



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No. 1375/4/12/20

Pursuant to rules 14 and 26 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Rules”), the Registrar gives notice of the receipt on 2 December 2020 of an application for review under section 120 of the Enterprise Act 2002 (the “Act”) by FNZ (Australia) Bidco Pty Ltd (“FNZ”) against a decision of the Competition and Markets Authority (the “CMA”) dated 5 November 2020, that FNZ’s acquisition of GBST Holdings Limited (“GBST”) (the “Merger”) resulted or may be expected to result in a substantial lessening of competition in the UK market for retail platform solutions and that the appropriate remedy is a full divestment of GBST (the “Decision”).

FNZ is represented by Slaughter and May LLP of 1 Bunhill Row, London, EC1Y 8YY (Reference: William Turtle / Sophia Haq / Jackie Holland / Robert Walmsley).

The Notice of Application (the “Application”) states that FNZ is a global provider of transaction and custody services to support the Investment Platform sector.

Investment Platforms enable investors and their advisors to invest in a range of assets, including funds, shares, bonds and other securities. They are typically accessed online and provide an interface to enable an investor and their financial advisers and wealth managers to monitor the valuation and performance of their investments as well as to make financial transactions, including buying and selling assets.

FNZ was established in 2003 in New Zealand. Since 2007, FNZ has been based and headquartered in the UK.

GBST is an Australian software company which was listed on the Australian Stock Exchange before being acquired by FNZ. In the UK, it operates through four entities. GBST offers a software only solution and does not offer services.

FNZ acquired the whole issued share capital of GBST on 5 November 2019 following a competitive bidding process. Prior to its acquisition by FNZ, GBST had been engaging in negotiations with two other parties regarding its potential acquisition. It had received bids from Bravura Solutions (Bravura) and SS&C Technologies (SS&C). On 3 February 2020 (following the issue of an initial enforcement order on 14 November 2019), the CMA initiated a Phase 1 merger inquiry and on 30 March 2020 referred the Merger for a Phase 2 inquiry.

On 5 November 2020, the CMA published its Final Report (“FR”) containing the Decision.

FNZ advances four grounds of review:

1. 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.
2. 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.
3. 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.
 4. The CMA made an error of law in directing the full divestment of GBST.

FNZ seeks the CMA's Decision be quashed and referred back to the CMA for reconsideration.

Any person who considers that they have sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

Please note that: (i) a direction of the President is currently in place as to the electronic filing of documents (see paragraph 2 of the [Practice Direction](#) relating to Covid-19 published on 20 March 2020); and (ii) any request for permission to intervene should be sent to the Registrar electronically, by email to registry@catribunal.org.uk, so that it is received within 3 weeks of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar
Published 18 December 2020