers who responded to the CMA's market testing, none of them indicated that they had considered switching to self-supply. One retailer

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[5] *Merger Assessment Guidelines*, paragraph 5.2.2.
[6] OFT Decision: ME/6105/13 – Anticipated acquisition by Exponent Private Equity LLP of Tax Free Worldwide UK Limited, 13 August 2013.
[7] Exponent/ TFW case, page 5

said that it provides some VAT refund services in-house, but these are for high-value transactions or VIP customers and it stated that it would not consider bringing all VAT refund services in-house because it is *"too expensive and large to maintain in-house*". Other retailers provided similar reasons for not providing VAT refund services in-house.

(b) VAT refund companies offer additional services, which may include (i) training for retailers' in-store staff, (ii) marketing to international travellers and (iii) data analysis where the VAT refund is integrated with payment acquiring. These services are more difficult for retailers to provide in-house.

32. Therefore, the CMA does not believe that self-supply exerts a sufficient constraint on the price and quality of the outsourced service to be considered part of the same frame of reference. Nevertheless, whether the CMA includes self-supply in the relevant frame of reference or not would not change the conclusion as no competition concerns arise on the narrower and more conservative basis.

Type of retailer

33. The Parties submitted that VAT refund services should not be further segmented by type of retailer, ie by retailers requiring a multi-country service or by retailer size. The Parties also submitted that GB TaxFree does not offer DCC or any services other than VAT refund services and so no overlap arises with Fintrax in relation to these other product areas. In addition, they submitted that, as GB TaxFree does not directly offer integrated services through its own payment terminal, and instead has its VAT refund services offered and led by a partner, there can be no notional frame of reference for integrated products.

34. In *Exponent/ TFW,* the OFT considered whether it was appropriate to distinguish for the purposes of the frame of reference and its competitive assessment between (i) retailers that wish to use the same provider in multiple EU countries, in particular given that only some providers have an international presence; (ii) retailers with low volume of transactions, and (iii) retailers with a preference for enhancements and integrated solutions. The OFT received mixed evidence on appropriate customer segmentation and did not ultimately need to conclude as, having considered the effects of the merger on a narrower and broader basis, it believed no concerns would arise.[8]

[8] Exponent/ TFW case, page 6

35. In the present case, evidence from the CMA's market testing indicates that the conditions of competition can vary across retailers according to their size and requirements, such that the effects of the Merger may be different for different retailers.[9] Some retailers expressed a preference for using the same VAT refund service company across their stores internationally, and some with large volumes of transactions or a large number of stores expressed a preference for integrated services. Some competitors indicated that there might be three groups of retailers, defined by their requirements in relation to international services and size.[10] The evidence available also indicates that it may be appropriate to distinguish retailers by reference to their preference for integrated or non-integrated solutions. This is because a preference for integrated solutions means the customer is seeking a wider set of products (ie more than just VAT refund services), with the integrated package not necessarily being substitutable with separate non-integrated offerings. Also, given the nature of integrated offerings, and the varied relationships with partners, the conditions of competition for retailers with a preference for integrated services could vary and therefore require separate closer scrutiny.

Conclusion on product scope

36. For the reasons set out above, the CMA has considered the impact of the Merger on the outsourced supply of VAT refund services to retailers. The CMA has also considered the impact of the Merger on the following narrower retailer segments: (i) retailers with a preference for integrated services; (ii) international retailers (who may have a preference for international VAT refund services); (iii) small and medium-sized retailers.

37. However, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Geographic scope

38. The Parties submitted that the relevant geographic frame of reference for the supply of VAT refunds is UK-wide. This is primarily because each EU Member State is responsible for operating and regulating its own national refund scheme and, consequently, there are substantial differences in the approach adopted by different Member States (as well as different rates of VAT that apply in different Member States). This is in line with *Exponent/ TFW* as,

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[9] *Merger Assessment Guidelines*, paragraphs 5.2.28 to 5.2.31

[10] In general, these groups can be defined as i) international luxury brand retailers, ii) medium-sized retailers with some national or international presence, and iii) small, independent retailers.

although the OFT did not conclude on the geographic market, it assessed the transaction on a UK-wide basis. The European Commission has also assessed a merger in a similar sector on a national basis.[11]

39. The CMA has not received evidence to indicate that the relevant frame of reference might be wider than the UK and, therefore, consistent with previous cases, has assessed the Merger on a UK-wide basis.

40. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Conclusion on frame of reference

41. For the reasons set out above, the CMA has assessed the impact of the Merger on the outsourced supply of VAT refund services to retailers in the UK. The CMA has also assessed the effect of the Merger on narrower retailer segments in the UK, namely: (i) retailers with a preference for integrated services; (ii) international retailers (who may have a preference for international VAT refund services); (iii) small and medium-sized retailers. However, as no concerns arise on any plausible basis, it has not been necessary for the CMA to conclude on the frame of reference.

Competitive assessment

Horizontal unilateral effects

42. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.[12] Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to unilateral horizontal effects in the outsourced supply of VAT refund services to retailers in the UK.

43. In assessing whether horizontal unilateral effects may arise from the Merger, the CMA has considered: (i) the Parties' shares of supply; (ii) how closely the Parties compete with each other; and (iii) other competitive constraints faced by the Parties.

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[11] Case No COMP/M.3762 - Apax/ Travelex – Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004, 16 June 2005.
[12] *Merger Assessment Guidelines*, from paragraph 5.4.1.

Shares of supply

44. The Parties provided the CMA with estimates of shares of supply for VAT refund services to retailers in the UK as shown in Table 1. These estimates were calculated based on gross commission earned using accounting data and the Parties' best estimates based on their knowledge of the market.

Table 1: Market share estimates for VAT refund services (UK, 2015/16)

Supplier	**Including self-supply, %**	**Excluding self-supply, %**
Global Blue	[50-60]%	[60-70]%
Fintrax	[20-30]%	[20-30]%
GB TaxFree	[0-5]%	[0-5]%
Innova	[0-5]%	[0-5]%
Synergy	[0-1]%	[0-1]%
U Shop Tax Free	[0-1]%	[0-1]%
TaxFree4U	[0-1]%	[0-1]%
WeVAT	[0-1]%	[0-1]%
Self-supply	[5-10]%	--
Gross commission	118 (£m)	106 (£m)

Source: Parties' submission

45. These estimates are supported by third party comments, which incidated that Global Blue is significantly larger than Fintrax, and Fintrax is significantly larger than GB TaxFree in terms of number of customers and the size of these retailers.

46. As Table 1 indicates, the VAT refund services market is concentrated, with relatively few competitors. The Parties are currently the second and third largest outsourced providers of VAT refund services in the UK, with a combined market share of [20-30]%. Global Blue is the clear market leader. The CMA notes that the Parties combined market share is not strongly indicative of competition concerns and, moreover, the increment arising from the Merger is only [0-5]%.

47. Although there are a number of smaller competitors, and some new entrants into the market, the CMA notes that the shares of supply of the largest

suppliers have not changed significantly since the OFT investigation in *Exponent/TFW* in 2013.

Closeness of competition

48. The Parties submitted that they are not close competitors on the basis that:

(a) The Parties have different business models. GB TaxFree's business model focuses on developing strategic longstanding relationships with partners, which then offer GB TaxFree's VAT refund services as part of their integrated solution to retailers. In contrast, Fintrax offers a range of products and its strategy has been to offer its own integrated products directly to retailers. GB TaxFree partners with Global Payments and Fexco to have its VAT refund services pre-loaded on their payment terminals; whereas Fintrax offers its own terminals, which may also combine DCC services.

(b) The Parties have a different customer base and target retailers with different characteristics (eg in size, multinational presence, etc).

49. The Parties submitted that Fintrax does not regard GB TaxFree as a competitor, as indicated by its internal documents (which primarily focus on Global Blue).

All retailers

50. The Parties submitted that they have different customer bases and therefore do not compete closely. Fintrax's customer base focuses on those retailers with many international travellers, particularly retailers active across multiple countries in the luxury goods sector. As the majority of GB TaxFree's retailers are from its partnerships, its customers encompass a broad range of different types of retailer and often include retailers generating a limited volume of VAT refunds.

51. The CMA considered evidence from (i) internal documents; (ii) win/loss data; and (iii) third party views in order to determine the extent to which the Parties compete closely to provide VAT refund services across all retailers generally.

