SLAUGHTER AND MAY

FNZ'S INITIAL PHASE 2 SUBMISSION

dated

29 April 2020

Case No. ME/6866/19

COMPLETED ACQUISITION OF GBST HOLDINGS LIMITED BY FNZ (AUSTRALIA) BIDCO PTY LTD

SLAUGHTER AND MAY

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CASE ME/6866/19 – COMPLETED ACQUISITION OF GBST HOLDINGS LIMITED ("GBST") BY FNZ

(AUSTRALIA) BIDCO PTY LTD ("FNZ")

FNZ'S INITIAL PHASE 2 SUBMISSION

1. Introduction and executive summary

1.1 This submission provides an overview of certain core issues that FNZ considers critical to the CMA's assessment of its acquisition of GBST (the "**Transaction**"). It is not intended to provide a comprehensive response to the CMA's Phase 1 decision (the "**Decision**"), and FNZ reserves its right to put in further submissions in due course.[1]

1.2 This submission demonstrates that:

(i) **The Parties' service offerings are very different which means they rarely compete head on.** While both Parties supply Platform Solutions, FNZ provides Platform-as-a-Service ("**PaaS**") solutions and GBST provides software-only solutions. These are fundamentally different deployment models with distinct features and pricing structures that serve customers with distinct preferences. As a result, the Parties have different competitor sets and rarely compete head-on. See section 2.

(ii) **Distinctions that once existed between platform types, and which appear to have shaped and informed the CMA's analysis, are no longer meaningful**. Over the past 15 years, regulatory and technological developments have driven convergence across platforms, which is only set to continue. This means that platforms (whatever their type) overlap substantially in terms of the customer base they serve and the services they offer, and so require the same solutions from their Solutions Providers. See section 3.

(iii) **The frame of reference in the Decision is excessively narrow, and artificial, and is not supported by the facts**. The relevant market should be the supply of Platform Solutions for all wealth management platforms for individual end-investors ("**WMPs**") – both "Retail" and "Non-Retail". There is substantial commonality in the solution requirements of Retail and Non-Retail Platforms, and Solutions Providers for Non-Retail Platforms can easily serve Retail Platforms. To the extent there is a case to exclude any platforms, this is limited to a handful of private banks ("**Private Banks**") that cater for ultra-high net worth individuals ("**UHNWIs**"). See section 4.

(iv) **On any plausible approach, numerous significant competitors remain.** While shares of supply are not a reliable indicator of competitive constraints, they do reveal that there are numerous other active competitors. If Private Banks and in-house software solutions are excluded (a conservative, realistic approach), the

[1] Where terms in this submission have not been otherwise defined, FNZ has adopted the definitions used in the Decision.

Parties will have a combined share of less than [30-40]% and compete against numerous reputable players – including SS&C, Bravura, Avaloq, Temenos, SEI and IRESS - with shares larger than or similar to GBST ([0-5]%). The Parties will also face strong competition from global players such as TCS BaNCS and Pershing. Even on the CMA's very narrow frame of reference, FNZ will remain subject to significant constraints. This is not a "4-to-3" merger. See section 5.

(v) **FNZ and GBST are <u>not</u> close competitors.** Much of the evidence in the Decision merely demonstrates that the Parties compete (which is not denied). The reality is that they are in no way close competitors. FNZ competes most closely with suppliers which offer a PaaS deployment model. This is borne out by the FNZ/ JHC tender data, which shows that customers generally have a clear preference for the type of solution that they want (PaaS or software-only). This means that PaaS only Solution Providers (such as FNZ) do not compete closely with software-only Solution Providers (such as GBST). In the past ten years FNZ (excluding JHC Systems Limited ("**JHC**")) has lost just [✂] to GBST which accounted for just £ [✂] of AUA. See section 6.

(vi) **GBST is a weak rival to FNZ – [✂].** GBST has been [✂] UK customers and its software proposition is [✂]. The Decision places too much weight on GBST's "E-volve" R&D programme, [✂], and its partnership with Equiniti, which FNZ understands [✂]. See section 7.

(vii) **The Transaction has a pro-competitive rationale.** The primary driver is the opportunity for FNZ to compete more effectively with larger global players in non-UK markets (in particular Australia). In the UK, the Transaction will result in increased investment, enabling GBST customers to take advantage of enhanced functionality and lower operational costs, if they elect to do so. See section 8.

(viii) **FNZ will not degrade or withhold GBST's standalone software, and it would not be rational to pursue such a strategy.** This would cut across written assurances to GBST's customers and would seriously damage FNZ's reputation and relationships with customers and regulators. In any case, customers would simply switch supplier. See section 9.

1.3 FNZ is conscious that the wealth management industry is characterised by terminology that often lacks clear definition and/or is used loosely and inconsistently. Partly as a result, and as acknowledged in the Decision, there is often no clear delineation between different market segments. There is a risk that this can sow confusion, and FNZ considers that this is apparent in particular in relation to the frame of reference adopted at Phase 1.[2] In order to assist the CMA, FNZ has therefore provided at Annex 1 a glossary of key

[2] FNZ notes that in the wealth management industry, "retail" has a specific meaning. Broadly speaking, it means non-institutional customers, i.e. the investment can be traced back to individual end-investors. The use of the term "Retail Platform" may therefore cause confusion. For example, a respondent to the CMA's market investigation may consider "retail" and "non-retail" platforms to differ because the former serve consumers while the latter serve institutional investors. The same respondent may nonetheless view Retail Platforms and Non-Retail Platforms (as defined by the CMA) to be very similar. FNZ has adopted CMA's concept of "Retail" and Non-Retail" in this submission only for consistency with the terminology used in the Decision.

terms used in this submission, including how these terms are understood to map on to key terms (such as "Retail Platforms") used in the Decision.

1.4 [✂].

2. The Parties' service offerings are very different

FNZ supplies PaaS solutions and GBST supplies an "on-premise" software-only solution

2.1 While both Parties, broadly speaking, supply Platform Solutions for WMPs, their offerings are very different and, accordingly, are suited to customers with different preferences. Table 2.1 provides an overview of the fundamental differences between these delivery models (explained further below).

Table 2.1
Core features of FNZ and GBST UK business models

FNZ	GBST
PaaS only, including outsourced retail investment transaction and asset custody (or "**BPO**") services (excluding JHC)	Software-only
Charges [✂]	Charges software licence and deployment fees for deploying "on-premise" software
Assumes responsibility, risk and capital requirements for trade execution and asset custody, which is FCA regulated	Does not assume risk for trade execution and asset custody. Not FCA regulated.
Customers typically do not have the option of switching or reverting to in-house servicing	Customers typically conduct servicing in-house

2.2 FNZ provides wealth management technology solutions through a fully outsourced PaaS model. Under a PaaS model, responsibility (and the associated costs and risks) for both (i) investment processes (trading, settlement and administration); and (ii) the supporting (cloud-based) investment accounting and pensions administration software ("**IAS**" and "**PAS**" respectively) are transferred from the platform provider (customer) to the PaaS supplier (FNZ). These responsibilities have direct financial liabilities (risks) for FNZ, require significant capital to be held to protect against that risk, and are directly regulated (by the FCA).

2.3 FNZ assumes full responsibility for delivery of services to the platform provider's internal staff and for external-facing (end-consumer facing) functions. FNZ is accountable for the overall performance of the solution in accordance with KPIs agreed with customers. With the exception of the recently-acquired JHC business (see paragraph 2.7 below), FNZ does not offer software-only solutions.

2.4 By contrast, GBST only supplies investment platform administration and management software "on-premise" through its "GBST Composer" solution. The "on-premise" model, whereby the software is deployed at the customer's own physical location, is increasingly outdated, with the move to Software-as-a-Service ("**SaaS**") (in essence, cloud-based software provision) having gained prominence because of its well-known potential for total cost reduction, efficiency gains and the ability to implement continuous software upgrades remotely with minimal disruption.[3]

2.5 GBST does not offer outsourced BPO services, which are the core component of FNZ's offering, and nor would it be able to do so without completely transforming its business model. Under a software-only model, the platform either conducts processing in-house (with its own employees) or procures a separate processing supplier – in either case, the platform retains greater responsibility and control of the solution (as well as greater complexity and risk). As a software-only supplier, GBST is not regulated by the FCA and is therefore – unlike FNZ – not required to maintain significant regulatory capital and incur substantial ongoing regulatory and compliance costs.

2.6 These fundamental differences are evident in the Parties' pricing models:

(i) FNZ's model includes [✂] which are linked to [✂] and certain KPIs.[4] This is reflective of the ongoing service relationship, the financial risks and financial capital FNZ holds against those risks, the regulatory requirements, and the performance responsibilities taken on by a fully-outsourced PaaS provider.

(ii) In contrast, GBST's model is primarily based on licence fees for the use of its software (as well as "time and materials" fees for additional specified work).

2.7 FNZ's subsidiary, JHC, is a software-only supplier, and does not offer the transaction and custody services which are the core components of FNZ's PaaS offering, nor any of the end-consumer-facing functions offered by FNZ. JHC has strengths in supporting trade execution and asset custody for stockbroking. JHC's and GBST's strengths are in fact largely complementary. [✂], for example, uses GBST's Composer for pension administration technology and JHC's Figaro for investment dealing and investment accounting functionality. The CMA has acknowledged this difference in focus in its Decision.[5]

These very different models suit customers with very different preferences, and as a result, the Parties' key competitors are also different

2.8 A software-only solution is well suited to customers who wish to have greater control over managing their own risk and customer proposition. On the other hand, a PaaS solution is more suited to customers who are willing to give up this control in favour of a more agile customer proposition at a lower operating cost.

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[3] NB: SaaS refers to the method of deployment of the software element of the Platform Solution and can be offered on a standalone software-only basis (i.e. absent the outsourced servicing functions that would be provided alongside the SaaS software in a PaaS model).

[4] [✂].

[5] Decision, paragraph 70(a).

2.9 Whilst some suppliers of Platform Solutions offer (distinct) software-only and PaaS solutions, others offer only software-only solutions or only PaaS solutions, as set out in Table 2.2.

Table 2.2
Business models offered by key providers of Platform Solutions

Provider	Software-only	PaaS
FNZ		✓
- JHC	✓	
GBST	✓	
Bravura	✓	
ERI Bancaire	✓	
IMiX	✓	
Investcloud	✓	
IRESS	✓	
Third financial	✓	
Temenos	✓	
Avaloq	✓	✓
SS&C	✓	✓
TCS BaNCS	✓	✓
PSL (FIS)		✓
Pershing (BNY Mellon)		✓
SEI		✓

Source: FNZ.

2.10 As a PaaS supplier, FNZ's key competitor set comprises other PaaS suppliers – i.e. those who offer a similar package of services and similar pricing structures. This is because customers usually specify whether they want a PaaS solution or not, and – if they do not – FNZ is not well placed to win the contract (even if it will sometimes bid for such contracts seeking to persuade the customer to switch to a PaaS solution). This is clearly borne out in the bidding data. Of the [✂] tenders since 2016 where FNZ is aware of the identity of the winning supplier, there are [✂] where the customer indicated a willingness to consider both software-only and PaaS solutions; in [✂], the customer requested one or the other. See section 6 for further elaboration.

2.11 As a software-only supplier, JHC's key competitor set comprises other software-only suppliers. This is also borne out in the bidding data. [✂]. JHC has only lost [✂] to GBST ([✂]). In that case, JHC believes the other bidders were [✂].

2.12 Further details on FNZ/ JHC bidding data are provided in Annex 2.

3. Convergence has led to all WMPs offering mainstream services

Introduction

3.1 This section focuses on one trend in the industry, namely that over the past 10-15 years, regulatory and technological developments have driven convergence across the wealth management sector. Distinctions that might once have existed between WMP types (e.g. financial planning or private client wealth management firms) are outdated.[6]

3.2 This means that, today, WMPs overlap substantially in terms of the services they offer, the investors they target, and the types of investments they are allowed (by regulation) to offer. This is particularly relevant to the discussion that follows in section 4 because it means that WMPs have essentially the same demands of their Solutions Providers.

Convergence in customers targeted and services offered across all WMPs

3.3 Around 15 years ago four types of customer segment could broadly be identified:

(i) **Financial Planning firms.** These were firms of financial advisors offering "packaged products" comprising: pensions, unit-linked insurance policies (insured onshore and offshore investment bonds), and ISAs. They targeted "mass affluent" consumers with investable assets of c. £50,000 – c. £1 million.

