

FNZ/GBST MERGER INQUIRY REMITTAL

Conduct of the Remittal

Introduction

1. On 5 November 2020, the CMA announced its decision that the completed acquisition by FNZ of GBST (**the Mergers**) has resulted or may be expected to result in a substantial lessening of competition (**SLC**), as a result of horizontal unilateral effects, in the supply of Retail Platform Solutions in the UK (**CMA's Phase 2 Report**).^{1 2}
2. On 2 December 2020, FNZ submitted a Notice of Application (**NoA**) challenging certain of the CMA's findings in the CMA's Phase 2 Report to the Competition Appeal Tribunal (**CAT**). FNZ advanced four grounds of review:³
 - (a) **Ground one:** The CMA erred in law by reaching an unreasonable determination of the counterfactual. It had no reasonable basis for (i) concluding that an SS&C acquisition of GBST was materially the same as the continued independence of GBST, (ii) not selecting an SS&C merger as the most likely counterfactual, and (iii) not addressing the likelihood and importance of a Bravura/GBST merger.
 - (b) **Ground two:** The CMA erred in law and/or acted irrationally by failing to properly define the relevant market, by (i) failing to carry out an appropriate market definition exercise as required by the Merger Assessment Guidelines, (ii) ignoring the fact that even on its own definitional basis there are three categories of customer, not two: Retail, Non-Retail and Borderline (mixed retail/non-retail), and (iii) the market definition was inadequately reasoned, incoherent and unduly vague.
 - (c) **Ground three:** The CMA erred in law and/or acted irrationally by finding an actual or expected lessening of competition without investigating the magnitude of the subset of the market affected by the alleged weakening of competition in relation to the size of the market as a whole.

¹ The terms defined in the CMA's Phase 2 Report have the same meaning in this notice.

² Completed acquisition by FNZ of GBST, [Final report](#), 5 November 2020.

³ CAT, Summary of Application under section 120 of the Enterprise Act 2002, case no. 1375/4/12/20, 18 December 2020.

- (d) **Ground four:** The CMA made an error of law in directing the full divestment of GBST.
3. Following receipt of the NoA, the CMA identified certain potential errors in its market share calculations, which it considers arose as a result of inconsistencies between the information provided by the Parties and third parties at various stages of the CMA's investigation.
 4. In light of the nature of these errors, the CMA asked the CAT to remit the case to the CMA for reconsideration of the applicable statutory questions. On 21 January 2021, the CAT, following the CMA's request, ordered the remittal of the CMA's Phase 2 Report to the CMA in respect of the finding of an SLC (paragraph 10.2 of the CMA's Phase 2 Report) and the final decision as to remedy (paragraph 11.379 of the CMA's Phase 2 Report).
 5. The way in which the CMA intends to conduct the remittal – in relation to the scope of the remittal, further information-gathering and consultation and the expected duration of the proceedings – is set out below.

The scope of the remittal

6. The starting point for the remittal will be the CMA's Phase 2 Report. During the remittal, the CMA will address the specific errors in relation to market share data that led to the CMA requesting the remittal. The CMA will also consider the other representations made by FNZ in the four grounds of review advanced in the NoA submitted to the CAT on 2 December 2020. The CMA also invites all parties to notify us if there are any other relevant issues that they believe should be considered in the remittal. **The CMA invites written comments on all of the matters set out in this document by 12 February 2021.**
7. Following the further information-gathering, analysis and consultation to be carried out during the remittal (as described further below), the CMA will consider whether the Merger has resulted or may be expected to result in an SLC, and if so, what action should be taken to remedy, mitigate or prevent the SLC or any adverse effect resulting from the SLC.

Information gathering and consultation

8. In keeping with its usual practice, the CMA will collect further evidence from the Parties and third parties through voluntary or mandatory information requests and conference calls. The CMA requests, in accordance with its guidance (CC7 (Revised)), that all parties making submissions provide both a confidential and non-confidential version of such submissions. The non-

confidential submissions will either be published on the CMA website (along with a summary of any hearing which the CMA holds) or, in cases of sensitivity, will be provided to the Parties and selected third parties.

9. As set out in paragraph 6, the CMA is now inviting written submissions on the matters that fall within the scope of the remittal. The Parties will also have the opportunity to make written submissions in relation to any additional materials disclosed to it prior to the publication of the CMA's Provisional Report. Both Parties will be provided with the opportunity to make oral representations to the Group in advance of the publication of the CMA's Provisional Report. If the CMA has provisionally found an SLC arising from the merger, response hearings with the Parties will also take place after the CMA's Provisional Report.
10. In order to discharge its statutory duty to consult, the CMA will issue a Provisional Report around the end of March 2021, which will be published on the CMA's website.

Duration of remittal

11. The CMA anticipates publishing the Final Report on the remittal around mid-May 2021.
12. An administrative timetable is published along with this notice. Compliance with any deadlines specified will help to ensure that the timetable is met. Anyone wishing to comment on the timetable should do so by **12 February 2021**.
13. Comments should be made, by email or in writing, to FNZ.GBST@cma.gov.uk.