Competition & Markets Authority

Completed acquisition by FNZ of GBST

Provisional findings report

Notified: 5 August 2020

The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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Summary

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.

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 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.

Provisional findings

1. The reference

1.1 On 8 April 2020, the CMA, in exercise of its duty under section 22(1) of the Act referred the completed acquisition by FNZ (Australia) Bidco Pty Ltd (FNZ) of GBST Holdings Limited (GBST) (the Merger) for further investigation and report by a group of CMA panel members (the Inquiry Group).

1.2 In exercise of its duty under section 35(1) of 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 a substantial lessening of competition (SLC) within any market or markets in the United Kingdom for goods or services.

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

1.4 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A.

1.5 This document, together with its appendices, constitutes the Inquiry Group's provisional findings published and notified to FNZ and GBST in line with the CMA's rules of procedure.[1] Further information can be found on our webpage.

2. The parties the merger and its rationale

2.1 This chapter sets out the background to the completed acquisition by FNZ of GBST, including the rationale for the Merger and details of the transaction.

[1] Rules of procedure for merger, market and special reference groups (CMA17), paragraphs 11.1 to 11.7.

FNZ

Background

2.2 FNZ is a global wealth management technology and investment administration services firm, established in 2003 and headquartered in London since 2005.[2,3]

2.3 The FNZ group is made up of a number of wholly owned subsidiaries. One of these, FNZ (Australia) Bidco Pty Ltd, acquired GBST. FNZ (UK) Limited is a wholly owned subsidiary of Kiwi UK Holdco 2 Limited. The ultimate parent company is Falcon Newco Limited,[4] with the ultimate controlling party being Kiwi Holdco CayCo. These latter three entities are all exempted limited companies formed under the laws of the Cayman Islands.[5]

2.4 In the UK, FNZ is active in the supply of technology solutions, including both software to support pension and investment administration and software to support trade settlement and clearing services, as well as 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.

2.5 FNZ provides Platform Solutions using a Combined Platform Solutions model, under which it combines servicing and software. Under this model, FNZ takes responsibility for delivery of services to the customer's internal and external-facing functions.

2.6 In August 2019, FNZ acquired JHC Systems Limited (JHC), a technology supplier offering software solutions to wealth managers and platform providers, principally in the UK.[6]

Financial information

2.7 In the financial year to 31 December 2018, FNZ had worldwide turnover of £[✂], of which £126.8 million (or [✂]%) was generated in the UK.[7] Table 1

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[2] FNZ submitted that each of Caisse de dépôt et placement du Québec (CDPQ) and Generation Investment Management LLP (GIM) [✂]. Neither CDQP nor GIM have any overlapping activities with GBST in the UK (except via FNZ).
[3] [✂]
[4] [✂]
[5] FNZ (UK) Ltd Financial statements 2018, publicly available on Companies House
[6] JHC's established software solutions include JHC Figaro, JHC Neon, JHC Xenon and JHC Digitize (a consultancy service).
[7] [✂]

below shows FNZ's UK revenue and profits for the period 2014 to 2018 inclusive.

Table 1: FNZ UK: revenue and profits 2014 to 2018[8]

	2014	2015	2016	2017	2018
Revenue (£m)	[✂]	[✂]	[✂]	[✂]	[✂]
Profit for the year (£m)	[✂]	[✂]	[✂]	[✂]	[✂]

Source: FNZ UK Financial Statements, publicly available at Companies House

2.8 FNZ profits decreased from £20.7m in 2017 to £11.1m in 2018. FNZ has attributed this to an [✂].[9]

GBST

Background

2.9 GBST Holdings Limited (GBST), is a company headquartered in Brisbane, Queensland, Australia which was listed on the Australian Stock Exchange (ASX) before being acquired by FNZ. GBST is a financial technology company which provides software to support pension administration, wealth management and stockbroking.

2.10 In the UK, GBST operates through four entities, GBST Ltd, GBST Hosting Ltd, GBST Wealth Management Ltd and GBST UK Holdings Limited. GBST UK Holdings Limited is the immediate parent company of GBST Wealth Management Ltd and GBST Hosting Ltd. GBST Holdings Ltd (an Australian entity) is the immediate parent company of GBST Ltd. GBST also has subsidiaries in Australia, Hong Kong, Singapore and the United States of America.[10]

2.11 In the UK, GBST is active in the supply of software to investment management platforms to support pension and investment administration, and of software to support trade settlement and clearing services. Unlike FNZ, GBST does not provide BPO services.

2.12 GBST formed a partnership with services provider Equiniti in 2018 in order to provide Combined Platform Solutions to Retail Platforms. At the time of the Merger ✂.

[8] Audited figures for 2019 are not currently available but will likely become available during the course of our investigation.
[9] [✂]
[10] GBST 2019 Annual Report.

Financial information

2.13 In the year to 30 June 2019, GBST had worldwide turnover of £[✂], of which £[✂] (40-50%) was generated in the UK.[11] The GBST 2019 full year accounts show a growth in revenue of 7%, a marginal increase in EBITDA, before a major 'strategic R&D programme' (which is considered in detail later in this Report).[12]

The rationale for the merger

2.14 On 5 November 2019, FNZ acquired, via its indirectly wholly owned subsidiary, FNZ (Australia) Bidco Pty Ltd, the whole issued share capital of GBST.

2.15 We set out below the evidence on the rationale for the Merger, from the perspective of both Parties.

FNZ rationale

2.16 We looked at FNZ's rationale for the Merger as submitted to the CMA and as set out in its internal documents.

2.17 FNZ submitted that the main strategic rationale for the Merger is to [✂].[13]

2.18 FNZ also submitted that, in the UK, the Merger will give GBST's customers the opportunity to substantially lower their cost structure by transitioning from an on-site software model to a Combined Platform Solutions model.[14] FNZ submitted that, while it intends to retain and invest in GBST's core Composer software, the offer to transfer from software to outsourced services would be made available to all of GBST's current customers.[15] [16]

2.19 FNZ stated that it will invest 'AUD$ [✂] into genuine R&D that will lead to enhanced functionality and better outcomes for customers'.17 FNZ stated this was [✂].[17]

2.20 FNZ went on to specify that the AUD$ [✂] budget would be used to:[18]

[11] [✂]
[12] GBST 2019 Annual Report.
[13] [✂]
[14] [✂]
[15] [✂]
[16] [✂]
[17] [✂]
[18] [✂]

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

(b) add enhanced functionality to GBST’s existing Composer platform to meet customer requirements;

(c) enable the optional transition from on-premise software to software as a service (SaaS), which has widespread support from a number of GBST’s UK customers; and

(d) complete the [✂] as contemplated in the Evolve programme, albeit more incrementally than proposed by GBST, so as to [✂].

2.21 Our review of FNZ internal documents shows that they support the rationale FNZ submitted to us.[19]

(a) FNZ noted that (GBST’s) [✂].[20] Further, it noted that [✂].[21]

(b) FNZ went on to state that there would be a [✂]’[22] and said [✂].[23]

2.22 FNZ also set out expected cost synergies, noting [✂]and [✂] as the main contributors to this.

2.23 In our view, this evidence indicates that FNZ intended to [✂]. We discuss the impact of FNZ’s plans for investment in GBST [✂] further in chapter 7, Product development section in the Competitive Assessment at Chapter 7.[24]

GBST rationale

2.24 GBST had not been contemplating the sale of the business before it received an unsolicited bid from Bravura in April 2019. This started a bidding process including SS&C and FNZ, which ultimately resulted in FNZ’s acquisition of GBST.

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19 [✂]
20 [✂]
21 [✂]
22 [✂]
23 [✂]
24[✂]

The transaction

2.25 On 5 November 2019, FNZ acquired, via its indirectly wholly owned subsidiary, FNZ (Australia) Bidco Pty Ltd, the whole issued share capital of GBST.

2.26 The Merger was structured via a scheme of arrangement (the 'Scheme') in which all GBST shares were transferred to FNZ Australia (Bidco) Pty Ltd. The binding Scheme Implementation Deed between GBST and Kiwi HoldCo CayCo, Ltd was entered into on the 29 July 2019. Implementation was subject to conditions including obtaining votes from a majority of GBST shareholders in favour and court approval. The Scheme was approved by GBST shareholders on 14 October 2019 and by the Supreme Court of New South Wales on 18 October 2019.[25]

2.27 The consideration paid for the share capital of GBST was agreed as 'approximately AUD$268.1 million, reflecting a price of AUD$3.85 per share, of which AUD$0.35 per share took the form of a special dividend paid by GBST'.[26]

Events leading up to the Merger

2.28 Prior to FNZ's acquisition of GBST, GBST had been engaging in negotiations with two other parties regarding a potential sale of GBST. GBST received bids from Bravura Solutions ('Bravura') and SS&C Technologies ('SS&C').[27]

2.29 In April 2019, Bravura made the initial, unsolicited bid for the acquisition of GBST, following which SS&C and FNZ entered the bidding process. These bids and the timeline of events are explained in more detail in the following paragraphs.

2.30 Figure 1 below shows a timeline of the bids received by GBST from Bravura, SS&C and FNZ, resulting in the final, binding, offer from FNZ on 29 July 2019.

Figure 1: Timeline of proposals for GBST, 2019.

Initial Bravura offer: A$2.5	Updated Bravura offer A$2.72	Bravura final offer A$3	SS&C offer A$3.25		SS&C updated offer A$3.60		Updated FNZ offer A$4		Updated FNZ offer A$3.90	
12 April >	**19 June >**	**27 June >**	**28 June >**	**1 July >**	**2 July >**	**5 July >**	**24 July >**	**25 July >**	**26 July >**	**29 July**
			FNZ initial	Updated FNZ		Updated FNZ		Updated FNZ		FNZ entered into

25 [✂]
26 [✂]
27 [✂]

offer A$3.15	offer A$3.50	offer A$3.65	offer A$3.95	binding offer A$3.85

Source: CMA Analysis

2.31 FNZ has submitted that the following were the main events leading up to its final offer for GBST: [28]

(a) Following Bravura's offer on 19 June, the GBST Board and its advisers agreed to conduct a confidential tender process and invited selected parties to submit non-binding indicative proposals.