(ii) **Private Client Wealth Management** ("**PCWM**") firms. These firms typically did not offer pensions, insurance bonds or other packaged products. They targeted high net worth individuals ("**HNWIs**"), with investable assets of c. £1 million – c. £5 million. Many of them evolved from a history of private client stockbrokers; they advised primarily on portfolios of investment securities (equities, bonds) and occasionally managed funds. PCWM firms generally offered a greater degree of bespoke investment advice than Financial Planning firms.

(iii) **Private Banks.** These firms typically did not offer pensions and targeted ultra high net worth individuals ("**UHNWIs**"), with investable assets of at least c. £5 million. Private Banks focused on offering a highly bespoke service and a wide range of asset classes (including bespoke (OTC) derivatives and asset-secured lending).

(iv) **Stockbrokers.** These firms (excluding the private client stockbrokers mentioned above) focused on an execution-only (non-advised) offer, where investors (whether mass affluent, HNWIs or UHNWIs) could build their own portfolios of equities, bonds and funds without going through a financial adviser.

3.4 FNZ's understanding is that the concept of "Retail Platforms" in the Decision largely corresponds to legacy Financial Planning firms (i.e. (i) above), while the remaining platforms would be termed "Non-Retail" by the CMA.

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[6] A detailed overview of the reasons for this is provided in FNZ's 20 March 2020 letter to the CMA. See Annex 3.

3.5 This distinction is simply not meaningful today. Over the past 15 years, WMPs have become substantially more similar in terms of the services they offer and the customers they serve. This convergence has arisen as a result of regulatory and technological developments which, *inter alia*, have:

(i) increased consumer cost transparency, eliminated product commissions, and increased competition thereby reducing revenue. This has caused all WMPs to reach out beyond their traditional customer bases to gain scale and take advantage of greater automation. These changes were driven by the FCA's Retail Distribution Review ("**RDR**") in 2013, which had a 3-year lead in (from 2010);

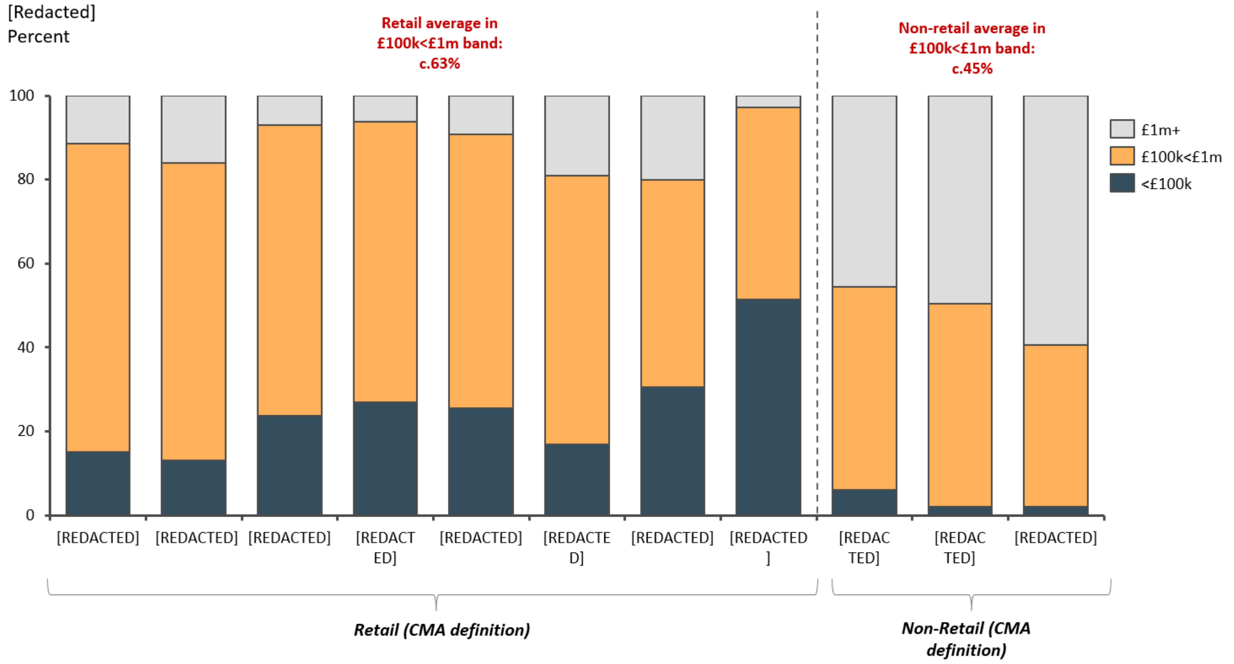
(ii) created strong incentives for all WMPs to introduce model portfolio services ("**MPS**") to reduce costs, as well as to offer pension wrappers to cater for increased demand from consumers (including HNWIs and UHNWIs). The latter incentive was driven by the introduction of pensions simplification, the use of Self Invested Personal Pensions ("**SIPPs**") and the expansion of the lifetime pensions allowance above £1m;

(iii) replaced the "packaged product" regime with investment platforms, whereby a common open-architecture investment solution (and supporting software) is at the core of the consumer proposition. "Wrappers", being pensions, ISAs and insurance investment policies, became relegated to a thin layer of "tax rules" encapsulating different portions of the investment portfolio (so as to benefit from tax-advantages where applicable). A pension wrapper is simply one of four to five "wrappers" commonly available through all WMPs; and

(iv) restricted the sale of complex investment products (such as derivatives) to most consumers, leading to a homogenous investment product offering across all consumer wealth segments excluding only UHNWIs. These restrictions resulted from the Conduct of Business Sourcebook ("**COBS**") client classification rules and the FCA's regulations for packaged retail investment products ("**PRIIPs**").

3.6 Drawing on information for a range of Retail and Non-Retail Platforms, Figure 3.1 below indicates that "mass affluent" investors (represented in orange) account for between [30-40]% and [40-50]% of legacy PCWM (i.e. Non-Retail) platforms' total asset base. This overlaps with the equivalent range for Retail Platforms (i.e. legacy Financial Planning Firms): [40-50]% to [70-80]%. In other words, today Non-Retail Platforms target the traditional customer base of Retail Platforms to a substantial degree. It is also notable that both Retail and Non-Retail Platforms serve HNWIs (represented in grey).

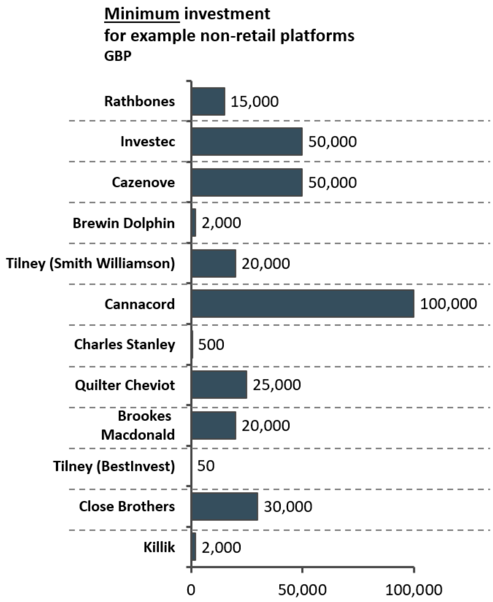
Figure 3.1
Non-Retail Platforms target the traditional customer base of Retail Platforms (diagram 1)



Source: [✂].

3.7 Further evidence of Non-Retail Platforms targeting mass-affluent customers is provided in Figure 3.2 below. This demonstrates that the minimum investment required by a number of major Non-Retail Platforms is small, and affordable for a mass-affluent investor, with minimum investment values as low as £50.

Figure 3.2
Non-Retail Platforms target the traditional customer base of Retail Platforms (diagram 2)



AuA (£bn)	Quote (*Company websites)*	Primary IMP Solution Provider
49	"... The Rathbone Managed Portfolio Service is available […] has a minimum investment threshold of £15,000 per account ..."	3i Infotech
43	"...This discretionary collective-based service is available for investments from £50,000 ..."	IRESS
42	"...Cazenove MPS is accessible through third party platforms with a minimum investment of £50,000 per client..."	Temenos
40	"...The Brewin Portfolio Service investment minimum is £2,000 ..."	Avaloq
36	"...Clients of professional advisers who are looking to make an initial investment of £20,000 or more..."	Avaloq
27	"...Managed Portfolio Service is a range of seven risk rated portfolios, suitable if you have at least £100,000 to invest..."	Avaloq
25	"...The minimum investment into a new fund is a £500 lump sum ..."	FNZ
24	"...We offer our MPS service to individuals wishing to invest more than £25,000..."	FNZ
12	"...Medium to High Risk portfolios are available from a minimum investment value of £20,000..."	FNZ
9	"...The minimum investment into most funds is £50, with some funds being £100. The minimum investment into equities is the cost of one share ..."	SEI
6	"...The minimum investment in our Close Managed Portfolio Service is £30,000..."	IRESS
5	"...You'll pay £1 per month until you have £2,000 invested with Silo, at which time this switches to 0.75% of the value of your investment portfolio,..."	PSL (Platform Securities)

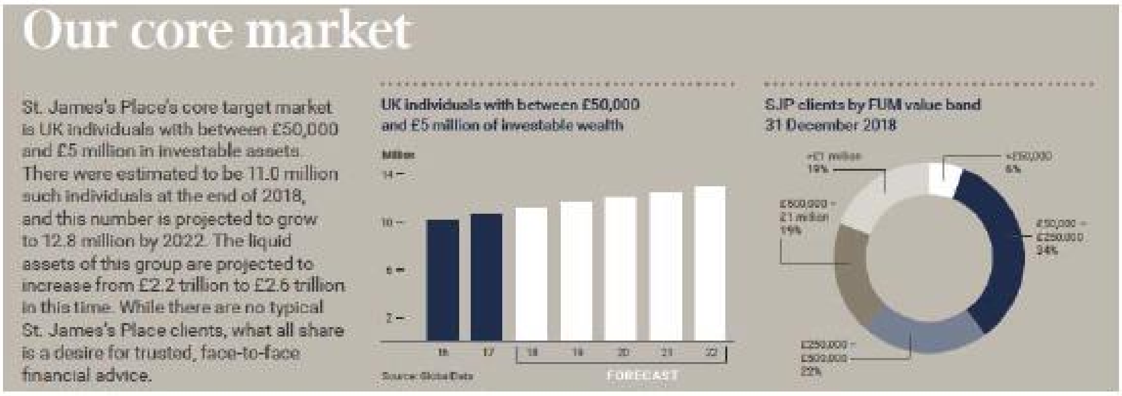
Source: Company websites; Financial Times "Independent UK wealth managers pick up younger clients." at: https://www.ft.com/content/4c950126-1f0a-11e5-aa5a-398b2169cf79.

3.8 Private Banks are also reaching down the wealth distribution. As Verdict, December 2019 indicated: "*UBS and GS [Goldman Sachs] recently reported that they are planning to expand wealth management services to include customers with limited investable assets*" (emphasis added).[7]

3.9 St James's Place provides an example of convergence in the opposite direction (i.e. from Retail to Non-Retail). St James's Place, the largest Retail Platform by AUA, targets investors with investable assets of between £50,000 and £5 million (i.e. right up to the top end of legacy PCWMs) as can be seen in Figure 3.3 below.

[7] See https://www.verdict.co.uk/retail-banker-international/news/temenos-bolsters-retail-banking-suite-with-wealth-apps/.

Figure 3.3
Retail Platforms serve HNWIs



Source: St James's Place 2018 Annual Report, available at:
https://www.sjp.co.uk/~/media/Files/S/SJP-Corp/document-library/reports/2019/annual-report-and-accounts-2018.pdf

Declining importance of pensions

3.10 Under the packaged product regime of 10-15 years ago, pensions were sold by Financial Planning firms as the <u>key way</u> to meet investors' needs.

3.11 However, in today's wealth management market, the key service offered to investors is the investment portfolio. The pensions wrapper is a <u>secondary element</u>; it permits (part of) the investment portfolio to benefit from advantageous tax treatment (provided certain rules are met). Further details are provided in section 4 below.

