SLAUGHTER AND MAY

RESPONSE TO ISSUES STATEMENT
DATED 7 May 2020

Case No. ME/6866/19

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

SLAUGHTER AND MAY

WJT/SHQ/FXJ/RXZW
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List of Annexes

1. Introduction and executive summary

1.1 The CMA's Issues Statement dated 7 May 2020 ("**Issues Statement**") sets out the main issues that the CMA is considering in its review of FNZ's acquisition of GBST ("**Transaction**"). FNZ has already provided significant detail on a number of points that it considers core to the CMA's assessment, including several points that the CMA has highlighted in the Issues Statement, in its Initial Submission dated 29 April 2020 ("**Initial Submission**").

1.2 For the reasons set out in the Initial Submission, FNZ strongly supports the CMA's view that there is no clear delineation between different types of investment platforms, and that the competitive assessment should take into account constraints from suppliers of software and servicing solutions ("**Platform Solutions**") to the full range of investment platforms. As explained in sections 3 and 4 of the Initial Submission, FNZ considers that the relevant product market should be the supply of Platform Solutions for all wealth management platforms for individual end-investors ("**WMPs**").[1]

1.3 FNZ also welcomes the recognition given in the Issues Statement to the distinguishing features of different delivery models, in particular software-only and combined software and servicing (or platform-as-a-service, "**PaaS**"). As explained in sections 2 and 6 of the Initial Submission, these models are very different in nature, cater to customers with dissimilar requirements, and do not represent close substitutes.

1.4 FNZ does not propose to rehearse in detail points made in its Initial Submission, or in its responses to the CMA's Market Questionnaire dated 30 April 2020 ("**Market Questionnaire**"). Instead, this response focuses on four key points that were raised in the Issues Statement and/or during the site visit on 7 May 2020 ("**Site Visit**"), as follows.

The different nature of their offerings means that competition between FNZ and GBST is limited (section 2)

1.5 Competition between FNZ's PaaS offering and GBST's software-only offering is rare, as shown by the fact FNZ has only lost one (comparatively low-value) tender to GBST in the last ten years. In most cases, WMPs have a clear preference for one delivery model or the other: of the [✂] tenders in the tender dataset since 2016, a customer requirement for <u>either</u> PaaS <u>or</u> software-only was identified in [✂] cases. Terms of supply (e.g. price and service levels) are negotiated after the customer has selected its preferred model.

1.6 The GBST/Equiniti partnership [✂]. As far as FNZ is aware, this partnership has [✂], and any future growth seems highly unlikely, given [✂], the number of integrated PaaS suppliers on the market, and Equiniti's recent acquisition of Aquila (a software supplier). This is consistent with the weak constraint provided by partnerships more generally.

1.7 While JHC and GBST both provide software-only solutions, their offerings have a complementary focus. Since 2016, JHC has only lost [✂] to GBST. Numerous other

[1] As explained in FNZ's Initial Submission, to the extent that there is a case to exclude any platforms, this is limited to a handful of private banks that cater for ultra-high net worth individuals.

software-only suppliers will remain post-Transaction, including Bravura, SS&C, Avaloq, Temenos, IRESS (and its acquired business Pulse), Objectway and Dion.

Benchmarking provisions do not pitch the Parties against one another, and the removal of GBST will have little impact on customer negotiations (section 3)

1.8 Benchmarking provisions do not provide any basis on which to conclude that FNZ and GBST are close competitors. Nor would the removal of GBST as a theoretical independent competitor affect the ability of a customer to negotiate better terms.

(i) While [✂] of FNZ's [✂] WMP customer contracts include benchmarking provisions, in all but [✂]. In any case, many competitors will remain post-Transaction and could perform a similar benchmarking function.

(ii) FNZ is not aware of [✂]. Downstream competition to attract assets under administration ("**AUA**") and FNZ's alignment with customer interests to grow AUA are the key drivers of any revisions to terms of supply.

The Transaction will not have an adverse effect on innovation (section 4)

1.9 FNZ has been at the vanguard of recent technological developments. [✂].

1.10 Innovation by FNZ is driven by customer (and, in turn, end-consumer) demands, as well as by an incentive to remain competitive with other PaaS suppliers, which compete head-to-head with FNZ. Given that FNZ has only lost one (low-value) tender to GBST in the past decade, the fear of losing customers to GBST is simply not a driver for innovation.

GBST customers will be offered greater choice and the option of upgraded technology (section 5)

1.11 It would not be rational for FNZ to degrade or withhold GBST's standalone software offer, and doing so would cut across written assurances to GBST customers and cause serious damage to FNZ's reputation (critical in an industry with long-term contracts). FNZ has allocated a budget of [✂] over [✂] for R&D capex for GBST, which is [✂] and aligned with GBST customer priorities.