(b) On 26 June, GBST communicated a range of key criteria for proposals to interested parties in the GBST tender process (the 'GBST Tender Process Participants'). Those parties were invited to submit non-binding indicative proposals by 3 July.

(c) Following Bravura's offer on 27 June, GBST Tender Process Participants were contacted and encouraged to submit proposals by 28 June.

(d) On 28 June, both SS&C and FNZ expressed confidential and non-binding interest in acquiring GBST.

(e) Following receipt of both proposals, GBST announced on 28 June that the Board had decided not to enter into further discussions with Bravura given the other offers received were higher than Bravura's.

(f) On 1 July, GBST announced that SS&C had secured exclusive due diligence in connection[29] with its proposal. FNZ then submitted its second bid.

(g) On 2 July, SS&C submitted an updated indicative proposal.

(h) On 5 July, during the period that SS&C had secured exclusive due diligence with GBST, FNZ submitted its third indicative proposal.

(i) Between 24 and 29 July FNZ submitted four further proposals, of decreasing value.

[28] [✂]
[29] [✂]

(j) On 29 July GBST announced that GBST and FNZ had entered into a binding Scheme Implementation Deed for 100% of the shares in GBST. The Scheme was not subject to financing or due diligence.[30]

FNZ valuation

2.32 FNZ told us that the [✂][31] and that the [✂] can be explained due to [✂] of GBST, and that investment was needed in it and some [✂].'[32]

2.33 Internal documents show that FNZ valued GBST [✂].

(a) The [✂] analysis showed that GBST had a market capitalisation of [✂].[33]

(b) [✂].

(c) [✂].[34] [35]

2.34 [✂].

2.35 FNZ's final, accepted offer of AUD$3.85 was [✂].

GBST valuations

2.36 A valuation of GBST by [✂]. [36]

2.37 We note that this is [✂].

2.38 A separate, sum-of-the-parts valuation[37] [✂] the final offer price of AUD$3.85.

3. Relevant merger situation

3.1 In accordance with section 35 of the Act and pursuant to our terms of reference (see Appendix A), we are required to investigate and report on two statutory questions:

(a) Whether a relevant merger situation (RMS) has been created; and

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[30] [✂]
[31] [✂]
[32] [✂]
[33] [✂]
[34] [✂]
[35] [✂]
[36] [✂]
[37] The sum-of-the-parts valuation is a process of valuing a company by determining what its aggregate divisions would be worth if they were spun off or acquired by another company. They are the summed to arrive at a single total enterprise value. Finally, the equity value is derived by adjusting for the company's net debt and other non-operating assets and expenses.

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

3.2 We address the first of the statutory questions in this section.

Enterprises ceasing to be distinct

3.3 A relevant merger situation will be created if, as a result of the Merger, two or more enterprises cease to be distinct within the statutory period for reference and the turnover test and/or the share of supply test is satisfied.[38]

3.4 The Act defines an 'enterprise' as 'the activities or part of the activities of a business'.[39] A 'business' is defined as including 'a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge'.[40]

3.5 Both FNZ and GBST are active in the supply of software and/or servicing to Investment Platforms with a mainstream retail proposition in the UK (Retail Platform Solutions). We are therefore satisfied that FNZ and GBST is each a 'business' within the meaning of the Act and that, accordingly, the activities of FNZ and GBST are 'enterprises' for the purposes of the Act.

3.6 The Act provides that two enterprises cease to be distinct if they are brought under common ownership or common control.[41] FNZ, through a wholly owned subsidiary, acquired the entire issued share capital of GBST. Both enterprises are under the common ownership and control of FNZ. We are therefore satisfied the enterprises have 'ceased to be distinct' purposes of the Act.

3.7 The Act requires that the enterprises must have ceased to be distinct within either not more than four months before the date on which the reference is made or, where the merger took place without having been made public and without the CMA being informed of it, four months from the earlier of the time that material facts are made public or the time the CMA is told of material facts.[42] The four-month period may be extended under section 25 of the Act.

3.8 The Merger completed on 5 November 2019 and was made public on the same date.[43] The four-month deadline for a reference was extended twice in

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[38] Section 23 of the Act.
[39] Section 129(1) of the Act.
[40] Section 129(1) and (3) of the Act.
[41] Section 26 of the Act.
[42] Section 24 of the Act.
[43] [✂]

accordance with section 25(2) of the Act with the last extension ending on 14 April 2020.[44] The reference was made on 8 April 2020. We are satisfied that the enterprises ceased to be distinct within the four-month period allowed by the Act.

Jurisdiction test

3.9 The second element of the relevant merger situation test seeks to establish a sufficient nexus with the UK on a turnover and/or share of supply basis.

3.10 The turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million. The turnover of GBST in the UK in its last financial year prior to the Merger was £20-30 million. The turnover test is therefore not met, and we are required to consider whether the share of supply test is met.

3.11 The share of supply test is satisfied where, as a result of enterprises ceasing to be distinct, the following condition prevails or prevails to a greater extent: at least one quarter of goods or services of any description which are supplied in the UK, or in a substantial part of the UK, are supplied either by or to one and the same person.[45] The requirement that the condition prevails or prevails to a greater extent means that the Merger must result in the *creation of* or *increase in* a share of supply of goods or services of a particular description and the resulting share must be 25% or more.

3.12 The description of goods or services identified for the purposes of the share of supply test does not have to correspond with the economic market definition adopted for the purposes of determining the SLC question. We will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met. Importantly however, the parties must together supply or acquire the same category of goods or services.[46]

The Parties' view

3.13 FNZ submitted that the share of supply test, based on “the narrowest plausible product market of wealth management platform solutions in the UK

[44] There were two extensions in Phase 1. On 14 January 2020 the 4 month period was extended to 2 April 2020 and on 10 February 2020 the four month period was extended to 14 April 2020.
[45] Section 23(2), (3) and (4) of the Act. The reference to supply ‘by’ or ‘to’ one and the same person catches aggregations with regard to the supply or purchase of goods or services. The test is also met where at least one quarter of the goods or services is supplied by the persons by whom the enterprises concerned are carried on, or are supplied to or for those persons.
[46] Mergers Guidance on the CMA's Jurisdiction and Procedure (CMA2), paragraph 4.56.

on the basis of recurring revenue,”[47] was not met but was met on an estimated combined share of supply of wealth management platform solutions for advised platforms in the UK on an assets under administration (AUA) basis.[48] FNZ also submitted that the test was met on a combined share of supply of Platform Solutions to customers excluding private banks in the UK on an AUA-basis.[49]

3.14 FNZ submitted that estimating shares of supply on an AUA-basis would lead to the shares of software-only suppliers being likely to be ‘overstated as a result of double counting’.[50] FNZ submitted that estimated shares of recurring revenue would provide a more reliable indicator of shares of supply. However, it provided its own estimates based on available AUA.[51]

3.15 FNZ made no further submissions on shares of supply in relation to the RMS. We consider its submissions in relation to the approach to defining an economic product market in Market Definition at Chapter 6.

Our view

3.16 The Act provides us with a wide discretion in describing the relevant goods or services for the purposes of determining share of supply. We are not required to undertake a substantive economic assessment but are required to have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met.[52]

3.17 Both Parties are active in the supply of Retail Platform Solutions, namely, software and/or servicing to investment platforms with a mainstream retail proposition. We are of the view that, for the purposes of establishing jurisdiction, it is reasonable to adopt the description of Retail Platform Solutions as the basis on which to determine share of supply as this is a broad description which encompasses the services offered by the Parties.

3.18 We considered the use of AUA as a reasonable basis on which to calculate shares of supply because these figures are publicly available and require no further modification or assumptions. We note that AUA can fluctuate over a

[47] [✂].
[48] [✂].
[49] [✂].
[50] [✂] FNZ also submitted that there were other limitations: (i) AUA shares are likely to distort analysis of the Parties’ combined shares, insofar as there are any existing overlaps in their customer bases; and (ii) the revenue bases of software-only, BPO and PaaS solutions providers are different ([✂]).
[51] [✂].
[52] Mergers: Guidance on the CMA’s jurisdiction and procedure, paragraph 4.56.

period, but we consider that using AUA as the basis for the share of supply calculations is the best available option.

3.19 The recurring revenue basis suggested by FNZ also has limitations and involves estimation based on AUA which is in our view inherently less accurate. We note FNZ's concern regarding double counting, but we do not regard this as a barrier to using AUA. We have mitigated the risk of double-counting by counting each supplier's share separately, according to whether it is in partnership or supplying alone.

3.20 We have not received any other submissions contesting AUA as a reasonable basis on which to calculate share of supply for determining if an RMS has been created.

3.21 The Parties overlap in the supply of Retail Platform Solutions in the UK We have provisionally found that as a result of the Merger the combined share of the supply of the Parties, on the basis of AUA is [40-50%] with the Merger accounting for an increment of [10-20%].[53] We are therefore satisfied that the share of supply test in section 23 of the Act is met

Provisional conclusion on the relevant merger situation

3.22 In the light of the above, we have provisionally concluded that the Merger has resulted in the creation of a RMS. As a result, we must consider 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.

4. Industry background

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

4.2 Investment Platforms enable consumers and their advisers to invest in a range of financial products, including tax wrappers such as Individual Savings Accounts (ISAs) and Self Invested Personal Pensions (SIPPs).[54] They may provide investment advice, asset management, accounting, tax services, and retirement planning.

4.3 Platforms are used to invest money in a range of products, including funds, shares, bonds, structured products and other securities, from different asset

[53] See paragraph 44 and **Table 1** of the CMA phase 1 decision
[54] A tax wrapper is a tax break that an investor can 'wrap' around their investment so that they are sheltered from paying tax on some or all of it. The most common tax wrappers are ISAs and pensions.

managers and hold them together in one account. They typically offer a range of services, which enable the investor or intermediary to see and analyse an overall portfolio of investments.[55]

4.4 Providers of Investment Platform include UK and global banks, insurers, asset managers and wealth managers.[56]

4.5 FNZ is active in the UK in the supply of software and transaction processing and custody services to Investment Platforms. GBST is active in the UK in the supply of software to Investment Platforms, and software to support trade settlement and clearing services for investment banks.