All WMPs offer mainstream assets and tax wrappers

3.12 The trend towards convergence described above means that all WMPs offer their clients access to a core set of asset and tax wrappers ("**mainstream services**"):

(i) **Access to a portfolio of assets**, such as cash/deposits, bonds/gilts, equities (stocks and shares), exchange traded funds ("**ETFs**"), investment funds and mutual funds.[8]

(ii) **Tax wrappers** (e.g. ISAs, SIPPs, Insurance Bonds).[9]

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[8] Most WMPs (including Retail Platforms) also offer clients some structured products although these largely fell out of favour in the UK following the Retail Distribution Review. FNZ's submission of 20 March 2020 attached as Annex 3 to this submission identifies numerous Retail Platforms offering structured products. These include FNZ-served Retail Platforms such as [✂]; GBST served platforms, namely [✂]; and many other prominent Retail Plaforms, including [✂]. The main exceptions are workplace platforms, which typically have a less sophisticated universe of funds.

[9] Tax wrappers involve some additional regulatory reporting by the WMP to HMRC.

3.13 Most WMPs (including Retail Platforms) also offer advised sales (i.e. where a financial advisor advises the investor). Some platforms (including Retail Platforms) also offer "execution-only" transactions, where the consumer purchases assets directly without first obtaining advice.

3.14 Mainstream assets do not include bespoke and exotic derivatives (and other complex products) that are offered almost exclusively by Private Banks, because their sale is restricted (via the COBS and PRIIPs rules) except to UHNWIs (professional or institutional investors), or to consumers who can demonstrate that they understand them. Such products are not offered by Retail Platforms or (the overwhelming majority of) Non-Retail Platforms.

All WMPs (whether Retail or Non-Retail Platforms) offer the same mainstream assets

3.15 There is no discernible difference between Retail and Non-Retail Platforms in terms of the mainstream assets that they offer.

3.16 Table 3.1 clearly shows that almost every Retail Platform offers the full range of mainstream assets.

Table 3.1[10]
Retail Platforms provide the full range of mainstream assets

	Platform	Cash / Deposits	Bonds / Gilts	Stocks and shares	ETFs	Funds
"Retail" (CMA definition)	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✗	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
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	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✗	✗	✗	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✗	✗	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✗	✗	✗	✓

Source: FNZ data; L.E.K. Research.

Notes: [1] Based on the CMA's proposed frame of reference in Phase 1.

3.17 Table 3.2 below shows the equivalent information for Non-Retail Platforms. Strikingly, there is no material difference between the two tables. All Non-Retail Platforms (whether PCWMs, stockbrokers or Private Banks) offer mainstream assets.

[10] The table should read as follows: the first column lists the Retail Platform, the second to sixth columns identify whether the platform offers each of the mainstream asset classes.

Table 3.2
Non-Retail Platforms provide the full range of mainstream assets

	Platform	Cash / Deposits	Bonds / Gilts	Stocks and shares	ETFs	Funds
PCWM (CMA "Non-retail" definition)**	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
Private bank (CMA)**	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
Stockbroker (CMA)**	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓
	[REDACTED]	✓	✓	✓	✓	✓

Source: FNZ data; L.E.K. Research.

Notes: [1] Based on the CMA's proposed frame of reference in Phase 1.

<u>All WMPs (whether Retail or Non-Retail Platforms) offer tax wrappers</u>

3.18 All platforms – both Retail and Non-Retail – offer their clients pension wrappers (such as ISAs and SIPPs) as a core part of their proposition.

3.19 This is evidenced clearly in FNZ's submission of 20 March 2020, which systematically, identifies whether each of c.80 platforms (both Retail and Non-Retail) offers its clients SIPPs and ISAs.[11] Pensions are offered in <u>every single case</u>, and the full range of ISAs is offered in almost every single case (the exception being a few <u>Retail</u> Platforms offering workplace pensions).

Conclusion

3.20 In summary, irrespective of their historical focus, WMPs today overlap substantially in terms of the customers they target, the services provided to them, and the types of investments they are allowed (by regulation) to offer. In turn, and as substantiated in

[11] See Annex 2.

detail in the following section, this means that all WMPs require the largely same functionality from their Solutions Providers. This trend is still continuing such that, over the coming years, the demand-side requirements of WMPs will overlap to an even greater extent, while the scope for supply-side substitution will further increase.

4. The CMA's proposed frame of reference is excessively narrow, and artificial

Introduction

4.1 The Decision considers the frame of reference to be the supply of Retail Platform Solutions.[12] The CMA acknowledges that some WMPs do not neatly fit into a single Retail or Non-Retail category, and that "*[t]here are no formal or other clear lines of delineation between these subsegments*".[13] Despite this, the CMA finds that Retail Platforms have different requirements to Non-Retail Platforms because Solutions Providers serving Retail Platforms must cater for:

(i) **high volume, commoditised transactions:** a high volume of mainstream investments, offered at low cost and with limited manual intervention; and

(ii) **integrated on-platform pensions wrappers:** where the WMP is the pension provider (managing the tax rules and HMRC reporting) and uses the same Solutions Provider for its IAS and PAS solutions.[14]

4.2 In contrast, the CMA considers that Non-Retail Platforms do not require these capabilities,[15] and have different, more complex, requirements, including the ability to cater for more sophisticated financial instruments.[16]

4.3 FNZ considers that this frame of reference is excessively narrow, and artificial, and submits that the relevant market should include the supply of Platform Solutions to all WMPs. This is for the reasons summarised at paragraphs 4.4 to 4.7 and explained in more detail below. If any platforms are to be excluded, this should at most apply to Private Banks, and specifically those Private Banks that focus on serving a smaller volume of UHNWIs, and do not offer their clients MPS.

4.4 On the **demand side**:

(i) All WMPs demand common functionality from their Solutions Providers, namely the functionality required to allow them to offer investors "mainstream services" (as explained in section 3 above). In particular, Retail and Non-Retail Platforms have very similar solution requirements in terms of processing high-volume,

[12] Decision, paragraph 113.

[13] Decision, paragraph 89.

[14] Decision, paragraphs 85b and 89c.

[15] Decision, paragraph 6.

[16] Decision, paragraphs 7 and 89.

commoditised transactions. This requirement is the very essence of MPS, which are offered by nearly all Retail and Non-Retail Platforms. [17]

(ii) Many Retail Platforms do not use integrated on-platform pension wrappers. This is because the key software solution for a WMP (whether Retail or Non-Retail) is the IAS solution: this is always "on-platform". So long as the IAS solution interoperates with a PAS solution that is either (i) off-platform or (ii) on-platform but from a different Solutions Provider, then the Retail Platform can offer its clients the pension wrappers they need. Such interoperability is not hard to achieve as numerous examples (provided below) demonstrate.

4.5 On the **supply side**, the commonality of mainstream requirements across all platform types means that the ability to serve Non-Retail Platforms implies the ability to serve Retail customers.

(i) Retail and Non-Retail Platforms do not differ materially in terms of the complexity of assets offered to their customers (with the exception of some Private Banks). But, even if they did, the relevant question for market definition purposes would be whether a Solutions Provider serving a complex Non-Retail requirement could serve a less-complex Retail requirement. The reality is that this would be straightforward because the needs of Non-Retail Platforms from their Solutions Providers typically <u>encompass</u> those of Retail Platforms.

(ii) As noted, many Retail Platforms do not require an integrated on-platform pension solution. Hence, such capability is not required by a Solutions Provider in order to be able to serve Retail Platforms. To the extent that an IAS Solutions Provider needed to offer a PAS solution to serve a particular Retail Platform, this could be achieved easily either within a PaaS solution (by obtaining a software licence from one of many providers of PAS solutions) or by developing the relevant software (as both FNZ and others have done quickly in the past).

4.6 There are no other meaningful obstacles preventing providers of Platform Solutions to Non-Retail Platforms from supplying Retail Platforms, whether in the form of increased regulatory responsibilities, the absence of a suitable track record or a lack of profitability (as suggested in the Decision).

4.7 Finally, it is noted that the Decision has misinterpreted FNZ internal documents relating to the Frame of Reference.

Demand-side substitutability: the market cannot be delineated on the basis of solution requirements for high-volume, commoditised transactions

4.8 The Decision states that "*Retail Platforms require Platform Solutions that give them the ability to process high volumes of transactions through a commoditised solution at low*

[17] Note that all WMPs, whether Retail or Non-Retail Platforms, also have a requirement to provide bespoke investment portfolio services, i.e. non-MPS.

cost".[18] However, the need to process high volume, commoditised transactions is a requirement that is not unique to Retail Platforms.

4.9 The demand from WMPs for solutions that can process high-volume, commoditised transactions has arisen as a result of greater (and growing) use of MPS. MPS offer a set of standardised investment portfolios that address different appetites for risk. A platform (whether Retail or Non-Retail) will typically establish an individual client's appetite for risk and then match him/her to the relevant model portfolio.[19] Clients with similar profiles will be matched with the same portfolio of investments, thereby generating scale and commoditisation (by removing bespoke portfolio construction that is costly to provide, and facilitating regulatory compliance).

4.10 The wide-spread use of MPS across all types of platforms is demonstrated by Table 4.1 below. This lists the top 10 Retail and Non-Retail Platforms by AUA. All Retail Platforms and 9 of the 10 Non-Retail Platforms offer MPS.

Table 4.1
WMPs offering their clients Model Portfolio Services

Availability of MPS products by platform (2020)*

	Platform	AuM (£bn)	Availability of MPS products
"Retail"(CMA Definition)**	St James Place	110	✓
	Hargreaves Lansdown	90	✓
	Quilter	50	✓
	Standard Life (Wrap)	44	✓
	Integrafin (Transact)	38	✓
	Fidelity Intl. (FundsNetwork)	38	✓
	AJ Bell (InvestCentre)	34	✓
	Aegon (Cofunds)	30	✓
	James Hay	27	✓
	Aviva Platform	27	✓
"Non-retail" (CMA Definition)**	Rathbones	49	✓
	Investec	43	✓
	Schroders Cazenove (UK Wealth)	42	✓
	Brewin Dolphin	40	✓
	Tilney (Smith Williamson)	36	✓
	UBS (UK Wealth Mgmt)	35	✓
	Cannacord	27	✓
	Charles Stanley	25	✓
	Credit Suisse (UK Wealth Mgmt)	25	✗
	Quilter Cheviot	24	✓

Source: *Company websites.*

Notes: [1] Showing top 10 largest Retail and Non-Retail platforms (excluding workplace pension providers);
[2] Based on CMA's proposed frame of reference in Phase 1.

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18 Decision, paragraph 85.

19 For example, a risk averse client will be allocated to a model portfolio heavily weighted towards gilts and government bonds whereas a client seeking long-term growth would be allocated to an MPS with a greater weight on equities.

4.11 The widespread use of MPS among Non-Retail Platforms is not limited to the leading Non-Retail Platforms. Most Non-Retail Platforms (including a number of Private Banks) offer MPS. In that regard, it is notable that some prominent Retail Platforms are yet to offer MPS – if anything, MPS (i.e. the feature that drives platform demand for high volume, commoditised services) are more associated with Non-Retail Platforms than Retail Platforms.[20]

4.12 While it is acknowledged that Retail Platforms typically have more individual accounts than Non-Retail Platforms, the underlying technology is highly scalable. Irrespective of whether a platform has tens of thousands or hundreds of thousands of investors, investments are processed in the same, easily scalable way using automated "straight-through processing". JHC provides a good example. While its focus has historically been more on Non-Retail than Retail Platforms, it has a fully scalable offer.

4.13 In summary, most Retail and Non-Retail Platforms demand solutions for high-volume, commoditised transactions. In technological terms their requirements are identical and there is no basis, therefore, to delineate the market on this basis.

Demand-side substitutability: the market cannot be delineated on the basis of solution requirements for on-platform pensions

4.14 The Decision states: "*Retail Platforms, in contrast to other types of platform, tend to require their Platform Solution to have strong capabilities in supporting…a wide range of tax wrappers integrated into the platform (on-platform tax wrappers), often for pension administration*".[21] The CMA, in particular, highlights **integrated "*On-Platform Pension Wrappers*"** (where the WMP uses the same provider for its IAS and PAS solution) as a feature that distinguishes Retail Platforms from other platforms.[22]

4.15 Before addressing this claim, it is important to understand by way of background that: (i) a pension wrapper relates to just one part of an overall investment portfolio (there are typically four or five different wrappers); and (ii) there are a variety of options available for WMPs wanting to offer consumers a pensions wrapper. Against that backdrop, paragraphs 4.22 to 4.28 below substantiate why it is not meaningful to define the market on the basis of whether or not a platform has an integrated on-pension platform wrapper.

Background: Pension monies are a subset of the consumer's overall investment portfolio

4.16 All WMPs, both Retail and Non-Retail, offer investors a pensions service using the same approach. The critical element for the platform is not the pension wrapper but the overall investment portfolio that it can offer the consumer.