1.12 The Transaction will facilitate an efficient transition to software-as-a-service ("**SaaS**") for GBST customers that wish to take advantage of the benefits of cloud-based technology. [✂]. GBST customers will also have the option to access enhanced add-on functionality from FNZ's extensive product portfolio (even if they wish to retain Composer) and/or transition to PaaS should they wish to do so.

2. Competition between FNZ and GBST (and, more broadly, between software-only and software-and-servicing suppliers) is limited

2.1 The CMA has indicated that it intends to explore competition between the Parties in three contexts: (i) between FNZ and GBST, where customers are undecided as to whether they want a software-only or a software-and-servicing solution; (ii) between FNZ and the

GBST/Equiniti partnership, where customers seek a software-and-servicing solution; and (iii) between JHC and GBST, where customers seek a software-only solution.[2]

2.2 As explained in FNZ's Initial Submission, and in more detail below, there is very limited competition between FNZ and GBST in each of these contexts.

Competition between FNZ's PaaS and GBST's software-only offering is limited

2.3 FNZ (excluding JHC) only provides PaaS solutions, while GBST (excluding its partnership with Equiniti) only provides software-only solutions. There is, therefore, scope for FNZ and GBST to compete only where a platform customer considers software-only <u>and</u> PaaS to be alternative solutions. However, the evidence clearly shows that such instances are very limited. In FNZ's experience, in the vast majority of cases customers have decided upfront which model they want, and therefore any broader "philosophical debate" as to their respective merits does not drive competition between Platform Solutions providers, in relation to the terms and conditions they offer.

<u>Choice of delivery model: PaaS and software-only solutions serve distinct WMP preferences</u>

2.4 As explained in detail in section 2 of the Initial Submission and slide 7 of the Site Visit presentation, PaaS and software-only models are very different. As a result, they cater to WMPs with distinct preferences. For example:

(i) A PaaS model is suited to WMPs that are willing to give up more control (letting the PaaS provider assume the risk of back-office service provision) in favour of a more agile customer-facing proposition, combined with greater certainty over total operating costs (which are charged out on [✂]).

(ii) A software-only model is more likely to appeal to a WMP wishing to manage servicing (and the attendant risks) itself, retain employees (as opposed to making them redundant), and incur fixed licence fees [✂].[3]

2.5 Before appointing a Platform Solutions provider, therefore, WMPs will typically assess which model best aligns with their preferences and commercial circumstances. Then, having made that decision, WMPs conduct a tender for the model of their choice.

2.6 Importantly, the point in time at which any choice is made between delivery models is not the point at which terms of supply (e.g. price, service levels, and KPIs) are determined. These are determined during the tender process. Pre-tender, internal decision-making processes of customers are not usually visible to Platform Solutions providers.

2.7 From time to time, FNZ may approach potential customers outside an RFP process to explain the benefits (as it sees them) of a PaaS model. However, this is more akin to a

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[2] Issues Statement, paragraphs 22 and 37.

[3] Further detail on the factors that a platform would consider when choosing between delivery models is set out in paragraph 6.6 of FNZ's response to the Market Questionnaire.

high-level marketing process, focusing on the conceptual advantages of PaaS, and how it differs from software-only models. By way of illustration, Figure 2.1 provides an extract from marketing materials prepared for [✂]. [✂]. Accordingly, any such pre-tender contacts do not drive competition between PaaS and software-only solutions.

Figure 2.1

[✂]

<u>WMPs have usually already chosen between PaaS or software-only solutions by the time of the tender process</u>

2.8 By the time a tender process is initiated, a WMP usually has a clear preference for a particular delivery model, and designs the key specifications of the tender accordingly:

(i) Where customers are tendering for software-only solutions, the focus is on the architecture of the technology, and the functionality that it provides.

(ii) Where customers are seeking a PaaS solution, the focus is on service standards and KPIs, rather than the technology architecture (since the details of "how" a solution is delivered are left to the PaaS provider). The financial capacity of the Platform Solution provider - notably its ability to stand behind potential liabilities, its operational risk management capabilities, and its governance structures - are more important, as is compliance with financial regulation.

2.9 That WMPs have typically already chosen between PaaS or software-only at the tender stage is evident from the FNZ/JHC bidding data.[4] Of the [✂] tenders since 2016 that are listed in the FNZ/JHC tender dataset (including [✂]), a customer requirement either for PaaS (but not software-only) or for software-only (but not PaaS) is identified in [✂] cases.[5]

2.10 Moreover, in almost all cases, the solution ultimately chosen by the platform satisfied the specified requirement. Put simply, the evidence shows that if a WMP has decided on a PaaS solution by the time it goes out to tender it almost always procures such a solution. Likewise, if a WMP decides on a software-only solution it will almost invariably end up with a software-only solution at the end of the procurement process.

[4] In order to assist the CMA, Annex 1 provides an updated version of the FNZ/JHC bidding data set. This includes information that has become available during the process of completing the CMA's Market Questionnaire and Financial Questionnaire dated 30 April 2020. The refinements include[✂]. FNZ and JHC have also taken this opportunity to review the dataset to complete missing information where possible and remove a small number of duplicate or out of scope tenders. Full details of these refinements are provided in Annex 2.