4.6 All Investment Platform operators need to combine the two components of a Platform Solution – software and servicing.[57] The Parties have submitted that platform software and investment transaction[58] and custody services[59] are two of the elements of a Platform Solution that may be outsourced by Investment Platform operators.[60]

4.7 Platform Solutions usually serve both front and back office: front office services are customer-facing, such as websites and reporting; back office services are non-customer facing.

4.8 Platform Solutions may have 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;[61]

(b) A Combined Platform Solution, including both software and servicing. Generally provided by one supplier where it may be known as a "Platform-as-a-Service solution (PaaS)” or from separate third-party software and servicing providers; or

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

55 [✂].

56 [✂].

57 Where both components are outsourced, the software and servicing may or may not be provided by the same third party.

58 Investment administration, pension administration, trade execution, asset custody servicing, execution and other back-office administrative functions are FCA regulated activities which require a greater level of human involvement in the process (e.g. to deal with exceptions and problems with trades etc).

59 ‘Transaction and custody services’ is commonly referred to as ‘Servicing’, ‘Administration’ and ‘Business Process Outsourcing’ (BPO), [✂].

60 The other two elements are: asset management services and client services, [✂].

61 The CMA did not receive evidence of any platform providers which use in-house software but outsource their servicing.

4.9 Some Platform Solutions providers, such as those offering custody services, are regulated in the UK by the Financial Conduct Authority (FCA):

(a) FNZ offers a Combined Platform Solution which includes transaction processing and asset custody which require it to be regulated by the FCA;

(b) the solutions provided by GBST do not require it to be regulated.

5. The counterfactual

Introduction

5.1 The counterfactual is an analytical tool used to help answer the question of whether a merger has or may be expected to result in an SLC.[62] It does this by providing the basis for a comparison of the competitive situation on the market with the merger against the likely future competitive situation on the market absent the merger.[63]

5.2 The choice of counterfactual requires a judgement on the likely situation in the absence of the merger. We may examine several possible scenarios, one of which may be the continuation of the pre-merger situation. Where there is more than one possible alternative scenario, we will select the situation most likely to have existed absent the merger.[64]

5.3 When we consider that the choice between two or more scenarios will make a material difference to the competitive assessment, we will carry out additional detailed investigation before reaching a conclusion on the appropriate counterfactual.[65]

5.4 We incorporate into the counterfactual only those aspects of scenarios that appear likely based on the facts available to us and the extent of our ability to foresee future developments.[66] The foreseeable period can sometimes be relatively short.[67] However, even if an event or its consequences are not sufficiently certain to include in the counterfactual, we may consider it in the context of the competitive assessment.[68] We seek to avoid importing into the assessment of the appropriate counterfactual any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those

[62] MAGs, paragraph 4.3.1.
[63] MAGs, paragraphs 4.3.1 and 4.3.6.
[64] MAGs, paragraph 4.3.6.
[65] MAGs, paragraph 4.3.6.
[66] MAGs, paragraph 4.3.6.
[67] MAGs, paragraph 4.3.6.
[68] MAGs, paragraph 4.3.2.

elements of scenarios that are foreseeable, it will not in general be necessary to make finely balanced judgements about what is and what is not included in the counterfactual.[69]

5.5 Depending on the evidence, the choice of the counterfactual could be a situation either more or less competitive than the competitive conditions prevailing at the time the merger occurred. Therefore, the selection of the appropriate counterfactual may increase or reduce the prospects of finding an SLC.[70]

5.6 In reaching our view on the appropriate counterfactual, we consider what future developments we foresee arising absent the merger based on the totality of facts available to us. Insofar as future events or circumstances are not certain or foreseeable enough to include in the counterfactual, we analyse such events in the assessment of competitive effects.[71]

Views of the Parties and third parties on the counterfactual

5.7 Prior to its acquisition by FNZ, GBST had been engaged in negotiations with two other parties regarding a potential sale and had received bids from Bravura and SS&C:[72]

(a) In April 2019, Bravura made an initial, unsolicited bid for the acquisition of GBST, after which SS&C and FNZ entered the bidding process.

(b) On 29 July 2019, GBST announced that GBST and FNZ had entered into a binding Scheme Implementation Deed for 100% of the shares in GBST, at AUD$3.85 per share.[73]

5.8 More detail about the bidding process is set out in Chapter 2, The Parties, the Merger and its rationale.

5.9 In assessing the counterfactual, we examine the possibility that another party may have acquired GBST, absent the Merger, taking account of the views of the various parties involved in the bidding process.

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[69] MAGs, paragraphs 4.3.2 and 4.3.6.
[70] MAGs, paragraph 4.3.4.
[71] The Guidelines at footnote 39 give one such example of where this may happen, which states that: *"the OFT, In its competitive effects analysis, … might have regard to facts that are insufficient for it to adopt a counterfactual other than the pre-merger conditions (for example, by taking account of the reduced competitive impact of a firm in financial difficulties even though the conditions of the exiting firm scenario are not met)"*.
[72] [✂]
[73] [✂]

Main Party views and evidence

5.10 FNZ and GBST have made separate submissions to the inquiry. We set out each party's view below.

FNZ

5.11 FNZ submitted that the relevant counterfactual was one where an alternative party (currently active in supplying platform solutions for wealth management platforms) acquired GBST.[74] This was on the basis that 'GBST had been engaging in negotiations with a number of other parties regarding a potential sale to one of them' and 'had received expressions of interest from a range of parties over an extended period of time,'[75] including from both Bravura and SS&C.

5.12 FNZ submitted that this outcome was made more plausible due to [✂]; the self-evident interest from both Bravura and SS&C in acquiring GBST; the clear willingness of GBST to entertain bids and the willingness of GBST shareholders to sell the company and the fiduciary duty of its board to maximise shareholder value'.[76]

5.13 FNZ also submitted that a 'plausible alternative counterfactual is that [✂] the GBST [✂].[77] FNZ submitted that GBST's [✂],[78] and that GBST's [✂].[79]

5.14 Further, FNZ submitted that 'GBST [✂].[80] FNZ submitted that GBST [✂][81] that its 'R&D programme [✂] not just FNZ, but the [✂];[82] and that [✂].[83]

5.15 FNZ told us that using pre-Merger conditions of competition as the counterfactual 'underestimates the existing competitive strength of SS&C and, critically, [✂].[84] FNZ also told us that [✂] .[85]

[74] [✂]
[75] [✂]
[76] [✂]
[77] [✂]
[78] [✂]
[79] [✂]
[80] [✂]
[81] [✂]
[82] [✂]
[83] [✂]
[84] [✂]
[85] [✂]

GBST

5.16 GBST submitted that the pre-Merger conditions of competition were the most likely counterfactual to the Merger because:[86]

(a) 'GBST was in a strong and improving financial position in April 2019 when the bidding process commenced and there was no threat to its viability as an independent market participant;

(b) absent an acquisition (whether by FNZ or another bidder) the competitive strength of GBST in the UK market would not have reduced and, in reality, is likely to have increased […]; and

(c) if GBST had been acquired by SS&C, an integrated GBST/SS&C offering would have posed a strong competitive constraint on FNZ in the UK, allowing SS&C to offer clients both software-only/SaaS and PaaS models.

5.17 GBST told us that: 'The bidding process for GBST was a very rocky road spanning close to four months which effectively created a very public bidding war between three of GBST's close competitors.'[87] It noted that 'this competitive tension resulted in the best outcome for GBST's shareholders.'[88]

5.18 GBST told us that: 'Given that FNZ's offer represented a significant premium to the undisturbed share price prior to the first bid and had a high level of certainty of completion, the Board recommended that the shareholders vote in favour'.[89]

5.19 GBST's internal documents indicate that GBST had a strategy for growth and was planning significant investment in its technology, absent the Merger, in order to remain competitive.[90] [91]

5.20 We have found no evidence in GBST's internal documents that indicate that it considered its viability as an independent market participant was uncertain.[92]

[86] [✂]
[87] [✂]
[88] [✂]
[89] [✂]
[90].[✂]
[91] [✂]
[92].[✂]

Third party evidence

5.21 We have reviewed third party evidence on the likelihood that, absent FNZ, SS&C would have acquired GBST and the implications of that.

5.22 Bravura told us that its bid was prompted by GBST's falling share price on the Australian Stock Exchange.,[93] GBST's undisturbed share price[94] was AUD$1.97[95] and the low share price made a potential acquisition attractive.

5.23 Bravura told us that 'it pulled out early on in the bidding process because it was not prepared to pay more than its initial offer (20-30% premium on the total share price). Further, Bravura told us that 'if FNZ and SS&C had not placed bids, then it thought that its bid would have been accepted'.[96]

5.24 Bravura told us that if SS&C had acquired GBST, 'Bravura thinks that it (SS&C) would have quickly established a credible business that would enable clients to take software only as well as software and service. SS&C would have established an offering that could compete with both FNZ and Bravura on a comparable basis for their respective software only and software and service models.'[97]

5.25 Bravura also told us that it believed that 'SS&C wanted to get into the platform space and FNZ may have wanted to keep SS&C out of that market due to its comparable size and business relationships'.[98] Bravura said that 'FNZ dominated the software and service market and might have felt threated by SS&C.'[99]

5.26 SS&C made two offers to acquire GBST. It told us that it was 'surprised and disappointed not to win the acquisition'.[100]

5.27 SS&C told us that 'the valuation of GBST's business needed to reflect the need for a sustained modernisation of Composer' and that its indicative bid of AUD$3.65 per share incorporated these investment requirements. It told us that a 'focus during the time that SS&C was preferred bidder (with access to the data-room) was justifying this indicative bid price in the context of the

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[93] [✂]
[94] The share price prior to any announcement.
[95] [✂]
[96] [✂]
[97] [✂]
[98] [✂]
[99] [✂]
[100] [✂]

investment spend necessary to make Composer fully competitive with Bravura's Sonata system'.[101]

5.28 Internal SS&C documents set out its rationale for acquiring GBST, the opportunities the acquisition presented, SS&C's understanding of GBST's performance and future trends in the UK wealth market.