4.17 Pensions monies comprise a subset of a consumer's investment portfolio. Where investments relate to pensions monies, the consumer's account is designated as a

[20] [✂].

[21] Decision, paragraph 6.

[22] Decision, paragraphs 85b, 89c and 94a.

"pensions account". In this case, there are: (i) extra rules governing the additional removal of monies from this account; and (ii) pension-specific HMRC reporting for the WMP.

Background: WMPs can adopt different ways to provide pensions to consumers, meaning the PAS Solution may be on- or off-platform – but the IAS solution, which covers the entire consumer investment portfolio regardless of wrapper, is always on-platform

4.18 A WMP can manage the preceding pension rules and HMRC reporting either internally or externally:

(i) The WMP may manage the rules and reporting itself (i.e. its pension is "internal" or "on-platform"). In this case, the WMP chooses the PAS Solution Provider.

(ii) The WMP may use a third-party pension provider (i.e. the pension is "external" or "off-platform"). In this case the PAS Solution Provider is determined by the third-party pension provider.

4.19 In both cases, however, the investment portfolio itself (including the pension monies that reside within it) is managed by the WMP. This means that whether the PAS solution is on- or off-platform, the IAS is always on-platform.

4.20 Where the WMP manages the pension rules and HMRC reporting itself, it may:

(i) use the same Solutions Provider for the IAS and PAS (which the CMA denoted an "integrated, on-platform pension"); or

(ii) use one provider for the IAS solution, and another for the PAS solution.

4.21 The WMP may also combine these approaches, acting as a pension provider itself *and* dealing with third-party pension providers.

The distinction between integrated on-platform pensions and other approaches is not relevant

4.22 The CMA sought to distinguish Retail and Non-Retail Platform Solution requirements on the basis that Retail Platforms require an integrated on-platform pension wrapper, i.e. with the IAS and PAS solution provided by the same Solutions Provider.[23]

4.23 However, it is erroneous to define the market on this basis.

4.24 First, many Retail Platforms (including large and successful Retail Platforms) do not have integrated on-platform pensions. This means that it is not critical for a Solutions Provider to offer both an IAS and a PAS Solution in order to be selected as the IAS Solution

[23] Decision, paragraphs 85b, 89c and 94a.

Provider for a Retail Platform.[24] A Retail Platform could easily: (i) use a different PAS Solution Provider (if it managed the pension internally); (ii) provide its customers with an off-platform tax wrapper from a third-party (and avoid the need to obtain a PAS Solution itself); or (iii) implement the pension rules and associated HMRC reporting in-house.

4.25 Second, interoperability between IAS and PAS solutions mean that the difference between integrated on-platform pension wrappers and other types of pension wrapper is not material. As noted above, the key software solution for the platform (i.e. providing the large majority of the functionality required by the WMP) is the IAS solution, which is always on-platform. So long as the IAS solution interoperates with a PAS solution that is off-platform or on-platform but offered by a different Solutions Provider, then the Retail Platform can offer its clients the pension wrappers they need.[25]

4.26 Such interoperability is frequently found in the case of Retail Platforms:

(i) Numerous Retail Platforms do not have an on-platform SIPP: Aegon (Cofunds);[26] [✂];[27] M&G Prudential;[28] Barclays (Smart Investor);[29] Scottish Widows;[30] Nutmeg;[31] and Hubwise.[32]

(ii) Several Retail Platforms use a different IAS and PAS Solutions provider on-platform (as set out in Table 4.2 below).

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24 [✂] has both a Retail Platform ([✂]) and Non-Retail Platform ([✂]) using the same combination of [✂] as the IAS solution provider connected to a SIPP provided by [✂].

25 From an investor perspective, there is no difference between an integrated on-platform pension wrapper and other types – indeed, in FNZ's view, most investors are unlikely to notice the difference.

26 "*[The Cofunds Pensions Account] gives you and your clients the support of Aegon's services, plus the pension administrative expertise of Curtis Banks*". (See Cofunds product factsheet https://www.cofunds.aegon.co.uk/content/dam/common/documents/suitability-and-features-cofunds-pensions-account.pdf.).

27 The pension provider is [✂] (see Annex 14.1 to the Merger Notice).

28 "*The SIF is a fund that is established by Prudential and forms part of the fund options available under the Plan. It is provided through reinsurance to Suffolk Life… Suffolk Life also deals with the day to day operation of the SIPP option and the SIF*". (Prudential – key features of retirement plan https://www.pru.co.uk/pdf/PPPK6139.pdf).

29 "*Our SIPP is provided and administered by AJ Bell*". (Barclays Website (SIPP): https://www.barclays.co.uk/smart-investor/accounts/sipp-pension/).

30 *"… Scottish Widows has appointed James Hay Partnership to deal with the day-to-day administration of the self-invested part of the plan …"* (Scottish Widows – key features of the SIPP).

31 *"… The operator and administrator is Hornbuckle…" (*Nutmeg website: https://www.nutmeg.com/pensions/pension-faq*)*.

32 "*… Provided and operated by Hartley Pensions Limited, administered by Hartley-SAS Limited…" (*Hubwise Hartley SIPP – key features): https://hartleypensions.com/wp-content/uploads/2019/06/Hubwise-SIPP-KFD-13.03.19-FINAL.pdf).

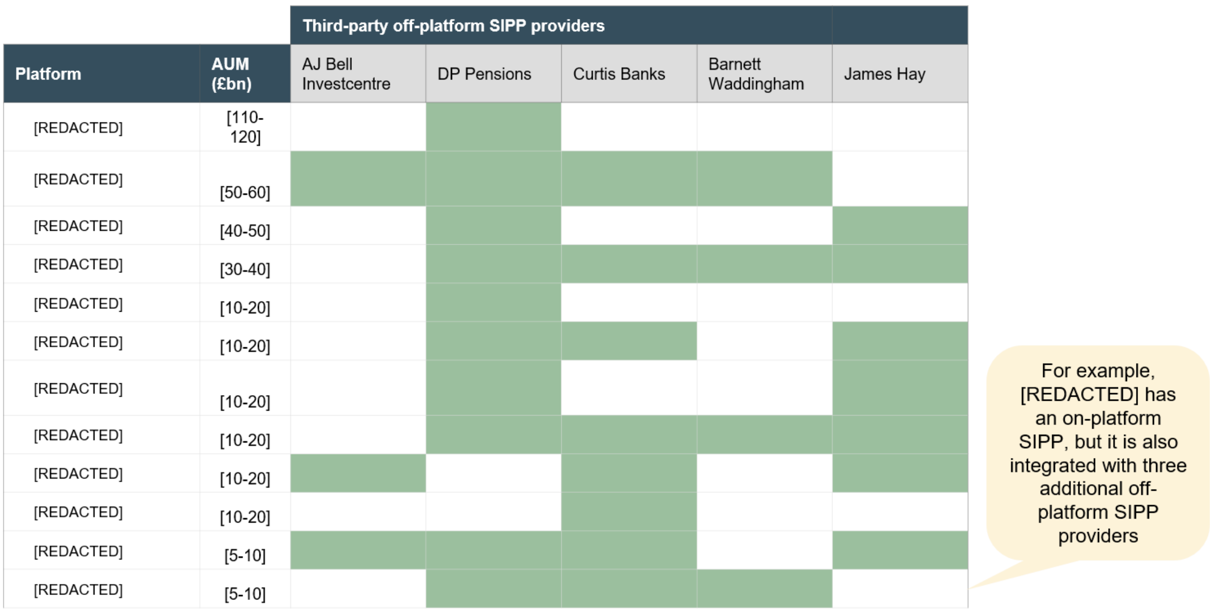
Table 4.2
Examples of Retail Platforms sourcing on-platform IAS and PAS solutions from different providers

Retail Platform	IAS Solution Provider	PAS Solution Provider
[✂]	JHC	GBST
[✂]	Bravura	Proprietary
[✂]	IRESS	Proprietary
[✂]	JHC	GBST
[✂]	State Street	Proprietary
[✂]	IRESS	Dunstan Thomas

Source: Annex 14.1 to Merger Notification.

(iii) Many Retail Platforms interoperate with several off-platform pensions (including using them alongside on-platform pensions), as set out in Figure 4.1 below.[33]

Figure 4.1
Examples of Retail Platforms using multiple off-platform pension offers



[33] The left-hand column indicates the Retail Platform. The remaining columns indicate the off-platform SIPP providers with which the Retail Platform interoperates.

Source: company websites; FCA: Investment Platforms Market Study Annex 6 (July 2018); FNZ RFP documents.

(iv) Indeed, some Retail Platforms (for example SEI) offer a wide choice of off-platform options, marketing this as a selling point for consumers – in other words, SEI's IAS solution must interoperate well with a wide range of different PAS solutions.

4.27 Finally, even where providers have integrated on-platform pension solutions, this does not mean that they would not have considered using an off-platform pension solution prior to appointing the current Solutions Provider. For example, while [✂] uses FNZ for its on-platform pension administration software solution, the need for an on-platform pension solution was not mentioned in its RFP as a requirement.[34] Indeed, [✂] also offers its investors off-platform pension solutions.

4.28 In summary, therefore, the distinction between integrated on-platform pension wrappers and other types of pension wrapper does not provide any credible basis on which to distinguish Retail and Non-Retail Platforms for the purpose of market definition.

Supply-side substitution: Solutions Providers for Non-Retail Platforms can easily serve Retail Platforms

4.29 The Decision claims that a Solutions Provider serving Non-Retail Platforms would not be well-placed to supply Retail Platforms for the following four reasons:

(i) a focus on solutions addressing more complex investments and the provision of tailored services;[35]

(ii) an inability to provide PAS solutions for on-platform pension wrappers;[36]

(iii) an increased regulatory responsibility associated with tax wrappers[37]; and

(iv) the absence of a track record of delivering the necessary functionality and at scale.[38]

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[34] [✂].

[35] Decision, paragraph 7.

[36] Decision, paragraph 94.

[37] Decision, paragraph 93.

[38] Decision, paragraph 94.

4.30 The Decision also claims that the profitability of supplying Retail Platforms is insufficient to incentivise Solutions Providers serving Non-Retail Platforms to start supplying Retail Platforms.[39]

4.31 For the reasons set out below, none of these points holds.

The functionality requirements of Non-Retail Platforms encompass those of Retail Platforms

4.32 The Decision notes that Non-Retail Platforms require solutions that provide for more complex investments and bespoke services than Retail Platforms. For example, the CMA states that Non-Retail Platforms "*…tend to focus more on managing a portfolio of investments, which can include more complex investments, for a smaller number of customers as part of a more tailored service with more manual intervention*".[40]

4.33 However, the fact that some Non-Retail Platforms may (also) manage more complex investments, and provide a more bespoke service, does not provide a good reason to distinguish between WMP types for the purposes of defining a market for Platform Solutions.

(i) First, Retail Platforms typically offer investors not only high-volume, commoditised services (i.e. MPS) but also (non-MPS) bespoke, low volume services as well. Indeed, the original motivation behind Retail Platforms was to enable financial advisers to construct bespoke portfolios for clients (on a manual basis). MPS was added later (from around 2010) to offer both scalability and (lower cost) personalisation to this process. It is notable too that HNWIs frequently constitute a substantial part of Retail Platforms' customer bases (see Figure 3.3 in section 3 above), in line with the view that Retail Platforms offer some bespoke services to serve this customer group.

(ii) More fundamentally, while different technology may be required to offer solutions for (i) high-volume, commoditised transactions, on the one hand, and (ii) low-volume, personalised investments, on the other, the same technology is required for (i) irrespective of whether the platform is a Retail Platform or a Non-Retail Platform. This also holds for (ii).

In other words, the functionality that a Solutions Provider requires to serve a Non-Retail Platform necessarily gives it the ability to serve a Retail Platform quickly and without incurring substantial sunk costs: technology and administration requirements are almost identical across Retail and Non-Retail platforms.[41]

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[39] Decision, paragraph 93.

[40] Decision, paragraph 7.

[41] As an illustration, Temenos' 2019 Annual Report observes that its solution "*covers all parts of the industry from the U/HNWI to the Mass Affluent and is designed to be deployed by all participants in the sector ranging from Private Banks*

Put simply, even if a Retail Platform only required a solution for mainstream assets, a Solution Provider that provides a Private Bank with solutions for mainstream assets and bespoke derivatives could straightforwardly serve that Retail Platform.