- *Internal documents*

52. Fintrax's internal documents indicate that it considers Global Blue to be the market leader and its main competitor. GB TaxFree is only mentioned in one of Fintrax's internal documents provided to the CMA, where it is not considered as a competitor to Fintrax. Internal emails provided by GB

TaxFree indicate that [✄] it was unable to compete against Global Blue or Fintrax, either because of a lack of partnerships, a lack of international presence, or a lack of an app-based solution (which both Global Blue and Fintrax offer).

53. This evidence indicates that GB TaxFree imposes a limited competitive constraint on Fintrax.

- *Win/loss data*

54. Win/loss data provided by the Parties with respect to UK customers indicates that there is limited switching relative to total gross commission earned. Most customer wins are new customers engaging a VAT refund service supplier for the first time. Where switching has occurred, GB TaxFree has won most of its new business [✄]. Similarly, Fintrax wins most of its new business [✄]. The CMA notes that most of Fintrax's recent losses have gone [✄], though this is a very small proportion (0-5%) of Fintrax's total gross commission. Moreover, the Parties said that wins and losses were driven by its partners' sales and involved factors unrelated to VAT refund services, eg choice of till/ EPOS system.

55. The CMA examined the data provided and found that the share of gross commission won or lost in the past two years attributable to VAT refund retail customers only, as well as the number of such customers, is very small and therefore placed limited weight on this evidence.

- *Third party views*

56. The views of the Parties' customers were mixed as to the extent to which they considered the Parties to be close alternatives. Around half of the customers responding to the CMA's market testing considered that the Parties may be close alternatives, with the other half indicating that they were either unaware of the other supplier or thought it unsuitable. Significantly, no Fintrax customers responding to the CMA's market testing considered GB TaxFree as an alternative when choosing their current VAT refund service provider, suggesting that GB TaxFree has provided a limited competitive constraint on Fintrax in recent years.

- *Conclusion on closeness of competition for all retailers*

57. On the basis of all the evidence outlined above, the CMA believes that GB TaxFree imposes a limited competitive constraint on Fintrax in the supply of VAT refund services to all retailers.

58. The CMA has also considered the extent to which the Parties may compete more closely across specific customer segments, as set out below.

Retailers with a preference for integrated services

59. As noted above, in order to compete for retailers with a preference for integrated services, VAT refund services suppliers form partnerships with other related suppliers in order to be able to offer an integrated solution, and in some cases may compete to become a preferred partner. The CMA therefore considered the extent to which the Parties are able to serve retailers with a preference for integrated services through a partnership solution.

60. The Parties submitted that they operate different business models, which can be seen by their different approaches to forming partnerships and how they win business. In particular, Fintrax offers its own card payment terminals, on which it incorporates partner services; whereas GB TaxFree does not offer its own card payment terminals and instead has its services incorporated onto its preferred partners' offerings. While Fintrax wins retailer customers directly, GB TaxFree wins custom through its preferred partners.

61. In order to assess the extent to which the Parties compete to serve retailers with a preference for integrated services, the CMA considered:

(a) The Parties' current propositions and business models;

(b) The extent to which each of the Parties can offer solutions through partnerships, based on evidence of current partnerships and the views of third parties on the attractiveness of each of the Parties as a partner in the supply of integrated services.

- *Current propositions and business models*

62. The majority of GB TaxFree's revenues ([✂]% of its gross commission generated) comes from offering VAT refund services through partnership arrangements, in particular through a preferred partnership arrangement with Global Payments.[13] However, this represents a small share of the overall market and therefore a small proportion of the retailers that prefer an integrated solution. This indicates that, despite GB TaxFree's partnership arrangements, it represents a limited constraint on Fintrax in relation to retailers with a preference for integrated solutions.

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[13] [✂]% by gross commission. Out of approximately [✂] retailers supplied by GB TaxFree through a partner, approximately [✂]% were through its two preferred partners: Global Payments and Fexco.

63. GB TaxFree's offering is delivered to retailers by its partners as part of their integrated solutions, where VAT refunds are typically a small element. The Parties told the CMA that a retailer's choice of integrated solution will typically be driven by services other than VAT refund services. The evidence available to the CMA confirms this. Third parties told the CMA that acquirers, PSPs and suppliers of till systems play a significant role in influencing a retailer's choice of VAT refund supplier. A majority of the partners who responded to the CMA, in particular acquirers, submitted that a VAT refund service adds value to their offering but does not attract customers on its own. The CMA also asked customers who have integrated solutions about the extent to which VAT refund services influenced their choice of supplier and a majority of retailers submitted that other services such as card processing and acquiring are more important. Only one retailer submitted it was the main reason for choosing a particular PSP.