(a) The internal assessment paper stated that [✂].[102]

(b) The paper noted GBST's performance on the ASX and commented on future trends in the UK wealth market.[103]

(c) An internal briefing paper outlined the main rationale for the acquisition of GBST as follows: [✂].[104]

GBST response to bids

5.29 GBST's public announcements made to the ASX its response to the bids from SS&C and FNZ.

(a) On 28 June, the GBST Board reviewed the first proposals made by both SS&C and FNZ, and 'determined that the proposal received from SS&C was superior to that of FNZ having regard to a range of factors'.

(b) On 1 July, GBST gave SS&C exclusive due diligence.

(c) FNZ provided its second proposal on an unsolicited basis.

(d) On 2 July, this was followed by an 'Updated Indicative Proposal' from SS&C and another announcement from GBST that it 'remained in the best interests of shareholders to allow SS&C to undertake due diligence and to engage further with SS&C in order to determine if a transaction capable of Board recommendation could be developed and put to shareholders'.

(e) On 5 July, GBST received its third indicative proposal from FNZ on an unsolicited basis for AUD$3.65 per share, compared to SS&C's offer of AUD$3.60 on 2 July. Despite the higher offer price from FNZ, GBST concluded that SS&C's proposal was still superior due the scope of its due diligence and other matters.[105]

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101 [✂]
102 [✂]
103 [✂]
104 [✂]
105 [✂]

5.30 As such, SS&C was allowed to undertake due diligence, with the GBST board noting it 'intends to unanimously recommend the Updated Indicative Proposal from SS&C to shareholders in the absence of a superior proposal'.[106]

5.31 This indicates that, absent the competing offer from FNZ, it was likely that SS&C would have sought to conclude the acquisition of GBST. There are two reasons for this.

(a) First, while SS&C was not the only alternative bidder to FNZ, Bravura was outbid early in the process by SS&C as it was not willing to pay as high a price for GBST; and

(b) second, SS&C was well advanced in the purchase process. As can be seen in SS&C's internal documents, it had performed due diligence work and held positive meetings with GBST management. Further, ASX announcements noted that the GBST board was going to recommend SS&C's proposal unanimously to its shareholders, in absence of a superior offer.

5.32 However, we consider that there are some material uncertainties relevant to the assessment of whether the most likely counterfactual is one in which SS&C acquired GBST:

(a) GBST had not committed to a strategy of selling the business, and the evidence relating to GBST's financial position indicates that GBST remaining under independent ownership was a plausible outcome. Notwithstanding the relatively advanced status of negotiations between GBST and SS&C (as described above), the residual uncertainties around the conclusion and execution of a final agreement between SS&C and GBST do not allow us to conclude that a SS&C/GBST merger would be the most likely scenario absent the Merger; and

(b) SS&C is also active in the relevant market and the available evidence indicates that this potential transaction would itself have given rise to *prima facie* competition concerns.[107]

5.33 The available evidence in relation to this question does not allow us to conclude that GBST would be a meaningfully different competitive presence under the ownership of SS&C. As a result of these uncertainties, we do not consider that an acquisition of GBST by SS&C is the most likely counterfactual for the purposes of assessing this merger.

[106] [✂]
[107] MAGs, 4.3.3.

5.34 We considered whether we should specify a sale of GBST to a purchaser other than SS&C as our counterfactual. We took the view that such a scenario is not the most likely counterfactual, for the following reasons:

(a) GBST was not undergoing a distressed sale, so GBST remaining under independent ownership was a plausible outcome.

(b) The other bidder, Bravura, was not as far advanced in a transaction as SS&C; it was offering less; it also operated in the relevant market and so its bid could also have raised *prima facie* competition concerns.

(c) We are not aware of any other bidder that was pursuing the acquisition of GBST and, in any case, there is no basis to conclude that an alternative bidder would have resulted in materially different conditions of competition.

5.35 With regard to FNZ's assertion that the prevailing conditions of competition [✂], we do not consider this to be supported by the evidence of GBST's pre-merger financial performance.

Provisional conclusion on the counterfactual

5.36 Based on the available evidence, our provisional view is that the appropriate counterfactual should be the conditions of competition prevailing prior to the contemplation of the Merger, with GBST in independent ownership.

6. Market definition

Overview

6.1 Market definition provides a framework for the analysis of the competitive effects of a merger. Market definition is a useful analytical tool, but not an end in itself, and identifying the relevant market involves an element of judgement.[108]

6.2 The boundaries of the market do not determine the outcome of our analysis of the competitive effects of a merger in any mechanistic way. In assessing whether a merger may be expected to give rise to a substantial lessening of competition (SLC), we may take into account constraints outside the relevant

[108] MAGs, paragraphs 5.2.1–5.2.2.

market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[109]

6.3 In practice, the analysis underpinning the identification of the market or markets and the assessment of the competitive effects of a merger overlap with many of the factors affecting market definition being relevant to the assessment of competitive effects and vice versa.[110]

6.4 In this chapter, we consider the definition of the relevant market in which the effects of the Merger should be assessed. We have assessed the relevant product market and the relevant geographic market.

Product market

6.5 The relevant product market will include the most significant competitive alternatives available to customers of the Parties.

6.6 Our approach to assessing the product market is to begin with the overlapping products of the Parties in the narrowest plausible candidate product market and then to see if this can be widened on the basis of demand or supply-side considerations.[111] Our guidelines state that we will have particular regard to demand-side factors when identifying relevant product markets.[112]

6.7 We have considered whether there are grounds for aggregating narrower markets into a single broader market based on the likely response of suppliers to changes in prices.[113] The CMA's guidance notes that such 'supply side substitution' may exist, for example, in markets that involve bidding and tendering where firms bid to supply customers with bespoke products. This is the case for the area of overlap between the Parties.[114]

6.8 There are two circumstances in which we may consider aggregating several narrow markets into a broader market based on supply-side factors:[115]

(a) Firms have the ability and incentive to shift capacity between the different products quickly, that is, generally within a year; and

[109] MAGs, paragraph 5.2.2.
[110] MAGs, paragraph 5.1.1.
[111] MAGs, section 5.2.
[112] MAGs, paragraphs 5.2.6 – 5.2.7.
[113] MAGs, paragraph 5.2.17.
[114] MAGs, paragraph 5.2.18.
[115] MAGs, paragraph 5.2.17.

(b) the same firms compete to supply the different products and the conditions of competition between the firms are the same for each product.

6.9 We consider whether it is appropriate within the supply of Platform Solutions to distinguish between:

(a) the supply of Software-only Solutions and Combined Platform Solutions (the delivery model used);

(b) Retail and other types of Platform Solutions; and

(c) In-house provision of software and/or servicing and third party provision

6.10 We assess the evidence on each of these points below.

Delivery model

FNZ/GBST submissions

6.11 FNZ submitted that the product market definition should include all delivery models including Software-only Solutions and Combined Platform Solutions (referred to by FNZ as PaaS) and the variations on them.

6.12 FNZ noted that the choice of delivery model does not, as a practical matter, change the totality of the Platform Solution that must be procured. It stated that they are all credible alternatives for customers, and as such all form part of the same market.[116]

6.13 FNZ submitted that suppliers with different delivery models compete against each other, including in tenders. It said that:

(a) customers may invite suppliers operating different models to participate in the same tender process and can decide the delivery model at any stage of the procurement process, including the final selection stage so that suppliers of Combined Platform Solutions may lose bids to suppliers of Software-only Solutions and vice-versa; and

(b) customers frequently combine suppliers (including their own self-supply models) to achieve a complete Platform Solution.[117]

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[116] [✂]
[117] [✂]

6.14 FNZ has also submitted that, while suppliers with different models (Software-only Solutions or Combined Platform Solutions) bid against each other, bidding data shows that the majority of customers specify whether they want a Software-only or a Combined Platform Solution early in the tender process. FNZ submitted that this demonstrates that suppliers of Software-only Solutions and Combined Platform Solutions do not compete closely.[118] [119]

6.15 GBST submitted that suppliers with different delivery models compete against each other. It said that:

(a) Suppliers with different delivery models compete against each other when customers have not yet decided what Platform Solution would work best for them;

(b) Investment Platforms will often look at all the options available in terms of model of supply in the beginning of the process, because choosing a model and a supplier is a decision a customer makes every 15-20 years; and

(c) Investment Platforms may prefer a Software-only Solution or a Combined Platform Solution after a certain stage of the tender process, such as post-RFP.[120]

Our assessment

6.16 It is clear that all Investment Platforms need to combine the two components of a Platform Solution – software and servicing – to form a complete Platform Solution in order to run their platforms. Each component may be provided in-house or outsourced to a third party.

6.17 We found that there are two main delivery models for the supply of Platform Solutions when these are not provided by the customer entirely in-house:

(a) the supply of Software-only Solutions by a third party such as GBST with servicing provided in-house; and

(b) the supply of a Combined Platform Solution by a third party, such as FNZ, or two third parties which offer a combined offering in the form of a partnership, such as the one between GBST and Equiniti.

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[118] FNZ Initial Phase 2 Submission, paragraphs 6.7-6.14.
[119] FNZ clarified that the 'software alternative is [a] clearly a credible alternative but we are [✂] '. FNZ lost '£[✂] of assets to software alternatives…but [we] lost £[✂] to PaaS', [✂]
[120] [✂].

6.18 We consider below the extent to which these two delivery models compete with each other to determine whether they should be included within the same product market.

Third party evidence

6.19 Third parties told us that the delivery model offered by a supplier was important, and many explained that customers will choose between a Software-only Solution or a Combined Platform Solution based on strategic need.[121]

6.20 Competitors and consultants were asked at which stage of the tendering process customers tend to make their choice between purchasing a Software-only Solution and a Combined Platform Solution.