(iii) Further, while Private Banks often seek to differentiate themselves from other WMPs by offering their clients a "tailored service", this frequently relates to "additional frills" such as concierge services, networking events and breadth and depth of macro-economic and company investment research. These are not features that affect their demands for IAS or PAS solutions.

4.34 In short, the IAS demands of Retail Platforms are no wider than those of Non-Retail Platforms. This means that Solution Providers serving Non-Retail Platforms already have the capability to meet the IAS requirements of Retail Platforms. Even if it were the case that some Solutions Providers focusing on Retail Platforms ([✂][42]) would be limited in their ability to serve Non-Retail customers, the reverse is certainly not true.

Acquiring pensions administration capabilities is not necessary – and is in any case comparatively straightforward

4.35 As explained at paragraphs 4.24 to 4.26 and Figure 4.1 above, there are many Retail Platforms (including key customers of the Parties) that use an "off-platform" pension model (where the pension provider is a third-party) or a model where the WMP is the pension provider but uses a different software provider for the IAS versus the PAS. Therefore, a Solutions Provider does not need to have its own PAS to serve Retail Platforms. All that would be required is for its IAS solution to interoperate with the Retail Platform's PAS solution. This, as explained above, is straightforward – as evidenced by the many cases in which it occurs.

4.36 Further, a PaaS provider (e.g. FNZ, Avaloq, Pershing) could incorporate multiple underlying software solutions as part of its PaaS offer. Specifically, the PaaS provider could easily license and "plug-in" one of the many software-only solutions that support pensions (such as those supplied by Bravura, SS&C, Dunstan Thomas, TCS BaNCS and Delta Financial Systems), without affecting the PaaS solution.[43] Indeed, this would simply replicate the approach that many WMPs (e.g. AJ Bell, Close Brothers and others) already adopt.

4.37 To the extent that a Retail Platform wanted to have the same provider for both its IAS and its PAS requirements, the relevant PAS could be built quickly. The architecture used by all WMPs (Retail and Non-Retail) separates the investment solution (including where investments are held in a pension) from the pension-specific rules and regulatory reporting. These rules in the UK are straightforward following pensions simplification,

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to Wealth Managers to Retail Banks for the mass affluent sector" (https://www.temenos.com/wp-content/uploads/2020/03/2019-Annual-Report-2020-mar-25.pdf).

42 [✂].

43 FNZ's submission to the CMA dated 20 March 2020, page 10, see attached as Annex 3 to this submission.

and developing the relevant software is a relatively simple process. Indeed, FNZ did precisely this in 2008 (when pension rules were significantly more complex) in a process that lasted c. 6 months (for [✂]). FNZ has also done so more recently, albeit for another tax wrapper, namely onshore investment bonds (for [✂]). Because all tax wrappers in the modern platform sector are only a thin layer of rules applied to a subset of a consumer's investment portfolio (and the rules are prescribed by regulation), updating software for these rules is not complicated.

4.38 The opportunity to win a large contract would certainly provide sufficient incentive to develop the relevant software, not least because that would then enhance the scope to win further contracts in the same geography. For example, Avaloq built a pensions software solution specifically for BT Panorama (a leading Retail Platform in Australia, [✂]). It is notable how Avaloq considered this would assist its expansion in the UK, stating: "*The go-live of our Superannuation functionality within BT is a major step in the completion of the Avaloq wealth proposition for the Australian market. This new functionality will also open potential opportunities for Avaloq in other superannuation pension markets such as the UK and the Netherlands*".[44]

<u>*There are no "increased regulatory responsibilities" arising from offering PAS solutions*</u>

4.39 FNZ does not understand the view that there are regulatory consequences of developing PAS solutions. GBST (as a software-only provider) is not regulated. In contrast, PaaS providers like FNZ are subject to regulation, but this is in respect of the investment function not the tax wrappers, which remain with the WMP, as legal provider.

<u>*A track record of scale can be established in a number of different ways*</u>

4.40 Success supplying Non-Retail Platforms in the UK should be sufficient to demonstrate expertise in terms of scale, not least because Non-Retail and Retail Platforms have similar requirements in that regard (see paragraph 4.8 to 4.13 above). While, on average, Non-Retail Platforms have fewer customers than Retail Platforms, the difference is not large from a technical scalability perspective. Whether a platform has 50,000 clients or 350,000 clients, it will have very similar technology automation and scalability requirements.

4.41 International strength also has reputational value. Indeed, in its own marketing materials, FNZ highlights its experience of serving platforms internationally.[45] In this regard it is notable that Avaloq, Pershing, SEI, TCS BaNCS and Temenos are not only UK rivals to FNZ but also significantly larger global operators, with more scale than FNZ (noting that technology scalability is not specific to a particular country). These rivals <u>already</u> serve international customer sites with at least the same scale as FNZ. Notably:

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[44] See article "BT Financial Group Goes Live with Retail Superannuation Administration Functionality", available at https://www.avaloq.com/en/-/news-2017-mar-20.

[45] [✂].

(i) **Avaloq:** processes c.320,000 customers with BT Panoroma servicing legacy Financial Planning Firms in Australia;[46]

(ii) **Pershing:** with $2 trillion in AUA globally, has significantly more scale than FNZ;[47]

(iii) **SEI:** provides solutions for Wells Fargo wealth management in the USA, one of the largest-scale US wealth management businesses;[48] and

(iv) **Temenos:** provides solutions for Macquarie Wrap financial planning platform in Australia, which FNZ understands accounts for 300,000 or more customers.

4.42 Success supplying Retail Platforms in the US, Australia or Europe also carries real weight because IAS solutions would not need to be fundamentally re-developed to be deployed in different geographies, also allowing cost economies to be realised. For example, a Wealth Advisor interview from 2019 noted that "*Avaloq delivers its software at scale, using its experience of working with more than 150 institutions globally to refine and adjust a standard set of industrial-grade, best-in-class, compliance-ready processes that can be made available to institutions that need them, based on a single consistent data model*".[49]

<u>*Retail Platforms are not insufficiently profitable*</u>

4.43 Finally, FNZ disagrees that supplying Retail Platforms would be insufficiently profitable (and notes that this appears to have been an unsubstantiated comment from just one competitor[50]). This segment is larger in terms of AUA than the Non-Retail segment. FNZ finds it hard to imagine that a Solutions Provider focusing on Non-Retail Platforms would fail to bid for a Retail Platform contract if invited to tender.

The CMA has misinterpreted FNZ internal documents relating to the Frame of Reference

4.44 The CMA specifically focuses on an FNZ internal document [✂] to highlight the "*differences between the types of investment platform and the available Platform Solutions*". The CMA states that slide 14 of the document "sets out the different types of platform customers, noting that there is "[✂]" and assesses the extent to which different Platform Solution suppliers can provide certain functionalities such as an [✂]*."* [51]

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[46] See https://www.temenos.com/community/success-stories/bt-financial-group

[47] See https://www.pershing.com/about/strength-and-stability.

[48] See https://finance.yahoo.com/news/sei-extends-long-term-relationship-130000930.html

[49] See https://www.finextra.com/pressarticle/77981/brewin-dolphin-chooses-avaloq-for-new-custody-and-settlement-system

[50] Decision, paragraph 93.

[51] Decision, paragraph 86.

4.45 However, it is clear (from the main slide heading) and the fact that the table at the top of the slide is to be read from left to right (as indicated by arrows), that FNZ was using the slide to highlight its ability to service <u>both</u> Retail and Non-Retail customers. In this regard the [✂] listed in the table at the bottom of the slide are not specific to any one segment (e.g. Retail or Non-Retail). Finally many of the entries in the [✂] table are incorrect (all solution providers for example provide integrated complex tax wrappers and integrated front-office). This slide was a draft (as is clear from the mark-up notes addressing FNZ) prepared by an investment bank to support an equity investment process in Asia. This slide and many others were dropped for lack of accuracy from the final presentation.

5. Within any plausible frame of reference, there is fierce competition from numerous strong competitors

5.1 The Decision suggests that the main constraints on the Parties are Bravura and SS&C, with other competitors exerting a weaker constraint.[52] FNZ disagrees. As explained below, on any plausible frame of reference there is vigorous competition and no prospect of an SLC. This is not a "4-to-3" merger by any stretch. Further, as explained in section 6 below, FNZ is most constrained by the significant number of alternative PaaS suppliers who actually supply very similar services, and offer very similar pricing structures, to FNZ. Similarly, FNZ understands that GBST would be most constrained by the significant number of alternative software-only suppliers.

5.2 As noted in the Issues Letter Response, the competitive constraint faced by FNZ is consistent with FNZ's continuous [✂], which have [✂] over the past 10 years.[53] This is particularly notable in light of the persistently [✂] and increasing risk and regulatory capital requirements faced by FNZ, as a PaaS supplier.

On a conservative (but realistic) frame of reference, competition will remain broad-based and vigorous

5.3 As explained in section 4 above, the CMA's frame of reference (Retail Platform Solutions) is excessively narrow, and artificial. As set out below, on the basis of a more realistic (but still conservative) frame of reference (i.e. broader than Retail Platforms, but excluding Private Banks and in-house software provision), there is fierce competition. This is consistent with the (corrected) shares of supply, the bidding data and internal documents.

Numerous other players are active

5.4 The Decision specifically acknowledges (and FNZ agrees) that market share data are not a reliable indicator of competition, and that market shares should be accorded only limited weight because of the fact that procurement takes place through bidding and given the differentiated nature of the market.[54] Despite this, the CMA does appear to place some weight on market share evidence in its discussion of competitive effects.[55] What the market share data does show is that there are numerous other competitors active in the marketplace, and this is borne out in the bidding data.

5.5 To provide the CMA with a more accurate picture of the number of material rivals with which FNZ competes (and the small size of GBST relative to FNZ), Table 5.1 below sets

[52] Decision, paragraph 217.

[53] Issues Letter Response, paragraphs 15.22 – 15.24.

[54] Decision, paragraph 148.

[55] Decision, paragraphs 145-147.

out market share estimates for the supply of Platform Solutions on a conservative but realistic basis, excluding supply to Private Banks and proprietary in-house solutions.[56]

5.6 These (conservative) share estimates indicate no plausible concern. In particular:

(i) the Parties' combined share is below [30-40]%;

(ii) the increment (i.e. GBST's share) is less than [0-5]%; and

(iii) there are a significant number of competitors with shares that are larger than or comparable to GBST.

Table 5.1
Shares of supply of investment accounting software solutions to WMP platforms (excluding supply to Private Banks and in-house solutions)

Solution provider	**AUA (£ bn)**	**Share of supply**
FNZ		
GBST		
Combined		
Bravura		
SS&C		
Avaloq		
IRESS		
Temenos		
SEI		
3i Infotech		
TCS BaNCS	[✂]	[✂]
PSL		
Pershing		
Objectway		
Equiniti		
State Street		
Hubwise		
Others (including ERI Bancaire, IMix, Investcloud, Third Financial)		
Total		

Source: Annex 14.1 to the Merger Notification [✂] *(see* Annex 4*).* [✂].[57] *Platforms with proprietary investment accounting software (i.e. self-supplying platforms) have been excluded. TCS BaNCS' share does not include legacy closed books worth*

[56] Shares are calculated based on the identity of the provider of investment accounting software solution. This follows the CMA's view that *"the provider of the investment accounting software represents the core software solution used by the platform"* (footnote 137 of the Decision).

[57] [✂].

more than £100 billion in AUA which are to be migrated to platforms powered by TCS BaNCS.

5.7 The following four competitors all have shares of supply larger than GBST, and together service platforms with a combined AUA of £[500-600]billion (£[400-500] billion excluding Private Banks):

(i) **Bravura:** The CMA has clearly recognised that Bravura is a "credible supplier of Retail Platform Solutions capable of exerting a competitive constraint on the Parties".[58]

(ii) **SS&C:** The CMA has also recognised that SS&C exerts a competitive constraint on the Parties.[59] The CMA conclusion that that this constraint "*may be limited*", is contradicted by other evidence cited in the Decision. For example: at paragraph 185, the CMA quotes the FCA commenting that SS&C is *"gaining popularity*"; at paragraph 216(b) the CMA comments that SS&C "*is the only notable competitor that has won a recent tender against FNZ in Retail Platform Solutions*"; and at paragraph 173, the CMA notes that its main client, St James's Place, is "*the UK's largest financial advisory business.*"

While the CMA has suggested that SS&C may struggle to compete with FNZ due to apparent limitations with its main UK platform system, Bluedoor,[60] this does not take into account Bluedoor's recent success. In October 2019, SS&C successfully migrated St James's Place Wealth Management onto Bluedoor and now successfully administers over £100 billion AUA on the platform.[61] This recent success is likely to reverse any lingering reputational harm or concerns associated with the Old Mutual/Quilter example mentioned to the CMA by a number of third parties.[62]

(iii) **Avaloq:** Avaloq has several large and prominent UK customers: Brewin Dolphin, Tilney Smith & Williamson, and Cannacord, (in addition to Barclays PBOS, HSBC Private Banking, and RBS Coutts, which are Private Banks). [✂].[63]

(iv) **IRESS:** IRESS serves Investec, Parmenion and Close Brothers, as well as offering a broader portfolio of software solutions to the wealth management industry.