[5] Of these tenders, FNZ (excluding JHC) participated in [✂] tenders, of which [✂] were completed, [✂] with an identified external winner. JHC participated in [✂] tenders, of which [✂] were completed, each with an identified external winner. (FNZ and JHC both participated in [✂] of the completed tenders). See Annex 3 for the relevant tender information and (as a sensitivity check) comparable information in respect of tenders from 2015 onwards.

2.11 This is backed up by FNZ/JHC's bidding data:[6]

(i) [✄] tenders in the dataset (involving FNZ and/or JHC) have been won by an identified external provider since 2016.

(ii) In [✄] cases where the identified requirement was for software-only, the winner of the tender provided a software-only solution.

(iii) In [✄] of the [✄] cases where a PaaS requirement was identified, the winner of the tender provided a PaaS solution.[7]

(iv) In just [✄] out of [✄] cases the tender specified that both PaaS and software-only solutions were being considered.

<u>FNZ's main competition is from PaaS providers</u>

2.12 It follows that FNZ (excluding JHC) competes primarily with other PaaS providers. Again, this is borne out by the bidding data.

2.13 Since 2016, FNZ (excluding JHC) has participated in [✄] completed UK tenders. Of these, [✄] involved a customer requirement for a PaaS solution (including [✄] which specified either software-only or PaaS). FNZ won [✄] of these contracts.[8]

2.14 In some cases, FNZ will [✄]. Since 2016, FNZ has done this on [✄] occasions and was [✄].

2.15 The winners of these [✄] tenders were: [✄]. It is notable that [✄] of these contracts was won by GBST. Indeed, as explained previously, FNZ has not lost a tender to GBST since [✄]. Moreover, [✄] of the entries in the FNZ/JHC dataset records FNZ bids where GBST was the incumbent.

2.16 There is also very limited overlap between the RFPs received, and the tenders participated in, by FNZ (PaaS) and JHC (software-only). The FNZ/JHC bidding dataset shows that of [✄] tenders since 2016, FNZ and JHC both bid in only [✄] ([✄]).

2.17 In summary, there is limited competition between PaaS and software-only solutions. To the extent that such competition does exist, FNZ and GBST do not compete closely.

Competition between FNZ and GBST/Equiniti for combined solutions is limited

[6] Some of the underlying data have been updated since the Initial Submission (see note 4). As such, some of the summary numbers presented below have changed slightly from those presented in the Initial Submission. For more details, please see Annexes 2 and 3.

[7] [✄].

[8] Other winners included [✄].

2.18 As far as FNZ is aware, [✄]. This partnership has [✄], and [✄], given [✄] and Equiniti's recent acquisition of Aquila (a software supplier). This is consistent with [✄] more generally.

The GBST/Equiniti partnership [✄]

2.19 As far as FNZ is aware, and consistent with the FNZ/JHC bidding data, the partnership between GBST and Equiniti has [✄] since the partnership was established almost two years ago.

2.20 FNZ understands from discussions with GBST (which occurred prior to the entry into force of the CMA's initial enforcement order) that [✄]. However, [✄].

2.21 FNZ does not know whether the (contractual) partnership arrangement between GBST and Equiniti remains in force today. To the extent that it does, FNZ understands that [✄]. Further, at the end of 2018 Equiniti acquired Aquila, a direct competitor of GBST, and now offers Aquila's software both on a standalone basis and as part of a PaaS offering.[9] Given that Aquila's software [✄]. Indeed, Equiniti's 2019 annual report indicates that it has since secured a number of new clients, "*in particular as a result of the 2018 acquisition of Aquila*".[10]

2.22 [✄] (see paragraphs 2.23 to 2.25 below).

Partnerships more generally are a weak constraint on PaaS suppliers

2.23 As explained in section 7 of the Initial Submission, partnership models that bring together software and servicing providers tend to be a relatively weak option for customers. This is because the ability to optimise people, processes and software (critical to executing and sustaining a fully outsourced model) is much more challenging when dealing with two different companies. For example, in a partnership model:

(i) There is no single designated point of contact with responsibility and accountability for relationship and delivery, which results in inefficiencies. For instance, Nucleus, a leading independent platform provider, decided to switch from the Bravura-Genpact partnership (referred to in paragraph 2.25 below) to a direct contractual agreement with Bravura (complemented with in-house services) in 2018, citing the benefit of more regular and reliable platform updates.[11] Where problems or errors arise, it may not be clear whether these are attributable to the software or the servicing element of the solution. This creates delays and difficulties in problem resolution and liability allocation, and generates customer dissatisfaction and tensions in the partnership;

[9] See, for example, https://equiniti.com/uk/services/eq-paymaster/software/administrator-solutions/

[10] See https://investors.equiniti.com/~/media/Files/E/Equiniti-V4/documents/reports-and-presentations/strategic-report-2019.pdf, page 26.