6.21 Just under half (three of the eight) suppliers that provided a view said that customers form a view on which delivery model they prefer early on in the selection process such that the tendering process will only consider suppliers who offer the preferred model but not both. [122] However, just over half (five of the eight) said that some customers may remain undecided for some time and consider both Software-only Solutions and Combined Platform Solutions during the tender process. One competitor submitted that, more often than not, the choice between delivery models is made 'towards the shortlist end of tenders'.[123]

Tender analysis

6.22 Our assessment of recent tenders shows that most customers start the tender process having already decided on the preferred delivery model, but a significant minority consider suppliers of both Combined Platform Solutions and Software-only Solutions during the procurement process, including at the final stage.

6.23 We found that some customers will consider different models of supply in the beginning of the tender process, with requests for information (RFIs) being issued to suppliers of both Software-only Solutions and Combined Platform Solutions. Where this happens, RFIs may contain separate sections for

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[121] [✂]
[122] [✂]
[123] [✂]

suppliers with different propositions or questions that are relevant only to certain propositions.[124]

6.24 Customers may go further in the tender process with suppliers that offer different models, leaving the decision of the delivery model to the final stages of the process. The decision may include which elements will be outsourced and which will be kept in-house. In this case, the Investment Platform can make it clear which elements are open to a proposal.[125]

6.25 Both Software-only and Combined Platform Solutions were present in early and late stages of a significant minority of tenders.[126] [127]

(a) In at least [✂] of the [✂] tenders for Investment Platforms where we knew the identity of at least two bidders, there was a mix of Software-only Solutions and Combined Platform Solutions suppliers bidding at the RFI stage; and

(b) In at least [✂] out of the [✂] tenders for Investment Platforms where we knew the identity of at least two bidders at the commercial negotiations stage, both Software-only Solution and Combined Platform Solution suppliers were at the commercial negotiations stage.

6.26 We also found that Investment Platforms seeking to outsource both the software and servicing components of their Platform Solution consider suppliers that can offer both on their own as well as suppliers that offer both via a partnership.[128]

Internal documents

6.27 As discussed in Chapter 7, Competitive Assessment, our analysis of the Parties' internal documents found that both FNZ and GBST identify the other Merging Party as one of their main competitors, despite the differences in their delivery models. Both Parties' internal documents also refer to other

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[124] Appendix B gives examples of screenshots from RFIs asking suppliers with different propositions to answer different questions.
[125] Appendix B illustrates this point by showing an example when [✂] identified which elements they wished to retain in-house and which elements could be assessed for full or partial outsourcing in their RFP.
[126] Not all Investment Platforms responded to our questionnaire and, therefore, the list of bidders in each tender may not be exhaustive. For this reason, there may be more tenders in the CMA data which included Combined Platform Solution suppliers competing with Software-only Solution suppliers.
[127] These figures are accurate as far as we have been able to verify bidders in each tender. We consider the following suppliers to offer Software-only Solutions: GBST, JHC, Bravura, Objectway, Temenos, IRESS, Third Financial, InvestCloud, CTC, Delta and Sapiens.
[128] See Competitive Assessment, Chapter 7

suppliers that provide both Software-only Solutions (such as Bravura), and Combined Platform Solutions (for example, SS&C).

Retail and other types of Platform Solutions

FNZ/GBST submissions

6.28 FNZ submitted that:

(a) The relevant market should be the supply of Platform Solutions for all wealth management platforms for individual end investors.[129] It said that distinctions, such as between Retail, stockbrokers, private client investment managers(PCIMs) and private banks existed historically but no longer exist due to regulatory and technology changes over the past 15 years. It said that types of Investment Platforms have converged and 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;[130]

(b) Retail and Non-Retail Platforms both serve mass affluent customers; provide the same or similar investment assets including a wide range of 'tax wrappers'; can cater for high-volume, commoditised demand; and cannot be distinguished according to whether they have 'open' or 'closed' architecture;[131]

(c) while there may still be some differences between Retail Platforms and private banks and stockbrokers, PCIM Platforms should be considered as Retail Platforms[132] and, to the extent there is a case to exclude any Investment Platform, this is limited to a handful of private banks that cater for ultra-high net worth individuals;[133] and

(d) any differences in supplier focus do not mean that demand-side substitution is limited.[134] Even if there were differences between the suppliers of Platform Solutions, it would be straightforward for Non-Retail Platform suppliers to serve Retail Platforms because the needs of Non-Retail Platforms encompass those of Retail Platforms.[135]

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129 [✂].
130 FNZ Initial Phase 2 Submission, paragraphs 1.2 (ii).
131 FNZ Initial Phase 2 Submission sections 3 and 4
132 [✂].
133 FNZ Initial Phase 2 Submission, paragraphs 1.2 (iii).
134 [✂].
135 FNZ Initial Phase 2 Submission, paragraphs 4.5-4.6.

6.29 GBST gave a different view. It submitted that:

(a) Different types of Investment Platforms focus on different consumer groups. For example, PCIM Platforms target customers who need a wider range of services, a broader range of asset classes and tax planning, so these platforms require a more bespoke solution;

(b) technology for the private bank and PCIM categories is often not built to support the number of customers and trading volumes required by Retail Platforms;[136]

(c) suppliers serve different parts of the market, despite all being able to support the same tax wrappers and investments. For example, some focus on private wealth or banking; others on workplace or advised Retail Platforms, rather than all suppliers targeting all types of platform. It said; 'The nuances of each segment cannot be underestimated'. GBST pointed to data it had seen on tenders and the competitors it faces in each market segment';[137] and

(d) it would be difficult, and require significant investment, for suppliers serving Non-Retail Platforms to develop the underlying technology required to serve Retail Platforms, mainly due to the complexity of tax treatments and rules that apply to different tax wrappers.[138]

Investment Platform type

6.30 We have identified the following main types of Investment Platform which have differing Platform Solution requirements:

(a) Retail Platforms;[139]

(b) stockbroker platforms;

(c) PCIM platforms; and

(d) platforms operated by private banks.[140]

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136 [✂]
137 [✂].
138 [✂].
139 "Retail" is used in a number of different ways in investment management. We use the term to refer to a type of platform: Retail Platform – an Investment Platform which is not a Private-client or a stockbroker platform.
140 We have seen no formal terminology used by market participants to refer to these segments but the Parties' internal documents have used the terms retail/wealth management and mass affluent/high net worth to distinguish between Retail Platforms and private-client investment managers and private banks in a similar manner.

6.31 For the purposes of our analysis, we describe Investment Platform types B, C, and D together as 'Non-Retail Platforms'.

6.32 These Investment Platform types are not formally defined and there is some variation in the terminology used by market participants to describe them. In addition, we have not found there to be a clear line of delineation between Retail and Non-Retail Platforms and we therefore consider that there is a degree of overlap between the two, where some Investment Platforms do not neatly fit into only one category.[141] [142]

6.33 However, evidence from third parties shows the term Retail Platform is widely understood and used by suppliers, customers and consultants and third parties provided similar descriptions for each Investment Platform type characterised as follows:[143]

a) Retail Platforms typically serve high volumes of customers and are primarily focused in the mass affluent part of the market. They are more likely to offer a more restricted range of assets than other platform types (although this is not always the case and they are increasingly using an open architecture that widens the investment product range) but tend to be focused on providing tax wrappers such as individual savings accounts (ISAs) and self-invested personal pensions (SIPPs).[144] They are built to be highly automated so that they can efficiently manage a very large number of accounts;

b) Private client investment managers and private banks tend to deal with more bespoke wealth planning with a focus on managing money across a broader set of investments to meet the complex needs of a smaller number of higher net worth end-investors.[145] These Investment Platforms are built to provide a more customised service for their end-investors; and

c) Retail stockbrokers either trade financial instruments on behalf of consumers (through advisors) or allow the consumer the ability to 'Do-It-Yourself'. They are available to all investor types.

6.34 Based on the Parties' submissions, third party evidence and the bidding data, we consider that the supply of Retail Platform Solutions is the narrowest

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[141] See chart in Appendix B, paragraph 2 illustrates this overlap across segments.
[142] We set out how we took into account these considerations when collecting and interpreting evidence from third parties in Appendix C.
[143] [✂]
[144] We also consider suppliers of workplace pensions to be Retail Platforms.
[145] We have seen a range of terms used by third parties and within the Parties' internal documents to refer to the Private-client segment of the market including 'wealth', 'wealth management', 'private wealth management', 'higher end', 'high net worth', 'discretionary fund management' and other variation on these terms.

candidate product market in which the Parties overlap. This is therefore the starting point for our frame of reference, and we assess whether this should be widened to include Platform Solutions for other Non-Retail Platforms by considering:

a) the extent to which there is demand-side substitution between different suppliers of Platform Solutions; and

b) the extent to which there is supply-side substitution between different suppliers of Platform Solutions.

Demand-side substitution

6.35 From a demand-side perspective, the relevant product market is the set of products that customers consider to be close substitutes.[146] The relevant product market is therefore primarily identified by considering the response of customers to an increase in price[147] of one of the products.[148] In bidding markets, the products which customers select towards the final commercial negotiation stage also provides evidence on the products seen as closely competing.

6.36 We have considered whether:

(a) There are differences between the Platform Solution requirements of Retail and Non-Retail Platforms;[149] and

(b) those differences affect suppliers of Platform Solutions and the extent to which they are considered to be close substitutes.

6.37 In our view, this approach is more informative than examining in detail how the Platform Solution requirements differ in terms of specific capabilities or functionalities. Such an examination in a differentiated market is a partial approach and ignores, for example, the roles played by brand, reputation, user experience, and track record, which the available evidence shows are key considerations for customers when selecting a Platform Solution.[150]

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[146] MAGs, paragraph 5.2.5.
[147] This also relates to non-price aspects "such as the quantity sold, service quality, product range, product quality and innovation" MAGs, paragraph 4.2.3.
[148] MAGs, paragraph 5.2.7.
[149] There is no formal or consistent terminology used by market participants to refer to these segments identified by us but the Parties' internal documents have used the terms retail/wealth management and mass affluent/high net worth to distinguish between Retail Platforms and private-client investment managers and private banks in a similar manner.
[150] In their responses to the CMA's Phase 1 customer questionnaire, customers typically submitted that reputation, track record of operating in the UK and ability to meet the customer's specific requirements were all important factors when selecting a Retail Platform Solutions supplier and often more important than cost.