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[58] Decision, paragraph 172.

[59] Decision, paragraph 175.

[60] Decision, paragraph 175.

[61] "SS&C Bluedoor helps Britain's largest wealth manager connect with clients", available at: https://www.ssctech.com/blog/ssc-bluedoor-helps-britains-largest-wealth-manager-connect-with-clients-1.

[62] Decision, footnote 229.

[63] [✂].

5.8 In addition, there are a number of other material competitors.

(i) Temenos, SEI, 3i Infotech, and TCS BaNCS each have shares that are comparable to GBST's. Together, these providers supply platforms with combined AUA of around £[200-300] billion (£[200-300] billion excluding Private Banks), including Canada Life, Lloyds Schroders JV, Phoenix, and Rathbones.

(ii) While Pershing (owned by BNY Mellon) has a relatively small share in the UK, it is a well-established international Solutions Provider (as are Avaloq and SEI) [✂]. Pershing provides software to institutions managing assets worth approximately USD 1.8 trillion globally.[64] As explained in paragraph 4.41, section 4 above, international experience carries important reputational value.

(iii) Equiniti (a BPO provider) announced the acquisition of a direct competitor of GBST (Aquila) at the end of 2018 and now offers Aquila's software both on a standalone basis and as part of a PaaS offering.

(iv) A range of challengers such as Hubwise, Third Financial, Multrees, Focus Solutions, GPP Wealth Solutions and Octopus/SECCL are winning and retaining platform business (see Annex 5 for further details).

Bidding data results show that FNZ is constrained by a range of competitors

5.9 FNZ tender data since 2016 reveals that a number of different providers have competed for and, indeed, won tenders against FNZ. These include [✂][65] [66] as well as in-house solutions. Over the same period, FNZ (excluding JHC) has [✂] to GBST. In fact since 2010, FNZ (excluding JHC) has lost only [✂] to GBST ([✂]), accounting for just £[✂] billion in AUA.

FNZ's internal documents support the presence of a range of competitors

5.10 The CMA acknowledges that the "*Parties' internal documents make reference to a range of competitors*".[67] Further, the CMA notes that the FNZ documents specifically cited at paragraph 187 of the Decision point to several competitors, including [✂]. This is consistent with the fact that FNZ considers itself to be constrained by a broad range of players.

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[64] https://www.pershing.com/about/strength-and-stability. Note that this figure includes both Pershing's "Banks and Broker-Dealers" clients as well as "Wealth Managers and Advisors".

[65] [✂].

[66] [✂].

[67] Decision, paragraph 186.

5.11 Neither FNZ nor its advisers have access to GBST's internal documents. However, [✂].[68] [✂]. [69]

Even on the CMA's excessively narrow frame of reference, an SLC is not plausible

5.12 While FNZ strongly believes that the frame of reference applied in the Decision is excessively narrow, even on this basis the Transaction would not give rise to an SLC if proper account is given to suppliers which are incorrectly dismissed by the CMA and the very strong "out of market" constraints.

The CMA incorrectly dismisses SEI, Pershing and TCS BaNCS

5.13 As Figure 5.1 demonstrates, based on available public information, each of these providers is actively servicing Retail Platforms.[70]

Figure 5.1
SEI, Pershing and TCS BaNCS – Major Retail Customers

Solutions provider	Platform name	Platform category*	AuA (£bn)	Commentary
Temenos	Canada Life	Retail	15	Canada Life selected Temenos as its new investment accounting system in the UK in 2019
SEI	Benchmark capital (Fusion)	Retail	15	Worked together with Schroders to develop the Fusion Wealth platform, aiming to work together until at least 2025
SEI	Munnypot	Retail	n/a	Robo-advisor Munnypot launched in 2016 with help from SEI who provides outsourced investment operations trading, custody and settlement services
SEI	*True Potential*	*Retail*	*10*	*SEI powered until 2018, when True Potential switched to Proprietary software*
Pershing	Raymond James	Retail	11	Pershing provides custody services for Raymond James
Pershing	Saga	Retail	n/a	Saga Investment Services, a joint venture between Saga and Tilney Bestinvest, signed a deal with Pershing in 2016 for a wrap platform with Pershing's GIA, ISA and SIPP wrappers
Pershing	Sanlam	Retail	4	Sanlam signed a deal with Pershing in 2019 for trading, clearing, custody and settlement services for its trade platform
Pershing	*Seven IM*	*Retail*	*8*	*Seven IM switched to Proprietary technology in 2018/19*
TCS BaNCS	Phoenix	Retail	35	Phoenix renewed their contract with TCS in 2019
TCS BaNCS	Scottish Widows	Retail	12	In 2017, Scottish Widows entered into a 15-year partnership with TCS BaNCS to provide solutions for Investment Administration, Life Insurance and Pensions
TCS BaNCS	NEST	Retail	9	NEST has used TCS BaNCS since 2010

Source: Company websites; press releases

Notes: [1] Platform category is based on the CMA's proposed frame of reference in Phase 1.

5.14 The CMA appears to have dismissed SEI on the basis of comments from certain third parties to the effect that SEI is not particularly strong in the UK, that it has a low market share with its "*coverage in AUA terms fall*[*ing*] *well below that of GBST, Bravura and FNZ*",

[68] Decision, paragraph 189.

[69] Decision, paragraph 154.

[70] Figure 5.1 is based on publicly available information and is not intended to be a complete representation of all Retail customers of these providers.

and that it does not support on-platform pension administration.[71] While SEI may currently have a more limited UK presence for Retail customers, it has a very strong international presence (providing solutions for Wells Fargo wealth management in the USA, one of the largest-scale US wealth management businesses).

5.15 When SEI's supply to Non-Retail UK customers (excluding Private Banks) is accounted for, SEI actually has a very similar market share to GBST (see Figure 5.1 above). This additional experience of providing solutions for UK Non-Retail platforms should not be dismissed when assessing SEI's ability to compete for Retail customers. In relation to on-platform pension administration, as explained in section 4 above this is not systematically required by Retail customers and, in any case, could easily be provided by teaming up with a pensions administration software supplier.

5.16 The CMA appears to have dismissed Pershing on the basis of certain comments from third parties to the effect that it "*has a limited presence among UK customers",* is expensive, uses old technology and is unable to provide "*Digital Customer Facing Capability*".[72] While Pershing (owned by BNY Mellon) currently has a relatively small share in the UK it is well-established internationally. Contrary to third-party comments, Pershing actually offers state-of-the art digital customer capability through its Pershing Nexus Investor platform, which provides end customers with 24/7 access to investments, documents, market news and alerts.[73] High pricing does not, of itself, mean that an offer is not competitive – price may simply indicate that Pershing's solution is differentiated in terms of quality from other competitors. Finally, the [✂].

5.17 The CMA appears to dismiss TCS BaNCS based on limited feedback from third parties, and on the basis that it "*does not compete in the supply of Retail Platform Solutions outside National Employment Savings Trust (NEST) whom it supplies a BPO offering*".[74] But this is factually incorrect. TCS BaNCS also supplies (or is on the process of migrating) Scottish Widows, Aviva, and Phoenix, with these three WMPs alone representing well over £150 billion of AUA. Notably, moreover, [✂]. As a PaaS supplier, TCS BaNCS' offering is more similar to, and exerts more pressure on, FNZ than GBST's software-only model.

<u>The CMA fails to adequately account for out of markets constraints from Solutions Providers serving Non-Retail Platforms</u>

5.18 If the supply of WMP Solutions to Non-Retail Platforms fell outside the relevant product market (a conclusion with which FNZ strongly disagrees), then the relevant "out of market" constraints from Non-Retail Platform solution providers would be very significant.

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[71] Decision, paragraph 180.

[72] Decision, paragraph 177.

[73] "Investor Portal: Pershing Nexus Investor", available at https://www.pershing.com/uk/en/what-we-provide/technology-solutions/integrated-digital-front-end-solutions/pershing-nexus-investor.

[74] Decision, paragraph 183.

5.19 As explained in section 4, the barriers for a non-Retail focused Solutions Provider (such as Avaloq, or Temenos) to enter and expand in the Retail “market” are very low. These suppliers already:

(i) offer the mainstream IAS solutions that Retail Platforms (like any other platform) require, and integrate to multiple PAS solutions;

(ii) serve UK customers; and

(iii) have an established reputation, based on their UK track-record of serving Non-Retail Platforms and their international experience serving both Retail and Non-Retail Platforms.[75]

5.20 In light of the extremely low barriers to entry, it follows that the “out of market constraint” exerted by these players would be almost as powerful as if they were “in” the market.

5.21 Where Solution Providers (such as IRESS and SEI) supply solutions to Non-Retail Platforms in addition to Retail Platforms, the strength of the competitive constraint that they offer will be underestimated if this additional capability and success in delivering Platform Solutions outside the Retail “market” is not properly taken into account in the competitive assessment.

5.22 It should also be noted that statements made in FNZ internal documents about barriers to entry, as quoted by the CMA,[76] were broader industry comments and did not relate to the CMA’s very narrow frame of reference of Retail Platform Solutions. In fact, many of these documents were simply highlighting the difficulty for a software-only supplier (such as GBST) to transition to a PaaS model (such as that deployed by FNZ).

[75] For instance, significant platforms served by Avaloq internationally include BT Panorama and Crestone in Australia and DBS and Maybank in Singapore. Examples for Temenos include Swissquote, Openbank and Macquarie Wrap platforms. The relevant UK businesses would also be able to draw on the economies delivered by existing global operations.

[76] Decision, paragraph 271.

6. FNZ and GBST are not close competitors, and certainly not particularly close competitors

6.1 The Decision concludes that the Parties are close competitors on the basis that:

(i) FNZ and GBST are "*two of the largest Retail Platform Solutions in terms of assets under administration*", and both parties "*have strengths in the technology used in Retail Platform Solutions, including developing this technology in direct competition with each other*";[77]

(ii) Third-party views, internal documents and evidence from recent tenders purportedly reveal that GBST is "*one of only a few rivals that exerts a competitive constraint on FNZ*".[78]

6.2 Much of the evidence put forward by the CMA in the Decision to support the conclusion that the Parties are close competitors simply goes to show that the Parties compete. However, as explained below, there is no basis to conclude that the Parties are close (or particularly close) competitors. Put differently, it is one thing for the Parties to "compete" in the sense of seeking from time to time to win the same tender (which is not denied). It is quite another for the Parties to be aggressively and credibly targeting the same customer base to such an extent that each Party is a major determinant of whether the other Party offers competitive terms to its customers. There is no basis for the latter interpretation.

6.3 As explained above, as a PaaS supplier, FNZ's key competitor set comprises other PaaS suppliers – i.e. those who offer a similar package of services and similar pricing structures. Similarly, as an on-premise software-only supplier, GBST's key competitor set comprises other software-only suppliers. This is clearly borne out in the FNZ/JHC bidding data.

The Parties' offerings are very different and are suited to customers with very different preferences

6.4 FNZ and GBST have very different business models, which suit customers with different preferences - see section 2.

6.5 The very different strengths of the Parties emerges from the Decision, which notes that third parties commented on FNZ's strong capabilities in cloud-based technology and servicing, as well as its integrated business model.[79] These are features which are core to FNZ's PaaS software and servicing solution, and that GBST – with its on-premise Composer software-only solution – simply cannot offer.

[77] Decision, paragraph 211.

[78] Decision, paragraph 212.

[79] Decision, paragraph 163(a).

6.6 The Decision claims that GBST can compete with FNZ's fully-outsourced offer by combining its software with an in-house servicing solution.[80] However, for many of FNZ's customers, in-house servicing is not likely to be a preferred option, either because the customer does not have the capability or resources to support in-house processing, or simply prefers not to take on the associated risk and complexity of managing a separate in-house asset servicing function.