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

(ii) It is difficult for partners to present a long-term roadmap to customers, as they are likely to have different development and resource priorities, and their interests and level of commitment to particular regions and markets may diverge over time;

(iii) The potential customer would need to run two separate sets of due diligence processes in relation to the two companies, which adds complexity, time and cost to the tender process.

2.24 Platform Solutions suppliers themselves may also be unwilling to tender for contracts using a partnership model:

(i) The service provider must take on substantial operational and financial risks, yet cannot mitigate those risks through its own software.[12] In effect, the services provider may become liable for (and suffer reputational damage as a result of) failures that originate with the software-supplier partner. For example:

(a) The service provider is responsible for executing trades in investment products in a timely fashion. Should it fail to do so, it will bear the cost of placing each end-customer in the position they should have been had that trade been executed. This cost (i.e. the market risk of the aggregate failed trades) can be substantial. Trading is largely automated and accordingly failed trades are usually attributable to software defects.

(b) Reliable software functionality, and close ongoing interaction between people, processes and software, is required to discharge the service provider's regulatory responsibilities, such as obligations to protect client money (FCA CASS rules).

(ii) Forming a new partnership, or aligning an existing commercial partnership to the requirements of a particular bid, can be a challenging logistical, technological and commercial exercise – the parties must align on value contributions and revenue and profit allocations, as well as operational and technological priorities. This requires material resources and time, which may not fit within tender timelines.

2.25 These challenges are not faced by the many integrated PaaS suppliers, which will be able to compete for the same tender opportunities. This is consistent with the limited success other partnerships have had in the UK:

(i) Genpact's OpenWealth partnership with Bravura led to the loss of its largest customer in 2016 (Aviva),[13] and Genpact has now withdrawn from the UK. Other customers using the OpenWealth partnership have also since moved away from this model, including Nucleus (see paragraph 2.23(i) above). The FNZ/JHC

[12] The situation is different where BPO is outsourced but software is provided in-house. In such cases, FNZ understands that the software element linked specifically to the provision of transaction and custody services would usually be outsourced to the BPO provider.

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

bidding data indicate that Genpact's partnership with Bravura [✂] against FNZ or JHC.

(ii) In 2015, GBST pursued a partnership with UK-based Xchanging,[14] but this [✂], and no longer seems to be operational, based on publicly available information.

(iii) [✂] wins by a third party software provider in combination with a third party servicing (i.e. business process outsourcing "**BPO**") provider can be identified from the FNZ/ JHC bidding data.

Competition between JHC and GBST in the software-only space is limited

<u>JHC and GBST are not close competitors</u>

2.26 As explained in FNZ's Initial Submission, although both offer a software-only proposition, JHC and GBST offer largely complementary solutions.[15]

2.27 This can be seen from the fact that [✂] uses GBST for pension administration technology (which JHC does not have) and JHC for investment dealing and investment accounting functionality, for both its [✂] (Advised) and [✂] (Direct) platforms.

2.28 Both [✂] and [✂], have indicated that they could not use Composer as their core platform because it did not offer the functionalities required by their clients. In particular, Composer did not offer: (i)[✂]; and (ii)[✂]. JHC's offering does not suffer from these limitations, and could better support [✂] and [✂] businesses.

2.29 Bidding data provide further evidence that JHC and GBST are not close competitors. Since 2016, JHC has only lost [✂] to GBST ([✂]). In the same period, JHC has lost in tenders to numerous other software suppliers: [✂].

2.30 Similarly, JHC's internal documents support the conclusion that GBST is not a close competitor. While these documents include numerous references to a range of other players (see further below), we have not identified any evidence of JHC tracking GBST as a material competitive constraint.[16] This is emphasised by [✂].[17] The [✂] requirement for [✂] meant that Composer was not a suitable solution.

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[14] See https://www.verdict.co.uk/private-banker-international/news/gbst-xchanging-partner-to-develop-platform-for-wealth-management-activities-240615-4607742/. Xchanging later became part of DXC Technologies in 2017.

[15] The CMA has acknowledged this difference in focus in its Phase I decision (paragraph 70(a)).

[16] [✂]. See JHC's response to question 15 of the CMA's Market Questionnaire s.109 request dated 30 April 2020 ("Market Questionnaire s.109") for further context.

[17] [✂].

<u>A significant number of alternative software-only suppliers will remain</u>

2.31 There are numerous other strong software-only competitors which will continue to constrain the combined entity post-Transaction. These include Bravura, Avaloq, IRESS and Temenos, among others.