64. This suggests that there is limited direct competition between the Parties for retailers with a preference for integrated services (see below for a discussion of competition to become the VAT refund supplier for an integrated solutions provider).

- *Ability to offer solutions through partnerships*

65. Evidence from third parties indicates that partners integrate with a range of VAT refund suppliers, as requested by the retailer, and do not limit themselves to exclusive dealing with their preferred partners. Almost half of the integrated solutions providers which responded to the CMA said that they do not have a preferred VAT refund supplier and will partner with whichever VAT refund supplier is requested by a retailer; while those that do have a preferred supplier said that they still partner with other VAT refund suppliers when requested by a retailer. For example, although GB TaxFree has a partnership agreement with [✂], it said that it will work with Fintrax or Global Blue if the customer requested it. A number of other acquirer and payment related partners ([✂], [✂], [✂] and [✂]) also confirmed that the choice of partners with whom they work is driven by retailer demand.

66. Third party evidence also indicates that GB TaxFree may be less attractive to partners, and therefore a more limited constraint on Fintrax in offering integrated solutions. The CMA notes:

(a) Most of the integrated solutions providers without preferred partnerships said that they partnered only with Fintrax or Global Blue for VAT refund services and never with GB TaxFree. Third parties indicated that integrated solutions providers sought partnerships with VAT refund services suppliers that were able to integrate quickly and smoothly with

their own systems. In this context, GB TaxFree submitted that its smaller scale may have led to its not being able to establish some partnerships. One partner, who works with both Parties, noted that Fintrax's ability (i) to operate internationally and (ii) to offer a full range of solutions compared to GB TaxFree was an advantage.

(b) Although GB TaxFree achieves a much higher proportion of its sales through partners, in particular its preferred partnership with Global Payments, which differentiates its business model and route to market from Fintrax, it has overall far fewer partnerships than Fintrax. As a complement to its sales direct to retailers, Fintrax has [✂] partners, while GB TaxFree has only [✂] partners. Fintrax confirmed that it partners with [✂] till/ EPOS providers and [✂] acquirers/ PSPs, whereas GB TaxFree only partners with [✂] till/ EPOS providers and [✂] acquirers/ PSPs. GB TaxFree is far more dependent on its partners but Fintrax's far higher number of partners demonstrates its greater ability to work with partners (both till/EPOS providers and acquirers/PSPs) and win retailers through an integrated offering, suggesting that the competitive constraint from GB TaxFree on Fintrax for integrated solutions might be limited.

67. Overall, while the Parties both utilise partnerships to reach retailers with a preference for integrated solutions, the available evidence indicates that GB TaxFree is a limited constraint on Fintrax. In particular, GB TaxFree appears limited in its ability to offer the range of solutions and services offered by Fintrax, which are important to reach retailers through partnerships.

International retailers

68. The Parties submitted that some retailers require a single provider to offer a VAT refund service across multiple countries. The Parties said that, as GB TaxFree's activities in relation to such retailers is very limited (in Ireland, Germany and the Netherlands through EU TaxFree),[14] GB TaxFree is not a credible competitor to Fintrax for retailers requiring a multi-country offering.

69. The Parties submitted that for Fintrax international retailers account for a significant proportion [✂] of gross commission in the UK, and it has numerous retailers it supplies VAT refund services to internationally, while GB TaxFree only serves [✂] internationally.

[14] An internal document submitted by GB TaxFree indicated that it might have some plans to expand its offering in the future into other countries, [✂]. This would strengthen its offering for retailers requiring international presence. However, these plans contained few details and appeared speculative, which meant that there was no basis for the CMA to put weight on them.

70. Other customers also submitted that the decision on which VAT refund service company to use was made at a group level by, in some cases, an overseas head office. One competitor submitted that Global Blue and Fintrax dominate the international segment, with retailers looking for global or pan-European VAT refund agreements alongside DCC services.

71. This evidence indicates that, for retailers who require international VAT refund services, GB TaxFree is not a strong alternative to Fintrax.