6.7 Indeed, FNZ's experience is that WMPs (whether Retail or Non-Retail) have generally decided early on whether they want a software-only solution (in which case FNZ (excluding JHC) is unlikely to be a strong competitor) or software and services combined (in which case GBST will not be competitive).

6.8 The FNZ/JHC bidding data provides evidence that customers generally have a clear preference for the type of solution that they want. This in turn strongly supports the view that PaaS only Solution Providers (such as FNZ) do not compete closely with software-only Solution Providers (such as GBST).

6.9 Specifically, there are [✂] tenders in the dataset from 2016 onwards where the identity of the winning bidder is known.[81] In [✂], the customer requirement is identified. This allows two points to be tested:

(i) Does the customer have a "binary specification", e.g. software-only (and not PaaS)? Alternatively, does the customer indicate that it would consider both software and software-plus-servicing solutions?

(ii) Even if the customer has a "binary specification", is it the case that the winner of the tender provides a different solution? For example, even if the customer requested a software-only solution, did the winner ultimately supply a PaaS solution?

6.10 In relation to the first question, of the [✂] tenders, there are [✂] where the customer indicated a willingness to consider both software-only and PaaS solutions. In the remaining [✂] cases a binary choice is made. This is important: in almost all cases in which FNZ bid, the customer had a clear requirement for the type of solution it wanted.

6.11 In relation to the second question, there are [✂] tenders in which a software-only solution is specified. In [✂], the winning solution was software-only. In the remaining [✂], the winning bidder was able to supply both SaaS and PaaS, meaning that in theory it may have won with a PaaS offer, [✂].

6.12 In other words, in at least [✂] out of the [✂] cases, if the customer required a software-only solution at the tender stage the winning bidder provided a software-only solution. This provides strong support for the view that PaaS suppliers (such as FNZ) are not important constraints on software-only suppliers (such as GBST). Put simply, FNZ is not

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80 Decision, paragraph 162.

81 This excludes tenders which are on-going, as well as where the winner is unknown or an in-house solution.

likely to be viewed as a good alternative to GBST for customers that want a software-only supplier. Those customers are more likely to consider other software-only suppliers to be better options.

6.13 Turning to software plus servicing, there are [✂] tenders in which a PaaS solution is specified. In [✂] of those cases, the winning solution was PaaS. [✂].

6.14 In other words, in at least [✂] out of [✂] cases if the customer required a PaaS solution at the tender stage, the winning bidder provided just that. This provides strong support for the view that software-only suppliers (without a PaaS offer) – such as GBST – are not important constraints on PaaS only suppliers, such as FNZ. This is indeed borne out by the win/loss data. FNZ has [✂] to GBST over this period.

6.15 Finally, the Decision states that GBST can offer a credible alternative to FNZ's software and services proposition through its partnership with Equiniti.[82] [✂]. FNZ understands that GBST and Equiniti have not [✂] since the partnership was established <u>almost two years ago</u>.[83]

6.16 Moreover, Equiniti announced the acquisition of a direct competitor of GBST, Aquila, at the end of 2018 and now offers Aquila's software both on a standalone basis and as part of a PaaS offering. FNZ has no reason to believe that Equiniti would cooperate with GBST to put business through the partnership arrangements (should it still be in force) given its acquisition of Aquila, and indeed has every reason to believe that this would not be in Equiniti's interests.

Bidding data proves that the Parties rarely lose to one another

6.17 Shares of supply are no basis on which to conclude that the Parties are close competitors. The CMA itself recognises that "*on their own shares of supply should be given limited weight in its competitive assessment due to the nature of competition in the market (ie a bidding market with differentiated products*)."[84] Bidding data therefore reveals more about the degree and nature of competition that exists between the Parties.

6.18 FNZ tender data from 2016 onwards reveals that in this period [✂]. In the same period FNZ (excluding JHC) has not [✂] to GBST. Equally, there are no cases since [✂] in the FNZ tender dataset where FNZ (excluding JHC) has won a tender for which GBST has been identified as the incumbent. In the last ten years, FNZ (excluding JHC) has only lost [✂] to GBST ([✂]) accounting for just £[✂] billion in AUA. Analysis of FNZ/JHC bidding data is set out in Annex 2.

6.19 The Decision states that FNZ and GBST are "*two of only three competitors that regularly participated*" in recent Retail Platform tenders, the other being Bravura (or

[82] Decision, paragraph 212.

[83] [✂].

[84] Decision, paragraph 148.

Bravura/Genpact).[85] The CMA seems to infer that GBST is a particularly strong competitor for such contracts, and that less regular participants are not. However, the regularity of tender participation is of little import unless the bidder in question is able to make a competitive bid for a particular project. The tender outcomes reported in the FNZ bidding dataset simply do not support the view that GBST is the source of a critical competitive constraint on FNZ (or vice versa). The Decision itself highlights the apparent success of SS&C, despite it not being one of the regular tender participants identified by the CMA.[86]

6.20 The FNZ bidding data evidence therefore does not support the view that customers switch between the Parties frequently in practice.

The CMA puts undue emphasis on comments from GBST and other market players

6.21 As noted in section 1, comments from GBST should be viewed with caution. Comments from third parties cited in the Decision do not provide strong evidence that the Parties are particularly close competitors, but instead merely show that the Parties do compete (to an extent). For example, the CMA quotes third parties as saying that the difference in delivery models "*has not prevented*" FNZ and GBST from competing with each other.[87] This is not denied, but the objective evidence shows that the strength of the constraint GBST exerts on FNZ is limited.

The CMA puts undue emphasis on internal documents, and incorrectly focuses on GBST internal documents as evidence of GBST's constraint on FNZ

6.22 The Decision points to the Parties' internal documents as evidence of closeness of competition. However, FNZ understands that the CMA has relied heavily on GBST's internal documents. While such documents may [✂], they do not provide any reliable evidence of whether GBST actually exerts any material constraint on FNZ.

6.23 The CMA's assessment of the proportionately very small number of FNZ internal documents quoted in the Decision to evidence this point is also misplaced:

(i) the CMA cites a number of FNZ documents which merely describe the strength of FNZ's offer[88] - the quoted passages do not even mention GBST.

(ii) the CMA cites a number of FNZ documents which reference [✂] "market shares".[89] However, read together, these documents make clear that there are a number of other players in the market, including those with a "Non-Retail" focus

[85] Decision, paragraph 200.

[86] Decision, paragraph 201.

[87] Decision, paragraph 162.

[88] Decision, paragraph 187(a).

[89] Decision, paragraph 187(c)

([✂] are all mentioned). The [✂] mentioned in paragraph 187(c) specifically noted that "*global players such as [✂] could play an increasing role*...".

(iii) the CMA cites a [✂], as support for the conclusion that the Parties have developed technology in "*direct competition*" with one another.[90] [✂]. The CMA later states that it has not placed much weight on this report, yet it does not cite any other FNZ documents in support of this assertion.[91]

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90 Decision, paragraph 188 and 211.

91 Decision, paragraph 192.

7. GBST is a weak rival, [✄]

7.1 When considering the appropriate counterfactual, the CMA took into account the assumed growth of GBST, specifically accounting for "*GBST's continued investment in its E-volve programme and ongoing use of its partnership model*."[92] This assumption is ill-founded. The reality is that, in the UK at least, GBST is a weak rival [✄].

There is clear evidence that GBST [✄] and [✄]

7.2 GBST [✄]. FNZ understands from public sources that recently:

(i) Investec has shut its platform down to new business, and has asked its end-consumers to transfer their funds elsewhere;

(ii) Fidelity has recently decided to re-platform to Bravura, with AUA moving away from GBST over the next six months;

(iii) Alliance Trust Savings has been acquired by Embark and is moving to FNZ; and

(iv) Just has migrated its advised pension drawdown book to Embark, with its pension product now closed to new business.[93]

7.3 In addition, FNZ understands that [✄] of GBST's [✄].

7.4 GBST [✄] are summarised in Figure 7.1 below.[94] These [✄] represent a [✄].

Figure 7.1
[✄]

7.5 FNZ understands (from publicly available information) that GBST has [✄] to [✄].

GBST is [✄] – it is currently [✄]

7.6 GBST's software solutions are still delivered by way of [✄] "on-premises" delivery model which is [✄] than cloud-based solutions. Provision of upgrades through an on-premise model creates significant customer disruption, which in turn means that customers are more likely to experience technical issues (bugs, data corruption, database instability).

7.7 Moreover, the underlying technology framework for GBST's Composer product is PowerBuilder, a legacy software development platform that [✄]. In practice, this [✄].

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[92] Decision, paragraph 63.

[93] See "Just moves drawdown clients to Embark platform", available at: https://www.ftadviser.com/platforms/2019/12/02/just-moves-drawdown-clients-to-embark-platform/.

[94] [✄].

Third-party comments in the CMA's Phase 1 market investigation recognise that the Composer solution is not "*fully competitive*".[95]

7.8 As shown by Figure 7.2 below, GBST [✂].

Figure 7.2
Key industry innovations by WMP providers

[✂]

Source: FNZ data; company accounts; company websites; industry press.

7.9 The CMA appears to have placed significant importance on GBST's investment in its "E-volve" R&D programme.[96] FNZ understands that the programme consists of three separate stages:

(i) [✂];

(ii) [✂]; and

(iii) [✂].

7.10 GBST's [✂] R&D programme is [✂], addressing a [✂]. Meanwhile it has [✂], notably MPS (which FNZ introduced originally in 2008). [✂] is currently working with [✂] to source new capabilities, rather than its existing provider GBST.

7.11 As FNZ has explained in detail in previous submissions,[97] the re-write of this [✂] technology will be [✂] and [✂]. FNZ therefore considers that – [✂], and [✂]. Further, given the nature of GBST's "on-premise" delivery model, the full re-write of Composer (whether delivered incrementally or all at once) would be [✂].

7.12 [✂].[98] [✂]. As early as 2017, GBST accepted that the "*development program is having to overcome challenges, particularly related to the automated migration of code" and that "these challenges will impact the timing of the implementation of the project*".[99]

7.13 [✂]:

(i) as noted above, FNZ considers that the E-volve programme would [✂];

[95] Decision, paragraph 58.

[96] Decision, paragraphs 4, 62-63 and 244-245.

[97] Merger Notice, paragraphs 2.6.2 and 2.21; Issues Letter Response, paragraph 5.1-5.6.

[98] Decision, paragraph 56.

[99] GBST Annual Report 2017, page 14, see: http://www.annualreports.com/HostedData/AnnualReportArchive/G/ASX_GBT_2017.pdf.

(ii) [✂]; and

(iii) [✂].

7.14 As far as FNZ is aware, GBST has not been responsible for any [✂] in the Platform Solutions market.

[✂]

7.15 The CMA dismissed FNZ's submissions regarding the uncertainty of GBST's viability as an independent market participant and the deterioration of its financial position.[100] In doing so the CMA pointed to (now outdated) figures from the financial year ended 30 June 2019.[101]

7.16 [✂].

7.17 GBST's [✂] [✂] is clearly evidenced by [✂]. On one occasion, [✂]. Table 7.1 provides a summary of [✂] before any impact of the financial crisis precipitated by COVID-19.

Table 7.1
[✂]

GBST's partnership with Equiniti does not change the fact that GBST is a weak competitor

7.18 The CMA has placed undue weight on the alleged importance of GBST's partnership with Equiniti as a credible alternative to FNZ's combined software and servicing Platform Solution.

7.19 As explained in FNZ's response to the CMA's Phase 1 Issues Letter, partnership models that bring together software and servicing providers tend to be a weaker option when compared with a single, integrated supply by numerous PaaS competitors (e.g. SS&C, SEI, Pershing, TCS BaNCS and Avaloq). This is because: (i) the ability to constantly optimise people, processes and software (critical to providing a fully outsourced model) is much more challenging when dealing with two different companies; and (ii) the BPO provider takes on substantial operational and financial risks, yet cannot mitigate those risks through their own software.[102] Integrated PaaS suppliers do not suffer from these weaknesses.[103]

[100] Decision, paragraph 59.

[101] Decision, paragraph 55.

[102] Issues Letter Response, paragraph 5.16.

[103] This is quite different to the issue of whether IAS can work effectively with separate PAS – which it clearly can do, as demonstrated by the numerous examples of this happening successfully in practice.

7.20 More specifically, GBST's Equiniti partnership has not increased GBST's ability to compete with FNZ, nor other PaaS suppliers. [✂],[104] no effective challenge has materialised. [✂] by the GBST and Equiniti partnership since it was established almost two years ago.[105] Further, Equiniti may have a reduced incentive to invest in its partnership with GBST since acquiring Aquila in October 2018. Aquila and GBST both supply PAS and have the potential to become closer competitors over time. In particular, both firms target customers seeking personal schemes and workplace platforms and offer similar functionality, such as the ability to ensure compliance with regulatory changes. Any potential for future growth is simply unproven and unsubstantiated.