2.32 JHC loses to a wide range of software competitors, as borne out in the JHC bidding data (see paragraph 2.29 above). JHC's internal documents analyse a range of alternative software competitors including [✂].[18] There is also evidence that JHC is closely tracking [✂], which entered the UK in [✂] and has a similar focus to JHC.[19]

3. Benchmarking provisions do not typically pitch the Parties against one another, and the removal of GBST will have little impact on customer negotiations

3.1 The CMA has noted, at paragraph 39 of the Issues Statement, that "*some customers benchmark suppliers of Platform Solutions against each other in order to obtain better terms. We will consider the extent to which the Parties are benchmarked against each other by these customers. To the extent that such benchmarking includes the Parties, the merger may lead to worse outcomes by removing one of the Parties as an independent comparator*."

3.2 As set out in FNZ's response to question 27 of the Market Questionnaire, benchmarking clauses are contractual levers that offer customers a degree of comfort that a Platform Solution supplier's pricing and services will remain competitive over the long term, as technology and services evolve and mature.

3.3 Benchmarking provisions do not provide any basis on which to conclude that customers consider FNZ/JHC and GBST are close competitors. Nor would the removal of GBST as a theoretical independent competitor have a material impact on the ability of a customer to negotiate better terms under their contracts. As explained in more detail below:

(i) **Benchmarking provisions do not typically pitch FNZ and GBST against each other:** JHC customer contracts [✂]. While [✂] FNZ's[✂] UK WMP customer contracts [✂]. The provisions typically refer to a generic group of "[✂]" that would need to be identified at the relevant time, based on criteria intended to ensure that providers of *comparable* services are selected. FNZ considers that the nature of GBST's delivery model and product features means that it is unlikely to be considered *comparable* for these purposes.

(ii) **In practice, benchmarking exercises** [✂] **and as a result have not performed a material role in setting the terms of supply:** FNZ is not aware of a [✂]. Downstream market pressures and FNZ's direct commercial alignment ([✂]) with its customers' interests are the key drivers of revisions to FNZ's terms and conditions of supply.

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[18] See for example, [✂].

[19] [✂]. See in particular page [✂] which identifies [✂], and page [✂] which comments on [✂].

How benchmarking provisions work

3.4 Whether a contract includes benchmarking provisions and, if so, the form that they take, varies from case to case. However, benchmarking provisions in FNZ contracts generally operate as follows:

(i) **Trigger:** A benchmarking exercise can usually be triggered [✂], and would then be carried out by an independent third-party expert (the "**Benchmarker**").

(ii) **Parameters:** Typically the benchmarking exercise must be carried out by reference to [✂]. The [✂] are often left for determination by the Benchmarker.

(iii) **Comparators:** Most provisions [✂]. Usually, the Benchmarker is required to apply a set of criteria to identify appropriate third-party services. These criteria vary by customer, but the Benchmarker is generally required to consider services or suppliers that are [✂].

Independent comparators to FNZ are unlikely to include GBST

<u>It is unusual for benchmarking provisions to identify specific comparators</u>

3.5 A review of current FNZ UK customer contracts has revealed that [✂] out of [✂] WMP customer contracts include benchmarking provisions. Only [✂], only [✂] as comparators.[20] [✂] of JHC's [✂] WMP customer contracts [✂].

3.6 For completeness, FNZ notes that:

(i) [✂][21] [✂].[22] [✂].

(ii) [✂].[23] [✂].[24] [✂].

3.7 [✂], indicating that these provisions are not a key area of ongoing focus and scrutiny.

<u>"General" benchmarking provisions are unlikely to involve a comparison between FNZ and GBST</u>

3.8 A benchmarking review has [✂]. However, if a review pursuant to a general benchmarking provision ([✂]) were triggered, FNZ considers that a Benchmarker would be unlikely to include GBST, as there are a number of PaaS suppliers in the UK (e.g.

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[20] FNZ notes that in response to question 27 of the Market Questionnaire, [✂].

[21] [✂].

[22] [✂].

[23] [✂]. [✂].

[24] [✂].

SS&C, TCS BaNCS, Pershing, SEI) whose propositions are more likely to be considered [✂].[25]

3.9 Even if GBST (or another software supplier) were included, it would likely be given little weight, as it would not be feasible for a Benchmarker to effectively compare fees and service levels across fundamentally different delivery models. For example, FNZ's model benchmarking provision (attached as Annex 4) requires the Benchmarker to: [✂]. There would be a number of difficulties with conducting such a comparison between a PaaS and software-only provider:

(i) [✂] (software model) cannot be easily compared to [✂] (PaaS model). The risk profile of a PaaS solution is also significantly higher, which is reflected in intrinsically different [✂].

(ii) Value is linked to the package of services being provided: these are fundamentally different as between PaaS and software only providers. [✂] – meaning a comparison limited to the software element of the solution would not be possible.

3.10 Finally, even if a PaaS solution were benchmarked against a software-only solution, the loss of GBST as a comparator would not have any impact given the numerous other software-only comparators available, such as Bravura, ERI Bancaire, IMiX, Investcloud, IRESS, Third Financial and Temenos.

