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

Summary of provisional findings

Notified: 5 August 2020

Introduction

1. The Competition and Markets Authority (CMA) has provisionally found that the completed acquisition by FNZ (Australia) Bidco Pty Ltd (FNZ) of GBST Holdings Limited (GBST) (the Merger) has resulted, or may be expected to result, in a substantial lessening of competition (SLC), as a result of horizonal unilateral effects, in the supply of Retail Platform Solutions in the UK.

2. We invite any parties to make representations to us on these provisional findings by no later than 17.00hrs BST on 25 August 2020. Parties should refer to the notice of provisional findings for details of how to do this.

3. Alongside these provisional findings, we have published a notice of possible remedies, which sets out the CMA's initial views on the measures that might be required to remedy the SLC that we have provisionally found. We invite parties to make representations on these initial views by 17.00hrs BST on 18 August 2020.

Background

The reference

4. On 8 April 2020, the CMA, in exercise of its duty under section 22(1) of the Act referred the Merger of FNZ with GBST for further investigation and report by a group of CMA panel members (the Inquiry Group).

5. In exercise of its duty under section 35(1) of the Enterprise Act 2002 ('the Act'), the CMA must decide:

   (a) whether a relevant merger situation has been created; and

(b) if so, whether the creation of that situation has resulted, or may be expected to result, in an SLC within any market or markets in the United Kingdom for goods or services.

6. We are required to prepare and publish a final report by 22 September 2020.

The Parties and transaction

7. FNZ is a global wealth management technology and investment administration services firm, set up in 2003 and headquartered in London since 2005.

8. In the UK, FNZ is active in the supply of technology solutions, including: software to support pension and investment administration; software to support trade settlement and clearing services; transaction processing and custody services. These solutions enable its customers to provide investment management platforms, either directly to consumers or via financial advisers and employers.

9. GBST is a company headquartered in Brisbane, Australia, which was listed on the Australian Stock Exchange before being acquired by FNZ.

10. GBST is a financial technology company which provides software to support pension administration, investment management and stockbroking.

11. GBST has two main activities in the UK:

(a) An investment management solutions business that provides software to investment platforms to support the provision of pensions administration and investment management services to consumers; and

(b) a capital markets solutions business that provides software to stockbroking firms to enable the settlement and clearing of trades in listed securities and margin lending.

12. On 5 November 2019, FNZ acquired the whole issued share capital of GBST via a scheme of arrangement in which all GBST shares were transferred to FNZ. In this document and in this inquiry, the CMA will refer to FNZ and GBST collectively as the Parties and the post-merger business as the Merged Entity.

13. Prior to its acquisition by FNZ, GBST had been engaging in negotiations with two other parties regarding a potential sale: it had received bids from Bravura Solutions (Bravura) and SS&C Technologies (SS&C).

Industry background

14. The Parties are both active in the UK in the supply of Platform Solutions to Investment Platforms in the investment management sector.

15. Investment Platforms enable investors and their advisers to invest in a range of financial products. They provide services such as financial and investment advice, asset management, accounting, tax services, and retirement planning to manage a customer's investments. Products available on these Platforms include tax-efficient investments (known as tax wrappers in investment management) such as Individual Savings Accounts (ISAs) and Self Invested Personal Pensions (SIPPs). Investment Platform providers include UK and global banks, insurers, asset managers and wealth managers.

16. Platform Solutions are the software and services which enable Investment Platforms.

17. Investment Platforms source Platform Solutions using a range of delivery models, including:

    (a) A software-only Platform Solution sourced from a third party which the customer combines with in-house servicing or servicing from another third party;

    (b) an integrated software and servicing Platform Solution from a single third-party provider or a partnership of third-party suppliers (known as a Combined Platform Solution); or

    (c) software and servicing provided in-house (an in-house solution).

Provisional findings

Relevant merger situation

18. We have provisionally found that the Merger has resulted in the creation of a relevant merger situation because it has resulted in the Parties' enterprises ceasing to be distinct, and as a result, having a combined share of supply of at least 25% in the supply of Retail Platform Solutions in the UK.

19. We are therefore required by section 35(1) of the Act to decide whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.

Market definition

20. Market definition provides a framework for assessing the competitive effects of the Merger.

21. We considered the product market for Investment Platform solutions in terms of delivery model, the type of Investment Platform and the role of in-house supply of software and servicing.

22. We found that, while some Investment Platforms have already decided on a particular delivery model at the start of a tender process, a significant proportion have not and continue to consider different models at the later stages of a tender (including at the commercial negotiation stages). In our view, this shows that suppliers of Software-only Solutions and Combined Platform Solutions compete against each other and that these different delivery models are part of the same product market.

23. We considered whether different types of Investment Platforms had different requirements for Platform Solutions. We looked at those that typically serve high volumes of customers and are primarily focused in the mass affluent part of the market (which we term Retail Platforms) and stockbroker platforms, private client investment platforms and private banks which tend to deal with more bespoke wealth planning (which we term Non-Retail Platforms).