6.38 The rest of this section looks at the differentiation of Suppliers of Platform Solutions and convergence of Investment Platform requirements:

6.39 Greater convergence between Investment Platforms, other things being equal, will lead to a greater likelihood of demand-side substitution; that is, Investment Platforms and their Platform Solution requirements become more similar. On the other hand, the greater the differentiation between Platform Solution suppliers, the less likely customers will be to switch between them.

Differentiation of suppliers of Platform Solutions

6.40 In this section we examine whether different Suppliers of Platform Solutions can meet the requirements of both Retail and Non-Retail Platforms and the extent to which Investment Platforms consider them to be alternatives. We took account of third-party views, the tender analysis and the Parties' views in their internal documents.

Third party evidence

6.41 Third parties submitted that the differences between Investment Platforms and their Platform Solution requirements are reflected by differences in the Suppliers of Platform Solutions. For example:

(a) Bravura noted that 'Retail and Non-Retail platforms continue to have common capabilities, but the specific requirements of each market mean that these remain separate disciplines requiring different technology solutions.'[151]

(b) Avaloq told us that 'technology sourcing tends to be disparate, there are limited providers that could do it all'.[152]

6.42 Third parties confirmed that FNZ has a broad range of capabilities and has had some success in competing for Non-Retail customers in addition to its primary Retail Platform offering. However, third parties also noted that FNZ's ability to serve both Retail and Non-Retail Platforms is unusual, as other suppliers are typically focused on either Retail or Non-Retail customers.

6.43 Third parties said that, in contrast to FNZ, GBST and Bravura only have Retail Platform customers[153] while other suppliers (such as Avaloq and Temenos) are not credible suppliers of Retail Platform Solutions because they are

[151] , [✂]
[152] , [✂]
[153] [✂].

focused on Non-Retail customers. We have set out third party views on which suppliers focus on Retail and Non-Retail within Appendix I.

Tender analysis

6.44 Our analysis of suppliers' participation in tenders shows limited demand-side substitution as it indicates that there are distinct clusters of suppliers that tender for and win Retail and Non-Retail Platform Solution tenders.

6.45 Tables 3 and 4 in Chapter 7 show that the suppliers met by the Parties in cases where FNZ or GBST reached the commercial negotiation stage of a tender were different for Retail versus Non-Retail tenders.[154] This demonstrates that customers generally do not consider suppliers of Non-Retail-focused Solutions to be strong alternatives to those which focus on Retail Platform Solutions.

Internal documents

6.46 The Parties do not routinely segment customers in their internal documents, or comment on the extent to which other suppliers are focussed on certain types of customer (such as Retail or Non-Retail). Where they do analyse different customer segments, [✂].

6.47 Internal documents also generally show that the Parties recognise that Platform Solution requirements of Investment Platforms vary, and that different suppliers are focused on different platform types. [155] [156] [157]

Convergence of Investment Platform requirements

6.48 We considered FNZ's submissions on convergence in the market and examined the extent to which differences between Investment Platforms and their Platform Solution requirements remain. (We consider whether any future convergence will enable Non-Retail Platform suppliers to compete in the Retail segment in our assessment of supply-side substitution below.)

6.49 We asked third parties to comment on the extent to which there has been convergence in Retail Platforms and Non-Retail Platforms and their Platform Solution requirements over the last ten years.

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[154] With the exception of , [✂] where the Parties met each other in a Non-Retail tender as well as in Retail tenders.
[155] [✂].
[156] [✂]
[157] [✂]

6.50 Of the 25 third parties that gave a view, almost all believed that there had been some convergence. Some said there has been a little convergence and others said that there has been a high degree of convergence.

6.51 However, third parties often indicated that although convergence was occurring between Retail and Non-Retail Platforms, material differences still remain. For example:[158]

(a) One consultant told us that the market has started to converge but indicated that this trend had started fairly recently and remained at an early stage[159]; and

(b) Equiniti noted that '[t]hese two sectors are still largely separate with suppliers typically specialising in one or the other. However, in recent years there is increasing overlap, with retail platforms also servicing advisers who can often look after high net worth clients sometimes with increasingly complex needs; and also private wealth providers looking for more robust and scalable solutions so looking beyond their traditional suppliers who have typically struggled in this respect'.[160]

6.52 This evidence indicates that there appears to be some convergence but that material differences still remain between Retail and Non-Retail Platforms and their requirements.

Supply-side substitution

6.53 The boundaries of the relevant product market are generally determined by reference to demand-side substitution alone. However, we note that some suppliers, most notably FNZ, supply both Retail and Non-Retail Platforms and we have also considered whether the market could be widened because Non-Retail Platform Solution suppliers may be willing and able to adapt their offering to compete for Retail Platforms. [161,162]

6.54 In the early stages of tenders for Retail Platforms, customers typically ask for information on suppliers' current capabilities, for example, asking whether suppliers are able or not to provide a specific functionality.

6.55 We asked competitors and consultants to explain how easy it would be for suppliers of Non-Retail Platforms to adapt their Platform Solutions to enable

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[158] [✂]
[159] [✂]
[160] [✂].
[161] MAGs, paragraph 5.2.17.
[162] While we have considered this issue as part of the Market Definition analysis here, we note that these issues are also relevant for our assessment of entry and expansion (see chapter 8, Countervailing factors).

them to compete for Retail Platforms. Out of the nine respondents that gave a view, seven considered it would be hard for these suppliers to adapt their Platform Solutions, whereas two consultants indicated that it may be possible:

(a) Fundscape submitted that Pershing could change the ‘front end’ part of its solution to better meet the requirements of Retail Platforms. Pershing itself considers that it is already able to serve both Retail and Non-Retail Platforms;[163] and

(b) Another consultant said that Avaloq and Temenos were good examples of firms that are likely to increase their focus and presence in Retail Platforms.[164] However, as detailed in Appendix I, [✂][165] this is consistent with the majority of respondents who did not think that Non-Retail suppliers could easily adapt and pointed to a number of challenges:

6.56 Opportunities to compete for customers are limited and customers are likely to consider proceeding with an unproven software partner to be too risky. A competitor noted that incumbent providers are entrenched in this space and it would be difficult for a new entrant to win any business and justify the client’s business case for moving platforms. [166] (See also Switching costs section in Chapter 7.)

6.57 The task of adapting Platform Solution capabilities is difficult and unattractive:

(a) SS&C submitted that needing to handle thousands of advisors and para-planners and hundreds of thousands of underlying retail investors would require wholesale rewriting of code to change operating procedures and working processes. SS&C also submitted that ‘radically adapting wealth management software to accommodate the needs of the retail investment platform market, which as a sector remains stubbornly unprofitable, does not appear to hold great appeal’.[167]

(b) Equiniti said that having pension wrapper solutions fully integrated is a ‘massive challenge’ for other non-Retail Platform suppliers and that being able to support the scalability and automation required by a Retail Platform would be a major challenge.’’[168]

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[163] [✂].
[164] [✂]
[165] [✂]
[166] [✂]
[167] [✂]
[168] [✂]

(c) Another competitor noted that there were high costs of entry and the difficulty that any return on investment could only be achieved in the long term.[169]

6.58 We give more information on suppliers' views on their own likelihood to supply Retail Platforms in our assessment of entry and expansion in Chapter 8, Countervailing factors.

6.59 We have not seen any internal documents from FNZ or GBST that focus on Non-Retail focussed suppliers [✂], or consider the extent to which such suppliers would be able to adapt to compete for Retail Platform opportunities. We consider that the absence of such suppliers from the Parties' internal documents suggests that Non-Retail Platform Solutions suppliers are not an important consideration in the Parties' commercial decision-making and are therefore generally not seen as a threat to their activity in Retail Platform Solutions.

In-house provision of software and/or servicing

FNZ submissions

6.60 FNZ submitted that in-house supply provides a real and credible alternative to third party Platform Solutions, irrespective of the Investment Platform's size, level of sophistication or customer focus.[170] FNZ submitted that:

(a) Many Platforms in practice self-supply some or all of the components of their Platform Solutions;

(b) the barriers to switching to an in-house Platform Solution are broadly similar to those applicable to switching to a third-party supplier;

(c) customers are able to, and in practice do, switch from in-house to third party provision and vice-versa in response to a range of commercial and strategic requirements, and;

(d) in-house supply is actively considered and wins in procurement processes.[171]

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169 [✂]
170 [✂]
171 [✂]

6.61 FNZ submitted that there are examples of third parties that brought the supply of their software in-house after having previously outsourced it, such as [✂] and [✂].[172]

Our assessment

Third party evidence

6.62 Evidence from competitors, customers and consultants indicates that there is a tendency for Retail Platforms increasingly to outsource the provision of software, for reasons that relate to quality, economies of scale and cost.

6.63 This evidence indicates that in-house software is unlikely to be a significant constraint on the Parties: 20 out of 23 customers that gave a view indicated that the supply of software in-house was not an option for them. One reason given for this was a lack of expertise and budget which is required to develop and maintain in-house software.[173]

6.64 In contrast to in-house software, many more third parties considered the supply of servicing in-house to be possible. Most (14) out of 19 customers that gave a view said that the supply of servicing in-house was a viable option, and a small number of them submitted that they had a strong preference for providing servicing in-house as it is an important part of their customer proposition.[174]

Tender analysis

6.65 As discussed in Chapter 7 Competitive assessment, our tender analysis indicates that in-house supply of software and/or servicing is sometimes a viable alternative, but usually in cases where either the Platform Solution is already supplied in-house, or the Investment Platform is new and not replacing an existing Solution.

(a) In-house supply was identified as an option in [✂] of [✂] recent tenders in Retail Platform Solutions, with an in-house Platform Solution being chosen in [✂] tenders.[175] [176]

[172] [✂]
[173] [✂]. Also see Appendix I
[174] We set out further evidence on this in Appendix I
[175] In the two cases in-house was the incumbent solution. One customer was tendering for software-only solution ([✂]) and the other customer ([✂]) was tendering for both software and servicing solutions.
[176] We are mostly relying on the Parties' information about in-house being considered an option alongside other suppliers, as very few customers included in-house solution in the list of bidders for their tenders.