Small and medium-sized retailers

72. The Parties submitted that, given the different focus of their business models, the Parties do not compete closely for smaller/medium-sized retailers. In particular, Fintrax submitted that its proposition is targeted at, and more attractive to, retailers with a material number of international traveller customers. Fintrax explained that, [✄]. This was confirmed in internal emails submitted by the Parties. In contrast, because the majority of GB TaxFree's customers are determined by its partners, it often provides VAT refund services to small and medium-sized retailers.

73. Data submitted to the CMA shows that, in 2016, the average VAT-refundable sales in store (**SIS**)[15] for Fintrax customers was £[✄], compared with £[✄] for GB TaxFree. The combined SIS of the top 10 retailers of Fintrax was five times larger than the combined SIS of the top 10 retailers of GB TaxFree. GB TaxFree's main partner, Global Payments, told the CMA [✄].

74. One competitor submitted that there was "*fair competition"* for small retailers as other suppliers such as "*Innova Tax Free, Synergy Tax Free and UShopTaxFree compete for these [customers]"*. With regard to medium-sized retailers, this competitor submitted that, "*while Global Blue and Premier Tax Free [Fintrax] are prominent, smaller refund companies like GB Tax Free and Innova Tax Free have some market share."* Other competitor responses supported these comments, indicating that there were a number of alternatives to the Parties competing for small or medium-sized retailers, including still Global Blue, which confirmed that it works with any retailer.

75. This evidence indicates that, for small and medium-sized retailers, the Parties different routes to market and business strategies have resulted in them providing a limited constraint on each other. Moreover, for these customers there are alternative suppliers available.

[15] SIS is the value of eligible sales of the retailer where a refund form has been issued and the refund completed.

Conclusion on closeness of competition for specific customer segments

76. On the basis of the evidence set out above, the CMA believes that the Parties are not competing closely for:

a) retailers with a preference for integrated services as GB TaxFree is limited in the range of solutions and services it offers and therefore in the partners with which it can work compared with Fintrax;

b) multinational retailers, where Fintrax competes with Global Blue and GB TaxFree is not considered a significant competitor; or

c) small or medium-sized retailers, where the different business models of GB TaxFree and Fintrax have resulted in them supplying different customer groups, and where there are also a number of alternative suppliers.

Competitive constraints

Competitors

77. Most customers told the CMA that they did not have concerns about the Merger as there are alternative VAT refund suppliers and enough competition in the market. The majority of partners also raised no concerns, with some ([✂], [✂], [✂] and [✂]) submitting there could be benefits to the service they can offer to retailers following the Merger. Of those partners who raised concerns, these focused on the reduction of VAT refund suppliers available with which to partner. Some competitors raised concerns, citing increasing barriers to entry/expansion given the scale of the two largest VAT refund suppliers.

78. Global Blue is the clear UK market leader in VAT refund services. Third party evidence showed that it is well known among retailers and competitors, and was considered by almost all retailers when selecting their current provider of VAT refund services. It supplies a broad range of customers with a broad range of requirements, from luxury/premium brand retailers requiring multinational presence to smaller independent retailers. It has strong partnerships (eg with [✂] and [✂]) but also sells directly to retailers with its own integrated solutions. It is the only strong competitive constraint on Fintrax for retailers requesting a single provider across multiple countries. Fintrax's internal documents indicate that it considers Global Blue to be the market leader and its main competitor, [✂]. Switching data confirmed that Global Blue exerts a constraint on both the Parties. The majority of customers of the Parties were aware of Global Blue and considered them a close alternative to

their current supplier. Overall, this evidence indicates clearly that Global Blue exerts a strong competitive constraint on both Parties, in particular Fintrax.

79. Innova, headquartered in Spain, has been offering VAT refund services for 15 years. It is currently active in ten European countries.[16] It partners with [✄] and [✄] and is able to offer a range of solutions, though it targets small/medium retailers. In response to the CMA's third party questions, retailers were mostly unaware of Innova but competitors indicated that it is a close alternative to both Parties. One competitor noted that it is a small new competitor with potential to grow. [✄] commented that Innova is smaller but has indicated that it considers itself part of the "big four" (with Global Blue, Fintrax and GB TaxFree). Overall, this evidence indicates that Innova may exert some competitive constraint on the Parties, in particular on GB TaxFree.