In practice, benchmarking exercises are not a material driver for negotiation of terms of supply

3.11 FNZ's prices are set through commercial negotiation, and the point of reference is usually [✂].[26] Similarly, the service levels and functionalities FNZ must offer are dictated by the customer's particular requirements. FNZ has to demonstrate the (cost) benefit to the customer of adopting the proposed Platform Solution and present a competitive bid which is designed attractively enough to win the contract.

3.12 During the term of the contract, it is in FNZ's interests to remain competitive so that FNZ's customer remains competitive, since both FNZ and its customers [✂]. Non-competitive pricing (or uncompetitive service levels and functionality) would lead to loss of [✂] for both parties. In other words, during the contract term FNZ has strong incentives to [✂]. This incentive to [✂] in order to ensure FNZ's customers are competitive downstream ([✂]) exists on an ongoing basis irrespective of any contract benchmarking provisions.

3.13 It is true that benchmarking provisions may offer customers some additional peace of mind that they are receiving, and will in the future continue receiving, value for money. FNZ is generally willing to [✂]. However, given the close alignment of interests between

[25] FNZ notes that certain benchmarking provisions permit [✂].

[26] See FNZ's response to question 13(a) of the Market Questionnaire s.109 notice.

FNZ and its customers, these provisions do not in practice [✂]. In fact, FNZ has [✂] in the last [✂] years in response to [✂].[27]

4. The Transaction will not have an adverse effect on innovation

4.1 While innovation is an important aspect of competition between suppliers of Platform Solutions, there is no basis to find that the Transaction would have any adverse effect on innovation. In this context it is important to note that while FNZ has been an active innovator – competing in this respect against Avaloq, Pershing, SEI, SS&C and TCS BaNCS, in particular – [✂].

Key technology innovations over the past fifteen years

4.2 Most Platform Solutions suppliers continually upgrade their products to meet the requirements of their customers more effectively. Over the past fifteen years, the core enabling technologies developed by Platform Solutions suppliers have seen a number of significant developments. While FNZ has been at the vanguard of many such developments, [✂] in this regard.[28] Examples of such developments are as follows:

(i) A transition to a modern technology platform ("**modern programming language"**). Modern programming languages can improve the runtime performance and scalability of software, and simplify the maintenance of the underlying code. This allows for more agile adjustments and extensions according to the platforms' needs. Pershing was the first to upgrade to a modern programming language in 2003, followed by FNZ in 2005. By 2014, Bravura, Avaloq and Temenos had also completed the upgrade to a modern programming language. [✂].

(ii) A shift towards **modern database platforms.** Modern database platforms (Oracle, SQL, etc.) have a number of advantages for platform providers: they are typically lower-cost, capable of integrating with modern software and technology (cloud-based software, APIs, etc.), use more efficient workflows and processes (which allow faster transactions), and are more scalable. Modern database platforms were first introduced by FNZ in 2005, with Bravura, SEI and SS&C subsequently switching to such platforms by 2012. [✂].

(iii) A move to **cloud-based solutions**, as opposed to on-premise solutions. FNZ has provided its solution solely as a cloud-based service since inception. Cloud-based solutions allow platform customers to access services, information and data anywhere, at any time, and are more scalable than on-premise solutions. Importantly, cloud-based solutions can be enhanced continuously by the solution

[27] See section 15 of FNZ's Merger Notice.

[28] See paragraph 1.9 of FNZ's response to the Market Questionnaire and Figure 7.2 of the Initial Submission. See also slide 15 of the Site Visit presentation.

provider, across all customers, from a single central location (data-centre).[29] Many providers, including Avaloq, Bravura, Pershing, SEI and TCS BaNCS, also offer cloud-based solutions (and have done so for at least seven years). GBST [✂] ([✂]).

(iv) A progression towards **service-orientated architecture** (“**SOA**”). This is a type of software design where different software components provide services to each other through a standardised communication protocol. An SOA increases flexibility, source code reusability, and scalability, while reducing cost. FNZ first introduced SOA in 2014, and it has also been implemented by several PaaS competitors. [✂].

Functional innovation to meet the demands of WMPs and end-investors

4.3 Innovations in the underlying core <u>technology</u> (described in paragraph 4.2) enhance agility, scalability, security, resilience and operating cost. The underlying technology enables the consumer-facing functionality of the platform to work. FNZ and other PaaS providers have also been leaders in the development of innovative features of platform <u>functionality</u> to meet end-investor demands. PaaS providers are incentivised to constantly improve solutions for end-customers, as [✂] (see further paragraph 3.12 above).

4.4 The core areas of recent and ongoing functionality innovation are:

(i) **Digitisation of the adviser/consumer interface** (using web and mobile technologies): FNZ and other (cloud-based) PaaS providers have led the transition of services for financial advisers and investors online (in FNZ’s case since 2003) via web-based and, more recently, mobile-based services.