7.21 This is in line with the lack of success enjoyed by similar partnership models.

(i) Genpact's OpenWealth partnership with Bravura led to the loss of its largest customer in 2016 (Aviva),[106] and Genpact has now withdrawn from the UK market. Other customers using the OpenWealth partnership have also since moved away from this model. For example, Nucleus scaled back its use of OpenWealth in favour of working with Bravura directly and making use of in-house services.[107] [✂].[108]

(ii) GBST's partnership with Mainstream BPO in Australia similarly does not appear to have won any customers.

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[104] Decision, paragraph 187.

[105] See Annex 2.

[106] https://www.moneymarketing.co.uk/news/aviva-switches-to-fnz-for-adviser-platform/.

[107] https://markets.ft.com/data/announce/full?dockey=1323-13870998-4CFJLBHJINF04M8FFUJ12CV0DN.

[108] See Annex 2.

8. The Transaction has a clear, pro-competitive rationale

The Transaction will result in increased investment, and deliver benefits for both GBST customers and the market as a whole

8.1 Specifically, the Transaction will:

(i) enable FNZ to build upon GBST's capabilities in Australia, including in the large scale Australian superannuation sector, where FNZ has only a very small presence;[109]

(ii) enable FNZ to accelerate international expansion to compete more successfully against larger, global players, such as SS&C, SEI, Avaloq, Temenos and TCS BaNCS;

(iii) provide GBST's UK customers with immediate access to enhanced FNZ functionality alongside GBST's Composer, without any requirement to either migrate away from GBST software or switch to a PaaS delivery model. FNZ in addition offers the opportunity to reduce costs, risks and capital if they decide to <u>voluntarily</u> switch from on-premise software to SaaS or PaaS; and

(iv) reduce the combined entity's costs, by using existing FNZ technology to help deploy GBST products and avoid duplication in corporate back-office functions.[110]

FNZ will increase investment, which will result in better options and outcomes for all customers

8.2 Instead of prioritising a large-scale and [✂] re-write of [✂] software (Project E-volve or Project Catalyst), FNZ will inject [✂] into genuine R&D that will lead to enhanced functionality and better outcomes for customers.[111]

8.3 Specifically, this budget will be used (in priority order) to:

(i) integrate complementary FNZ functionality into GBST's existing Composer platform, so that customer's benefit from a wider range of functionality;

(ii) add enhanced functionality to GBST's existing Composer platform to meet customer requirements;

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[109] GBST, which is headquartered in Australia, has a much broader portfolio offering in Australia (see Merger Notice, paragraph 3.26) as well as a more significant presence than it does in the UK. [✂].

[110] This is consistent with FNZ's internal documents. See for example, [✂].

[111] See [✂], at page 4, provided as Annex 9.2 of the Merger Notice.

(iii) enable the optional transition from on-premise software to SaaS which has widespread support from a number of GBST's UK customers; and

(iv) complete the full re-write of Composer as contemplated in the E-volve programme, albeit more incrementally than proposed by GBST, so as to minimise disruption to existing customers.

8.4 FNZ's intentions and re-prioritisation of GBST's investment roadmap are aligned with GBST customer priorities and requirements, based on pre-merger discussions with those customers, and consistent with its letters to those customers.[112]

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[112] See FNZ letter to [✂] (Annex 2.9 to the Merger Notice), re-attached as Annex 6 and FNZ letter to [✂] re-attached as Annex 7.

9. No plausible basis to suggest unilateral effects of Transaction "particularly acute" for existing GBST customers

9.1 The Decision claims that the adverse effects of the Transaction "*may be particularly acute*" for GBST's existing customers.[113] Specifically, the Decision suggests the following possible sources of harm for GBST's customers, based on the merged entity's seeking "*to exploit its greater market power*" to induce GBST customers to switch either to FNZ's PaaS solution or a GBST software solution plus an FNZ servicing solution:

(i) FNZ develops GBST's software more slowly (i.e. degrading GBST's proposition relative to the counterfactual, to make it more likely that the customer would switch from GBST's software-only offer to FNZ's PaaS solution); and

(ii) FNZ maintains the development of GBST's software but only provides access to this "competitive" version if the customer switches from its current servicing option to servicing by FNZ.[114]

9.2 This is not plausible, for the following reasons.

FNZ will not gain greater market power as a result of the merger and so any consideration by FNZ of changing GBST's investment plans is not a competition issue

9.3 The starting point for the CMA's concern is the claim that FNZ "*could seek to exploit its greater market power*" by degrading GBST's software.[115] It follows, therefore, that if sufficient competition remains post-merger (as FNZ has explained will be the case – see section 5 above) then the concern that FNZ would pursue a different innovation path to GBST is not relevant, and would not be a competition concern. To the contrary, it would simply reflect the fact that a new owner (with a demonstrable track record of successful innovation and growth) may well have a different view than an existing owner (behind the curve in terms of innovation and [✂] customers) as regards the most effective way to serve market demand.

FNZ was not well-placed pre-merger to win GBST's existing customers

9.4 The Decision claims that "*GBST had incentives to maintain the competitiveness of GBST standalone software in part due to competition from FNZ.*"[116] However, the pre-Transaction constraint from FNZ would have been relatively weak because FNZ was not well placed, pre-Transaction, to win GBST's existing customers.

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[113] Decision, paragraph 19.

[114] Decision, paragraph 253.

[115] Decision, paragraph 253.

[116] Decision, paragraph 255.

9.5 First, to the best of FNZ's knowledge, FNZ has [✄] tender where GBST was the incumbent.

9.6 Second, GBST's main customers currently use a software-only solution combined with an in-house servicing proposition. Each of [✄] use a GBST software-only solution alongside a proprietary servicing solution.[117] This suggests that most GBST customers are likely to have a strong preference for a self-service model.[118]

9.7 This apparent reluctance to outsource servicing means that if FNZ were (hypothetically) to degrade GBST's standalone software solution, GBST's customers would be more likely to switch to an alternative software-only solution than an FNZ PaaS offer. Indeed, [✄] have recently switched (at least partially) to [✄] (a software-only provider). As far as FNZ is aware, none of GBST's [✄] (as noted in [✄] above) was the result of a switch to a PaaS provider (which is, after all, a very different business model).[119]

9.8 Further evidence that customers with a preference for software-only solutions would not be likely to switch to a PaaS solution is provided in section 6: [✄].

9.9 There are several strong providers of software-only solutions to whom GBST's customers could switch, including Bravura, SS&C, TCS BaNCs, Temenos, IRESS, Delta Systems (SIPP Pro), Avaloq, InvestCloud and Dunstan Thomas.

FNZ has no ability or incentive to try to force GBST's customers to switch

9.10 FNZ has no ability to unilaterally take action to degrade GBST software. FNZ submits that – in line with industry standards – all GBST contracts are likely to include strict service credit provisions and escalation clauses. Any attempt by FNZ to degrade GBST software would very likely involve an actionable breach of contract, exposing FNZ to significant financial penalties.

9.11 FNZ also has no incentive to degrade (or threaten to degrade) GBST software, in order to provide leverage to force a customer to switch to an FNZ servicing or PaaS solution. In fact, attempting to do so would not make commercial sense – it would materially damage its reputation as well as its relationships with both customers and regulators.

9.12 Indeed, the Decision is wrong to stress "*the low risk of a customer switching to another competitor*" as supportive of FNZ's incentives to degrade Composer.[120] Absent the Transaction – which is the relevant counterfactual – there is no reason to suppose that once a customer reaches the point of switching it would switch to FNZ's PaaS solution in preference to a competitor's software-only solution (or, for that matter, a competitive PaaS solution). To the contrary, FNZ is likely to be the less-preferred option due to the

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117 [✄].

118 [✄].

119 [✄].

120 Decision, paragraph 260.

customer's preference for software-only suppliers (as noted above). The same considerations also apply post-Transaction.

9.13 Further, FNZ has a clear interest in preserving the goodwill of GBST's customers. The goodwill associated with GBST's established customer relationships was seen as a major benefit to FNZ of the Transaction in the UK. It would, therefore, be irrational for FNZ to jeopardise those relationships by adopting the approach suggested in the Decision of trying to pressurise them to switch to FNZ. FNZ has no incentive to antagonise GBST's existing customers, as that would simply damage these relationships, further encouraging customers to look elsewhere for platform solutions.

There is clear and compelling evidence that FNZ has no intention to withhold or degrade GBST's standalone software offering

9.14 FNZ has absolutely no intention of restricting or degrading the supply of GBST's software. FNZ's clear intention is: (i) to provide GBST customers with the <u>option</u> to shift from on-premise software to SaaS (or Paas) at a competitive price, <u>should they wish to do so</u>; and (ii) to continue to invest in GBST software and to support customers who wish to retain their existing on-premise software solution.

9.15 The CMA recognises that FNZ has expressly confirmed this intention in direct communications with GBST customers, yet the CMA has placed "*limited weight*" on this evidence, noting that "*these* [letters] *were written to reassure GBST's customers in the context of the Merger and are not legally binding or enforceable.*"[121] It is important to remember that the communications were made <u>post-completion</u>, and <u>prior to the implementation of the IEO</u> – i.e. at a point in time when FNZ had unencumbered control of GBST's business and no expectation that the transaction (or its actions) would be subject to review by a merger control authority. Accordingly, these letters provide the best possible evidence of FNZ's genuine intentions regarding the treatment of GBST's customers post-Transaction.

9.16 The fact that these letters are not legally binding is irrelevant when considering their evidentiary value for these purposes. Further, as a regulated entity, FNZ is highly cognisant of, and complies with, all of its obligations to customers – FNZ would never seek to mislead customers, and would certainly not make promises in writing to very large organisations that it did not plan to uphold.

9.17 The CMA considers that certain of FNZ's internal documents undermine the statements made in its letters to customers.[122] FNZ strongly disagrees. Specifically:

(i) Statements regarding [✂] must be viewed in context.[123] As explained in section 7, FNZ considers that GBST's "Strategic R&D" programme is in fact merely [✂]. It would merely allow GBST to catch up to the status quo, rather than offer [✂].

121 Decision, paragraph 262.

122 Decision, paragraph 262.

123 Decision, paragraph 247.

FNZ has no intention of halting R&D at GBST altogether. Rather, as evidenced by FNZ's internal documents, it intends to [✂] with a larger capital investment of [✂] in genuine R&D – see section 8.

(ii) The recognition that benefits may flow to FNZ if customers choose to transfer to a combined software and servicing solution[124] is not evidence of an intention to force customers to do so (let alone an ability), nor to degrade their existing solution if they do not. If FNZ successfully convinced customers to switch – by offering the option of an upgrade to an enhanced solution – this would clearly be pro-competitive.

(iii) [✂][125] [✂].

9.18 FNZ's stated intentions are also entirely consistent with FNZ's treatment of JHC's software-only customers following its August 2019 acquisition. While a number of customers have been offered the option of switching to a PaaS solution, all customers have been given the opportunity to remain on Figaro (JHC's original software - which FNZ is continuing to invest in). To date, [✂] (voluntarily) opted to switch, indicating that customers have not been forced to do so, and that there is no basis for any concern about a degradation of the Figaro product. FNZ has not taken any steps to increase fees for JHC customers. Table 9.1 below summarises FNZ's post-acquisition contacts with JHC customers.

Table 9.1
Summary of post-acquisition contacts with JHC customers

Client	Post-acquisition contact about PaaS solutions (formal or informal)?	Status
[✂]	[✂]	[✂]

Source: FNZ.

[124] Decision, paragraph 257.

[125] Decision, paragraph 260.

FNZ would have to offer highly competitive terms to induce switching: this would be pro-competitive

9.19 FNZ believes it has a market-leading PaaS solution and is confident that it will continue to lower costs over time. Naturally, therefore, FNZ would eventually like to convince GBST customers to adopt FNZ solutions. However, to achieve this, FNZ must persuade these customers, first, to switch from a software-only to a software-plus-service solution and, second, even if they decide to make the switch, to choose FNZ's solution over the variety of competitive alternatives offered by PaaS rivals. As a result, FNZ could induce GBST customers to switch to its solutions only by offering GBST customers highly competitive terms. This does not support the CMA's theory of harm – and is actually pro-competitive.