(b) In-house supply was never identified as an option in cases where the incumbent Platform Solution was fully outsourced.

Internal documents

6.66 In-house Platform Solutions are often mentioned in the Parties' documents [✂]. However, in-house solutions [✂] in these documents by either Party, [✂]. The Parties' internal documents indicate that Investment Platforms are more willing to shift from in-house to outsourced Platform Solutions than vice versa.

6.67 The Parties' internal documents also indicate that:

(a) [✂];[177]

(b) [✂],[178] and;

(c) [✂][179]

Provisional conclusion on product market

6.68 We have found that a significant proportion of customers consider both Software-only Solutions and Combined Platform Solutions during the procurement process, including at the final commercial negotiations stage. In our view, the evidence shows that Software-only Solution and Combined Platform Solution suppliers compete in tenders and we therefore provisionally consider the different delivery models as part of the same product market.

6.69 We have provisionally concluded that significant differences remain between Retail and Non-Retail Platforms and their Platform Solution requirements, notwithstanding some (relatively recent) convergence between the two types of platform. Suppliers of Platform Solution are typically focused on specific types of Investment Platform customers and Retail Platform Solution suppliers usually do not compete closely with Non-Retail Platform Solution suppliers. Furthermore, we have found that it would be difficult for Non-Retail suppliers to adapt their offering such that they can compete strongly in the supply of Retail Platforms.

6.70 The evidence that we have received does not support the inclusion of all in-house provision in the relevant product market. We have found that Retail Platforms consider developing software in-house to be difficult and

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177 [✂]
178 [✂]
179 [✂]

unattractive but are more open to the servicing component of their Retail Platform Solution being supplied in-house. We have provisionally concluded that the relevant product market should include the supply of servicing in-house but exclude the in-house supply of software.

6.71 Based on the evidence set out above, we have therefore provisionally concluded that the relevant product market is the supply of Retail Platform Solutions, excluding the in-house supply of software.

6.72 We have taken into account differences in delivery models and competition from Non-Retail suppliers of Platform Solutions and in-house software where relevant as part of the competitive assessment.

Geographic market

FNZ/GBST submissions

6.73 FNZ submitted that the appropriate geographic market is global in scope and certainly no narrower that the UK.[180] It told us that:

(a) Customers do not choose suppliers based on their geographic location but consider offerings from a range of capable suppliers irrespective of their location;[181]

(b) suppliers can offer similar propositions in multiple jurisdictions[182] and the steps required to adapt to regulatory conditions in a new country are not significant;[183]

(c) all significant Platform Solutions suppliers currently active in the UK originated abroad, and that most of the investment required to develop a Platform Solution is needed to develop the core parts of the technology, rather than to tailor the platform to local requirements;[184] and

(d) there has been convergence between international regulatory regimes.[185]

6.74 FNZ also submitted that GBST, [✂].

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180 [✂]
181 [✂]
182 [✂]
183 [✂]
184 [✂]
185 [✂]

6.75 This suggests that FNZ sees a difference in market characteristics between the UK and Australia and, in general, a need for suppliers to plan investments having regard to the unique features of each relevant national market.[186]

6.76 FNZ submitted that its internal documents often focus specifically on the UK but do not support a UK-wide market and were not read in context.[187]

6.77 GBST submitted that:

(a) In order to enter new countries, a supplier must have a local presence and speak the language, understand the dynamics of the market and the product and tax rule requirements;[188]

(b) the upfront investment required to 'understand and meet the operating requirements to comply with regulation and tax rules is 'significant';[189] and

(c) convincing customers to switch to a new or unknown supplier with no direct UK track record is seen as a 'very high risk to the prospective customer and potentially the supplier'.[190]

Our assessment

6.78 We note that suppliers intending to offer Retail Platform products (such as ISAs) need to adapt their Retail Platform Solution to meet specific UK tax and regulatory requirements.[191]

6.79 We do not consider that the fact that a supplier is present in more than one country necessarily demonstrates that a worldwide geographic market is appropriate and note that the UK regulatory regime is different to that in other jurisdictions.[192]

6.80 In addition, the provision of trade execution and asset custody services (Platform Solution servicing) requires suppliers to be authorised and directly regulated by the Financial Conduct Authority (FCA), with, for example, strict capital requirements.[193]

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[186] [✂]

[188] [✂]
[189] [✂
[190] [✂.
[191] Capability in relation to tax wrappers is a key requirement for the software component of Retail Platform Solutions.
[192] [✂
[193] [✂.

Internal documents

6.81 Few of the Parties' internal documents discuss the deployment of Platform Solutions to new countries, but those that do show that the process involves adapting to complex country-specific requirements which may require the help of an external consultant, and customisation to the relevant local market needs in terms of language, currency and compliance. [194] [195] [196]

6.82 The evidence from the internal documents is consistent with the fact that FNZ told us that it was required to adapt to local requirements in nine out of ten countries in which it operates.[197]

6.83 In addition, we found that the Parties' documents typically focus specifically on the UK as a distinct market, rather than as part of a wider European or global market. While some documents also refer to other geographies, we consider the fact that the UK is considered separately in these and the majority of the Parties' internal documents that mention the UK, is consistent with a UK-wide market.

FNZ's recent and planned acquisitions

6.84 FNZ's recent acquisitions suggest that it sees the acquisition of, or partnership with, established players already active in other countries as means to overcome regulatory hurdles that prevent deployment of its products in new countries, and as a way of obtaining the scale and credibility required to timely enter in those markets.[198] For example:

(a) FNZ told us that it saw the acquisition of GBST as an 'opportunity to grow its presence and offering in Australia which is a key large-scale strategic savings and retirement market for FNZ'. FNZ observed that 'due to the complexity and market conditions of superannuation administration in Australia, [✂]'.[199]

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[194] [✂]
[195].[✂]
[196] [✂See Appendix B1 for further details.
[197][✂[
[198] We note that these considerations apply to the Platform Solutions industry in general and placed less weight on considerations referring to the acquisition of Non-Retail Platform Solutions.
[199] [✂]

(b) In 2019 FNZ acquired the German investment platform company 'ebase' from Comdirect Bank. FNZ said that this: [✂].[200] With regard to the rationale for the transaction, an FNZ internal document[201] adds that. [✂].

(c) FNZ told us that it has been discussing with [✂].[202]

(d) Furthermore, FNZ has been in discussion with [✂].[203]

6.85 On this basis, we consider that the rationale for these acquisitions supports a finding that the deployment of Retail Platform Solutions across more than one country requires significant adaptation to country-specific requirements and that having a local footprint is a relevant factor to win customers for Retail Platform Solutions.

Third party evidence

6.86 The views of third parties also indicate that a UK-wide market is appropriate:

(a) Four customers noted that the main suppliers of Retail Platform Solutions originally came to the UK from overseas;[204]

(b) However, the majority of third parties indicated that there are now significant barriers which make it difficult for suppliers of Retail Platform Solutions to win business in the UK if they do not already have a significant track record within the UK;[205]

(c) A few third parties told the CMA that the effort required to meet local geographical functional and regulatory requirements makes it 'challenging' for suppliers to expand to different geographies'[206]

(d) One customer said that the difficulty for overseas suppliers to successfully enter the UK lies primarily in the regulatory landscape and pension rules which are 'so complex and different to other main markets such as the US or Australia'.[207]

(e) One consultant said that it views it as unlikely that suppliers that only operate in other countries would be considered by UK customers because

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200 [✂]
201[✂]
202 [✂]
203 [✂]
204 [✂].
205 [✂
206 [✂
207 [✂

different countries have different regulatory and processing environments (the US being notably different from the UK, for example).[208]

(f) Some third parties also noted that, while it is technically feasible to enter from other geographic markets, this would require a significant investment.[209]

Tender data

6.87 Our analysis of the tender data shows that at least five customers' tender evaluations[210] highlighted the importance for a supplier of Platform Solutions to offer UK specific functionalities and regarded previous experience with UK customers as an important advantage. For example:

(a) Qualitative evidence from [✂] tender evaluation shows that it considered the 'general UK functionality' of the shortlisted suppliers and it undertook a careful assessment of the potential suppliers' position in the UK market, including their UK client base, experience, as well as 'commitment' to the UK market. [211]

(b) When assessing potential suppliers in its 2019 tender, [✂]decided to 'park' [✂] as a 'potential Ancillary supplier for later consideration given it was not able to: 1) meet UK credentials[212] 2) lacked overall capabilities'.[213] [✂] looked specifically at how [✂] could support 'UK equities, ETFs, investment trusts and fixed income bonds/gilts'. The 'gap analysis' concerning [✂] solution flagged that its [✂].[214]

(c) In its 2016 tender, [✂] compared the propositions offered by FNZ and GBST.[215] In its comparison, [✂] valued [✂]experience with [✂] and the fact that its technology was [✂]. On the other hand, the fact that [✂] had no [✂] experience was considered a high risk due to possible gaps and the need for new development.

208 [✂.
209 [✂
210 [✂
211 [✂]
212 More specifically, UK credentials were ''scale UK client'' and ''SIPP functionality''.
213 [✂]
214 [✂]
215 [✂]

(d) Qualitative evidence[216] from the [✄] tender shows that broad experience of operating in the UK and a range of UK clients were considered as key features for the purposes of the evaluating alternative suppliers.

(e) Qualitative evidence from [✄] indicates that both [✄] and [✄] were excluded from the final phase due to their lack of UK functionality and experience. [217] [218]

Provisional conclusion on geographic market

6.88 We have found that suppliers of Retail Platform Solutions must meet specific and complex tax and regulatory requirements in the UK (and other countries).

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

6.90 Accordingly, we have provisionally concluded that the relevant geographic market for the supply of Retail Platform Solutions excluding in-house software is the UK.

6.91 We consider competition from outside of the UK, to the extent relevant, as an out of market constraint in our competitive assessment.

7. Competitive assessment

Introduction

7.1 In this chapter we have assessed whether the Merger has removed a competitor from the market for Retail Platform Solutions excluding in-house software in the UK (Retail Platform Solutions in the UK) which previously provided a significant competitive constraint, and, in doing so, whether the Merged Entity would have the ability and/or incentive to worsen or not improve its offering when assessed against the position absent the Merger. This is a horizontal unilateral effects theory of harm.