24. We have found that significant differences between Retail and Non-Retail Platforms and their Platform Solution requirements remain, notwithstanding some relatively recent convergence between the two types of platforms. We have found that Suppliers of Platform Solutions are typically focused on specific types of Investment Platforms and Suppliers of Non-Retail Platform Solution usually do not and cannot compete closely with those serving Retail Platforms.

25. We have found that Retail Platforms consider developing software in-house to be challenging, but that they are more open to self-supply of servicing. In-house delivery of software does not appear to offer any competitive constraint on the suppliers of Platform Solutions.

26. We have provisionally concluded that the relevant product market is the supply of Retail Platform Solutions, excluding the in-house supply of software (but including in-house supply of servicing). We consider competition from Suppliers of Non-Retail Platform Solutions and the provision of in-house software as out of market constraints.

27. We considered the relevant geographic market and found that suppliers of Retail Platform Solutions must meet specific and complex tax and regulatory requirements in the UK (and in other countries).

28. Suppliers of Retail Platform Solutions cannot easily and quickly enter into a new country, given the need to adapt to different regulatory requirements and tax treatment of investments, as well as the importance of experience and reputation in serving customers in a particular jurisdiction.

29. Accordingly, we have provisionally concluded that the relevant geographic market for the supply of Retail Platform Solutions excluding in-house software is the UK. We consider competition from outside of the UK, to the extent relevant as an out of market constraint within our competitive assessment.

Competitive effects

The counterfactual

30. In order to assess the effects of a merger on competition, we consider the prospects for competition with the merger against what would have been the competitive situation without the merger: the counterfactual.

31. Prior to its acquisition by FNZ, GBST had been engaged in negotiation with two other parties regarding a potential sale. GBST had received bids from Bravura and SS&C.

32. Our provisional view is that, absent FNZ's bid being accepted, it is likely SS&C would have attempted to acquire GBST. However, we consider that there are some material uncertainties linked to SS&C's potential acquisition of GBST, the residual uncertainty around the completion of an acquisition and the prima facie competition concerns that this potential acquisition would have raised. We also note that GBST had not committed to sell the business and that the evidence on GBST's financial position indicates that GBST remaining under independent ownership was a plausible outcome.

33. As a result, we do not consider that an acquisition of GBST by SS&C to be an appropriate counterfactual for the purposes of assessing this merger. Nor do we consider acquisition by another party to represent a likely counterfactual.

34. Our provisional view is that the appropriate counterfactual is the conditions of competition prevailing prior to the contemplation of the Merger, with GBST in independent ownership.

Competitive assessment

35. We have assessed whether the Merger has removed a competitor from the Retail Platform Solutions market which previously provided a significant competitive constraint, and whether it gives the Merged Entity the ability and/or incentive to worsen or not improve its offering as much as it would absent the Merger. This is a 'horizontal unilateral effects' theory of harm.

36. We have considered how closely the Parties compete with one another and the effect of the removal of the constraint that the Parties place on each other. As part of this assessment, we have considered the competitive constraints on the Parties from other suppliers, including those from outside of the relevant market.

- *Shares of supply*

37. Shares of supply may not fully capture the closeness of competition between the Parties and other suppliers because the relevant market is a bidding market. However, alongside other evidence, we consider that shares provide a useful indicator of the relative size of each Party and other suppliers in the market, based on their current customer base and success in having won these customers through competitive tenders.

38. We have found that FNZ and GBST are two of the four largest suppliers (and that these four suppliers account for the vast majority of the market). As a result of the Merger, the Merged Entity would be, by far, the largest supplier in the market, accounting for almost half of the UK market and being twice the size of the next largest supplier, Bravura.

- *Closeness of competition*

39. We have assessed how closely the Parties compete with each other, relative to other competitors. Generally, the closer two firms are, the stronger their competitive constraint is on each other. The loss of these constraints, as a result of the Merger, could give the Merged Entity the ability and/or incentive to deteriorate its offering.

40. Our assessment is based on submissions from the Parties and from third parties, analysis of recent tenders since 2016 and a review of the Parties' internal documents.

41. FNZ submitted that the Parties do not compete closely due to their different delivery models and GBST's competitive position, notwithstanding GBST's partnership with Equiniti to supply a Combined Platform Solution and FNZ's

acquisition of Software-only Solutions supplier, JHC, in 2019. FNZ told us that it does not compete against GBST in many tenders and has only lost one small tender to it in the past ten years.

42. Third party views varied on how closely FNZ and GBST compete, but most third parties considered FNZ and GBST to be close competitors in the supply of Retail Platform Solutions.

43. Our analysis of tender data since 2016 showed that the Parties overlapped in a significant proportion of Retail Platform tenders, including at the final stages of some tenders. We found that no other supplier overlapped with the Parties as frequently as the Parties did with each other at the final stage of these tenders. Qualitative evidence also showed that customers tendering for a supplier considered the Parties' solutions as alternatives.