80. Synergy provides standalone VAT terminals, as well as manual and online solutions to fill in the VAT form. It does not currently have any partners. Therefore, it currently only competes for direct sales to small or medium-sized retailers which do not require additional or integrated services. Most customers which responded to the CMA's questions were unaware of Synergy, while the majority of competitors indicated that it might be an alternative to some extent to Fintrax and GB TaxFree. In the last two years, [✄]. Overall, this evidence indicates that Synergy currently exerts at most a small competitive constraint on Fintrax (due to its limited size), and even less on GB TaxFree (due to GB TaxFree's retailers mostly using integrated solutions).

81. The CMA understands that other competitors, such as WeVAT, UShopTaxFree or TaxFree4U operate only through apps or online, and focus on targeting consumers rather than retailers. These competitors could be an alternative for retailers who do not require international presence or integrated solutions, but are unlikely to exert a significant competitive constraint on either of the Parties.

Self-supply

82. The Parties submitted that the ability of retailers to undertake VAT refund services in-house imposes a significant competitive constraint on VAT refund companies. However, given that no concerns arise when assessing competition in a frame of reference excluding self-supply, it has not been necessary to consider this further.

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[16] Innova is active in Belgium, France, Germany, Ireland, the Netherlands, the UK, Italy, Spain, Portugal, Turkey, Japan and Singapore.

Conclusion on horizontal unilateral effects

83. For the reasons set out above, the CMA believes that the Parties do not compete closely given the differentiation in their business models and customer base, and given the small size of GB TaxFree compared to Fintrax. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the outsourced supply of VAT refund services to retailers in the UK.

Vertical effects

84. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or downstream competitors of the supplier's customers. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.[17]

85. Fintrax currently provides DCC services as well as VAT refund services. GB TaxFree currently only provides VAT refund services, but has a preferred partnership with a DCC supplier which enables these services to be delivered together. A number of acquirers and PSPs also offer DCC services (eg Worldpay, Elavon and Adyen). The CMA has considered whether the Merger could lead to the Parties foreclosing rivals in the provision of DCC by ceasing to partner with (or making less attractive the terms to) DCC suppliers. Rival DCC suppliers could then struggle to reach retailers looking for an integrated solution.

86. The Parties submitted that Fintrax is a small player in the DCC services segment, with a share of supply around 5-10%. The Parties consider there to be three much larger players, each with shares of supply of around ([20-30])%, ie Fexco, Global Blue and Worldpay.

87. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.[18]

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[17] In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.
[18] *Merger Assessment Guidelines*, paragraph 5.6.6.

88. The merged entity could only have the ability to foreclose a rival in the provision of DCC if a DCC provider were unable to find a suitable replacement VAT refund services supplier with which to partner and if the foreclosure strategy would weaken that provider's ability to compete in the supply of DCC services.

89. As noted above, GB TaxFree has a very small share of supply in VAT refund services and the importance of its customers relative to the overall scale of DCC providers is very limited. For this reason, any income earned by a current or prospective DCC provider from selling integrated solutions featuring GB TaxFree would be very small relative to the size of the overall DCC market. Therefore, the CMA does not believe it realistic that the Merger will result in the foreclosure of rivals in the provision of DCC services. Accordingly, the CMA has not found it necessary to assess the merged entity's incentive to carry out such a strategy.

90. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the outsourced supply of VAT refund services to retailers in the UK.

Barriers to entry and expansion

91. Entry, or the expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[19]

92. The Parties submitted that there are low barriers to entry, stating that there are no regulatory requirements (other than complying with HMRC rules regarding the Retail Export Scheme) and low start-up costs with limited investment required to develop software capable of supplying VAT refund services and integrating this into wider solutions. However, competitors submitted that there are barriers to entry, such as developing technical IT solutions, recruiting strong sales staff and developing a reputation and relationships with retailers and partners.

93. The CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

[19] *Merger Assessment Guidelines*, from paragraph 5.8.1.

Third party views

94. The CMA contacted customers, competitors and partners of the Parties. The views of third parties have been taken into account where appropriate in the competitive assessment above.

Decision

95. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.

96. The Merger will therefore **not be referred** under section 33(1) of the Act.

Andrew Wright
Director of Mergers
Competition and Markets Authority
14 November 2017

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[i] HMRC clarified that it is aiming for the new system to be adopted between 2018 – 2020.