(ii) **Personalisation of investment solutions:** Personalised investments have become increasingly accessible through algorithm-based solutions which construct portfolios based on individual investor requirements. The first generation (Model Portfolio Service or “**MPS**”) was launched by FNZ in 2008, at a similar time to other PaaS providers. FNZ has subsequently enhanced MPS functionality through the development of Tailored Portfolio Services (“**TPS**”)[30] (first launched in 2017) and Dynamic Managed Accounts (“**DMA**”)[31] (first launched in 2019). Competing PaaS providers have been making similar developments ([✂]).

(iii) **Automation of the investment back-office:** Efficiencies generated by automation have been key to delivering significant price reductions to end-

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[29] In contrast, on-premise software is deployed at many different customer sites (outside of the provider’s control), customised to the individual site and integrated with many other on-premise systems. Upgrades are therefore a significant IT project for each customer.

[30] TPS enhances the MPS solution by [✂].

[31] DMA further personalises the portfolio solution by [✂].

investors over the past 15 years. FNZ and other PaaS providers have developed systems to automate asset reconciliations and payment processes (among other things). FNZ has also adopted [✂]. Automation of back office solutions requires constant interaction with people, processes and technology. As PaaS providers control both the software and servicing elements, they are well placed to optimise and update such solutions.[32]

4.5 Further details of FNZ's recent R&D projects are set out in Annex 5 of FNZ's response to the Market Questionnaire.

Any competition between FNZ and GBST does not drive incentives to innovate

4.6 The presence or otherwise of GBST has no bearing on FNZ's incentive to continue to innovate. This is for several reasons.

4.7 First, GBST is a software-only provider and does not compete closely with FNZ's PaaS offer (for the reasons explained in section 2 above). Given that FNZ has lost only one tender to GBST in the past decade, the fear of losing a tender to GBST plainly is not what drives FNZ to innovate.

4.8 Competition from PaaS providers is a far more important stimulus to FNZ's innovation than any competition from GBST. PaaS providers have the same business model as FNZ; they compete head-on for the same customers. PaaS providers also tend to be well-funded international players. Competitors such as Avaloq, Pershing, SEI, TCS BaNCS and Temenos are significantly larger global operators than FNZ.[33] This matters because Platform Solutions technology is scalable across countries, and an innovation to improve functionality in the UK would benefit functionality in other geographies as well (and *vice versa*).[34] For example, FNZ X-Hub (powering FNZ's MPS, TPS and DMA solutions) has already been released in multiple other countries including Australia, New Zealand, Finland, Singapore and Switzerland. FNZ ChainClear (leveraging blockchain to improve the efficiency of trading and settlement between platforms and third party fund managers) has recently expanded from the UK to South Africa.

4.9 Second, [✂] in comparison to FNZ's and FNZ's PaaS rivals, such as Avaloq, Pershing, SEI, SS&C and TCS BaNCS.[35] GBST's record of innovation vis-à-vis software-only providers (such as Bravura and Temenos) is [✂]. By way of example, [✂], Avaloq, Pershing, SEI, SS&C, Bravura, Temenos and TCS have all had sophisticated web-based and mobile-based digital solutions for many years, and are constantly evolving their digital services.

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[32] On the other hand, software providers have to constantly negotiate with platform customers to implement these sorts of improvements.

[33] Paragraph 4.41 of the Initial Submission.

[34] Paragraph 4.42 of the Initial Submission.

[35] Paragraph 2.13 of the Market Questionnaire response.

4.10 [✂].[36] [✂].[37] Notably, FNZ is replacing GBST's R&D programme with [✂] that is aligned with GBST customer priorities and requirements.[38]

4.11 Similarly, GBST does not drive innovation by JHC. As explained in FNZ's response to the Market Questionnaire, JHC has [✂] – the focus of JHC's R&D spend has been on:

(i) [✂].

(ii) [✂].

4.12 As indicated in response to questions 6 and 7 of the CMA's Financial Questionnaire s.109 notice dated 30 April 2020, such enhancements of existing products are driven fundamentally by client customisation requests, which are then often standardised and included in core product releases.

4.13 To the extent JHC would be influenced by competitors, providers with a similar focus (such as IRESS, Dion and Objectway) are more likely to drive any innovation by JHC than GBST. Indeed, FNZ has not identified any references to innovation by GBST in JHC's internal documents. By contrast, there is evidence that JHC has been [✂].[39]

5. GBST customers will be offered greater choice and the option of upgraded technology

5.1 The CMA has noted, at paragraph 41 of the Issues Statement, that it will consider "*whether and how the Merger may weaken the Merged Entity's incentives to continue to offer existing and new customers GBST's software on a standalone basis on competitive terms and continue to develop it to remain competitive*".