44. The Parties' internal documents, to the extent that they provide insight into competitive conditions, consistently characterise FNZ and GBST as two of a limited number of significant suppliers of Retail Platform Solutions and highlight a significant degree of competitive interaction between the Parties.

45. On the basis of the findings set out above, we have provisionally concluded that FNZ and GBST compete closely against each other in the supply of Retail Platform Solutions.

- *Competitive constraints from alternatives*

46. We assessed the competitive constraint imposed by other suppliers, including out-of-market constraints, using the same evidence as we used to assess closeness of competition. We have found that Bravura is the only supplier that imposes a competitive constraint of similar strength on each of the Parties to that exerted by the other merging Party. Other suppliers, including SEI and SS&C, exert a limited constraint on each of the Parties.

47. We also considered constraints from smaller suppliers, from suppliers that are more active in the supply of Platform Solutions to Non-Retail Platforms and from in-house solutions. We have provisionally found that they offer a weak constraint, both individually and collectively.

- *Switching costs*

48. We assessed the costs to customers which switch supplier of Retail Platform Solutions, including financial costs, risks and time costs. High switching costs may weaken the bargaining position of customers and make them more insensitive to changes in the price, quality or service levels.

49. We found that switching costs vary across customers and that customers do switch. But in general, we have found that switching is expensive and typically only undertaken when there is a substantial change needed, such as moving from a legacy system or the business is facing significant changes (such as a merger or significant growth).

50. We have provisionally found that switching is complex, risky, lengthy, and expensive.

- *Benchmarking and other contractual arrangements*

51. Our provisional view is that in principle and practice, contractual arrangements would not serve to protect customers following a reduction in rivalry caused by the Merger.

52. Moreover, benchmarking arrangements are not used widely in this market and there are limitations in their effectiveness.

53. We therefore consider that the Merged Entity would not be prevented from deteriorating its offer due to benchmarking and other contractual provisions.

- *Competition in relation to product development*

54. When a horizontal merger takes place, a potential concern is whether it could have a negative impact on the Merged Entity's incentives to, for example, lower prices and/or raise quality. Product development is a key competitive factor in this market, so we have considered whether the Merger could have a negative impact on the Merged Entity's incentives to invest in the quality and development of its products.

55. The Merger will remove the rivalry between GBST and FNZ and any future product development will be subject to reduced incentives to innovate resulting from the loss of this rivalry.

56. We have provisionally found that the Merged Entity will have less incentive to undertake product development and /or its product development will generate substantially less competitive tension in the market than the Parties would have created absent the Merger and is likely to worsen outcomes for customers.

Our provisional conclusion

57. We have provisionally found that, subject to our findings on Countervailing Factors, the Merger has resulted, or may be expected to result, in a SLC in the market for the supply of Retail Platform Solutions in the UK.

Countervailing factors

58. We have considered whether there are any factors that may mitigate the effect of the Merger on competition: these are countervailing factors.

Entry and expansion

59. We have considered whether there may be entry from new suppliers into the market or expansion by existing suppliers which might be timely, likely and sufficient to counteract the effects of the Merger.

60. We have found that potential entry from suppliers of Non-Retail Platform Solutions is unlikely, based on evidence from those suppliers. We have seen some evidence of expansion by smaller firms in recent years. However, this expansion has been limited in nature and would not, either individually or collectively, be of sufficient scale to constrain the Merged Entity and protect customers from the SLC .

61. We have provisionally concluded that entry or expansion would not be timely, likely and sufficient to outweigh the SLC.

Buyer power

62. In some circumstances, a customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices: this is countervailing buyer power.

63. We have found that customers can generate competitive tension through their tender processes, and this may include using tenders to get better terms from their incumbent supplier. We also found that larger customers may have more bargaining power than smaller customers.

64. However, other evidence indicates that this does not equate to countervailing buyer power over the Merged Entity. We found that Retail Platforms do not readily switch suppliers due to high switching costs and that they face a limited choice of credible suppliers which reduces their negotiating power.

65. After the Merger, customers will have will have lost one of the few major suppliers which could credibly provide an alternative and consequently will have reduced negotiating leverage with their supplier. We consider, therefore, that the Parties, after the Merger, are unlikely to be prevented from worsening their offer by their customers’ negotiating strength.

Rivalry-enhancing efficiencies

66. FNZ has not currently demonstrated that the Merger would result in rivalry-enhancing efficiencies which would off-set the adverse effects of the Merger on competition.

Our provisional conclusion

67. We have provisionally concluded that there are no countervailing factors which would offset the adverse effects of the Merger on competition.

Provisional conclusion

68. We have provisionally found that the Merger of FNZ with GBST has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in the supply of Retail Platform Solutions excluding the in-house supply of software in the UK.

69. We invite any parties to make representations to us on these provisional findings by no later than 17.00hrs BST, on 25 August 2020. Parties should refer to the notice of provisional findings for details of how to do this.

70. Please note that, due to the COVID-19 outbreak, the CMA's offices are closed. We are not able to accept delivery of any documents or correspondence by post or courier to our offices.