5.2 As explained in the Initial Submission, it would not be rational for FNZ to degrade or withhold GBST's Composer software from GBST customers. Moreover, doing so would cut across written assurances to GBST's customers, as well as causing serious damage to FNZ's reputation and relationships with customers and regulators. Further, FNZ will continue to invest in GBST's software on a standalone basis. In fact, FNZ has allocated a budget of [✂] over a period of [✂] for genuine R&D capex for GBST, which is [✂] and aligned with GBST customer priorities. See sections 8-9 of the Initial Submission.

<u>The Transaction facilitates an efficient [✂] transition to SaaS for GBST customers</u>

5.3 It is essential that GBST upgrades its current software offering, [✂]. [✂].

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[36] See section 7 of the Initial Submission.

[37] See section 7 of the Initial Submission.

[38] See section 8 of the Initial Submission.

[39] See [✂].

5.4 In FNZ's view, GBST would [✂].[40]

5.5 When a Platform Solutions provider moves from on-premise software delivery to SaaS, it assumes on-going responsibility, not only for the software itself, but for the infrastructure required to deliver cloud-based SaaS provision.[41] In order to [✂].

5.6 The key capabilities which would need to be in place to transition from on-premise to SaaS include the following:

(i) Cloud or on-premise data centres to host the platforms (or alternatively, the completion of complex engineering to achieve the necessary resilience, security, performance and availability in the public cloud).[42]

(ii) Geographically dispersed resilience to ensure seamless continuity in the event of loss of a datacentre, including provision for real-time transactional data replication between multiple sites, active-active automated failover across sites and within sites (high availability), and automated scalability.

(iii) Backup and secure archiving of all platform data.

(iv) Cyber security and data security network infrastructure engineering and processes (to at least ISO27002), including a round-the-clock global network monitoring team.

(v) Platform monitoring on a round-the-clock basis, with automatic alerting if there are issues, and a team which can respond at any time if an incident is detected.

(vi) Capacity monitoring and management, to ensure additional capacity is added as the platforms scale.

5.7 [✂]. FNZ estimates that [✂]. The costs involved are [✂]: FNZ's costs of supporting its SaaS infrastructure globally in 2020 are around £[✂] for staff (a team of [✂] FTE in locations across the globe) and around £[✂] for infrastructure, hardware and software. [✂].

5.8 By contrast, FNZ already has the infrastructure and support services in place to easily support SaaS operations, as well as considerable experience and expertise providing cloud-based solutions. Post-Transaction, any GBST customers that wish to move to SaaS will be able to do so more quickly, benefitting from these capabilities. Customers will also be able to benefit from FNZ's scale and resources more broadly, whilst continuing to use Composer software. Moreover, as there are some economies of scale associated

40 [✂].

41 See, for example, slide 7 of the Site Visit presentation.

42 [✂].

with SaaS infrastructure and operations (e.g. the round-the-clock monitoring), the Transaction would allow GBST to offer SaaS [✂].

5.9 Moreover, once the transition to SaaS is accomplished, the upgrading of Composer (including [✂]) can take place more incrementally. This again reduces the risk and disruption to WMP customers, compared to making those changes on-premise.

The Transaction will also provide GBST customers with access to enhanced functionality

5.10 The Transaction will enable enhanced functionality to be introduced to GBST's existing Composer platform, including functionality currently offered by FNZ's solutions.[43] For instance, FNZ offers sophisticated personalised investment solutions technology [✂]. FNZ also has significant incremental capability in supporting automated reconciliations (FNZ T-Rex), automated SWIFT payments, UK equity execution and CREST clearing, all of which significantly lower operational costs and risks for customers.

5.11 Further, the Transaction will give GBST customers the option of transitioning to PaaS solutions should they wish to acquire a PaaS solution, and consider FNZ's proposition competitive in light of the range of other options available.[44]

Benefits for GBST's customers will not come at the expense of lost competition

5.12 As explained in section 2 above, competition between FNZ (including JHC) and GBST was very limited pre-Transaction. The Transaction does not, therefore, remove an important alternative for GBST customers that wish to retain a software-only model. Such customers will continue to be able to choose between numerous providers, including Bravura, Temenos, IRESS, Avaloq, SS&C and TCSBaNCS.

5.13 As explained above, FNZ believes that the Transaction will *improve* the current software-only solution provided to GBST customers by facilitating an efficient and less disruptive migration to SaaS. This will deliver benefits to GBST's customers, without affecting the range of competitive alternatives available to them.

5.14 If, absent the Transaction, GBST's customers decided to migrate to PaaS in the future, GBST would not have been able to credibly serve their requirements (either by itself or in partnership with Equiniti or an alternative BPO provider). Following the Transaction, any such customers would continue to have the same range of options for obtaining a PaaS solution from FNZ's rivals, while at the same time gaining a [✂] option to switch to a PaaS solution from FNZ. FNZ will need to offer competitive terms to secure this business. The Transaction therefore offers real benefits without negatively affecting any competition to provide GBST customers with a PaaS solution.

[43] See section 8 of the Initial Submission.

[44] See section 5 of FNZ's Initial Submission.