7.2 Horizontal unilateral effects are more likely when the merging parties are close competitors. Generally, the closer two firms are, the stronger their

216 [✄]

217 We note that this was not a tender for Retail Platform Solutions and have therefore put less weight on this evidence. However, we also note that our considerations on the importance for suppliers to offer UK specific functionalities and to demonstrate previous UK experience apply to the Platform Solutions industry more broadly.

218 [✄]

competitive constraint is on each other, which would be lost as a result of a merger.

7.3 We have therefore 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 aggregate current competitive constraints on the Parties from other suppliers, including from in-house solutions and Non-Retail Platform Solution suppliers.

7.4 In forming our view, we took account of a wide range of evidence collected from the Parties and third parties:

(a) Customers, consultants and suppliers gave their views on the strength of competition between the Parties and which suppliers (including in-house supply and out-of-market competitors) they saw as competing against the Parties.

(b) We analysed tender data, which showed which suppliers bid for which contracts at various stages of the tender process.

(c) We reviewed the Parties' internal documents to assess what these told us about competition between the Parties and between them and other suppliers.

7.5 This evidence informs our assessment of how competition works in the supply of Retail Platform Solutions and, in particular, the closeness of competition between the Parties and the competitive constraints imposed by other suppliers at present and in the foreseeable future.[219]

7.6 In reaching our decision, we assessed the evidence in the round.

7.7 The structure of this chapter is as follows:

(a) we set out the nature of competition in the supply of Retail Platform Solutions;

(b) we present our estimates of shares of supply in the market;

(c) we assess closeness of competition between the Parties;

(d) we assess the competitive constraint from alternatives, including in-house and out-of-market constraints;

[219] Appendix C presents the details of the evidence we gathered and how we used it in our assessment.

(e) we assess switching costs;

(f) we assess the role of benchmarking provisions and other contractual arrangements; and

(g) we assess how the Parties compete in relation to product development.

7.8 In each section, we set out any relevant submissions made by the Parties and third parties, then we present our own assessment and set out a provisional conclusion. Finally, we set out our overall provisional conclusion on competitive effects in the supply of Retail Platform Solutions.

The nature of competition in this market

7.9 The use of external suppliers of Platform Solutions has led to there being a range of suppliers, many of whom work internationally. However, for a customer, switching to a new supplier of Platform Solutions can involve a complex, risky, lengthy and expensive migration from one system to another.

7.10 Recent failures of such migrations have highlighted the risks for both customers and suppliers. Once a customer has switched to a new supplier, they may have little appetite to switch again for a long time. The result is that the choice of Platform Solution is usually a long-term decision.

7.11 Given this, customers must have a high degree of confidence that a potential supplier can operate at the necessary scale, is committed to developing their Retail Platform Solution and will enable the Retail Platform to remain competitive and compliant with necessary regulation. Customers therefore seek suppliers with good track-records. This gives established suppliers of Retail Platform Solutions a significant competitive advantage over others.

7.12 Customers use lengthy procurement processes involving multiple tender stages and commercial negotiations with a final list of suppliers. Even if they only switch supplier infrequently, they may use these processes to maintain competitive tension and extract the best possible terms from incumbent or potential suppliers. Some customers also use contractual benchmarking provisions whereby their supplier agrees to maintain the long-term competitiveness of their proposition compared to others in the market.

7.13 These market features, in particular the difficulty of switching, place customers in a weaker bargaining position with their suppliers. We have taken this into account when considering the impact of the Merger on the choice of available suppliers and customers' bargaining strength.

Shares of supply

7.14 In differentiated bidding markets, such as the market for Retail Platform Solutions in the UK, where the market boundaries are less distinct, shares of supply do not fully capture the closeness of competition between firms. These shares nevertheless provide an indication of the relative size of each supplier, based on its current customer base and its success in having won these customers through competitive tenders.

7.15 Therefore, we consider this evidence as providing some indication of the existing market position and the relative strength of each competitor as a constraint on the Parties. In particular, the scale of other suppliers relative to the Parties is relevant to our competitive assessment because, as noted above, customers consider scale (i.e. whether a potential supplier can operate at the necessary scale) as part of their choice of supplier.

FNZ/GBST submissions

7.16 FNZ submitted that market shares do not meaningfully reflect market power and that the CMA's approach in its phase 1 decision overstated the Parties' shares of the market.[220]

7.17 FNZ submitted that the shares of supply data reveal that numerous significant competitors will remain post-merger.[221] It said that shares of supply are not reliable due to customers' requirement for bespoke solutions, the long tender processes and the use of long-term contracts.[222]

7.18 FNZ also addressed the use of assets under administration (AUA) as the basis for the share of supply estimates, compared to a revenue-based approach. It submitted that there are weaknesses in both approaches, but that the AUA approach overstates the shares of suppliers which provide a small set of services to customers with high value assets, and that these shares are subject to fluctuation based on the value of customers' assets.[223]

7.19 FNZ provided us with its own calculation of shares of supply, based on the identity of the supplier of the investment accounting software (one part of the

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[220] [✂].
[221] FNZ Initial Phase 2 Submission, paragraph 1.2.
[222] [✂].
[223] In particular, FNZ submitted that 'several of FNZ's own clients have seen significant fluctuations in AUA for reasons completely unrelated to FNZ's own competitive performance. For example, AUA on [✂] has grown by over 50% year on year since July 2017 – inflating FNZ's share of supply despite the absence of a new contract or increase in scope of the contract.' See FNZ Response to the Issues Letter, paragraphs 14.1-14.12.

Platform Solution).[224] Its calculation included all Investment Platforms apart from private banks and in-house software provision.

7.20 On this basis, FNZ calculated that:

(a) The Parties have a combined share of less than [✂]%;

(b) the Parties have numerous competitors, including SS&C, Bravura, Avaloq, Temenos, SEI and IRESS, with shares larger than, or similar to, GBST at [✂]%.[225]

(c) FNZ submitted that 'the Parties will also face strong competition from global players such as TCS BaNCS and Pershing'.[226]

7.21 It said that significant constraints will remain, and the Merger should not be characterised as a "4-to-3" reduction in suppliers,[227] as Bravura, SS&C and SEI are all major competitors.[228]

7.22 GBST told us that, other than Bravura, SS&C and SEI, the competitors mentioned by FNZ should not be part of the narrowest plausible market for Retail Platform Solutions in the UK.[229]

7.23 Certain GBST internal documents use third party estimates of market shares. For example:

(a) A GBST presentation to FNZ [✂].[230] The presentation [✂] and in-house solutions.[231] It showed that, based on advised AUA, [✂].Based on advised gross flows, [✂].

(b) A 2018 GBST Strategy Presentation [✂][232]

Our assessment

7.24 We have calculated shares of supply of the market for Retail Platform Solutions in the UK.[233] We have taken FNZ's submissions[234] on our approach

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[224] FNZ share of supply estimates are provided in Appendix J.
[225] FNZ also submitted that around [✂% share should attributed to Objectway and part of GBST's share should be attributed to PSL [✂.
[226] FNZ Initial Phase 2 Submission, paragraph 1.2.
[227] [✂.
[228] [✂.
[229] [✂.
[230] [✂
[231][[✂
[232] [✂
[233] [✂.
[234] FNZ Initial Phase 2 Submission, Annex 4); [✂

into account and made some changes to our calculations since phase 1 of the inquiry.

7.25 We consider that AUA is the best basis for our share of supply estimates rather than the revenue-based approach as suggested by FNZ. This is because AUA figures are publicly available, unlike revenue which would be an estimate of what is earned from each customer.[235] The AUA approach may overstate the share of suppliers if they happened to provide mostly a small service to a large customer, but so would a revenue-based approach as revenues are derived from AUA.

7.26 Our share of supply estimates for the supply of Retail Platform Solutions in the UK are shown in Table 1 below. This sets out the share of each supplier separately for its supply of Platform Solutions, either alone or in any partnership, to customers. In this way, there is no double-counting of revenue from each customer.

Table 1. Shares in the supply of Retail Platform Solutions in the UK excluding in-house software (based on AUA) (2018)

Software + servicing supplier(s)	*Share of supply (%)*
[✂]	[✂]

[235] FNZ Initial Phase 2 Submission, Annex 4

Source: CMA estimates based on the Parties' data: ✂. The shares of supply in the Table present third-party software combined with third-party or in-house servicing We excluded AUA of any platforms where the software supplier is unknown.

7.27 These shares of supply indicate that:

(a) FNZ and GBST are, respectively, the first and fourth largest suppliers of Retail Platform Solutions in the UK;

(b) the Merged Entity is, by far, the largest supplier in the market, accounting for [✂] [40-50%] of the supply of Retail Platform Solutions in the UK. The position of the Merged Entity is twice as large as that of the second largest supplier, Bravura.

(c) Bravura and SS&C are the only other suppliers with more than a [✂] [10-20]% share. We note, however, that almost all of SS&C's share relies on a single, very large customer, St James's Place, and that it may be difficult for SS&C to replicate this offering for other customers.

(d) Other than the four largest suppliers (which together account for close to 90% of the market), no supplier has a share of supply of more than [✂] [5-10]%.[236]

Provisional conclusion on shares of supply

7.28 We have examined shares of supply primarily in order to assess the existing market positions of suppliers of Retail Platform Solutions in the UK.

7.29 The shares of supply show that FNZ and GBST are among the largest suppliers of Retail Platform Solutions in the UK excluding in-house software. As a result of the Merger, the Merged Entity is by far the largest supplier in the market. It is twice the size of, Bravura, the next largest supplier.

7.30 We consider that these shares provide some indication of the Parties' and their competitors' position in the market but do not necessarily indicate the level of closeness of competition between the Parties and their alternatives.

7.31 We take these findings together with other evidence of competition in the rest of this chapter to reach our provisional conclusions on the competitive effects of the merger.

[236] [✂]

Closeness of competition between the Parties

7.32 In this section we assess 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.

7.33 Our findings are based on consideration of submissions from the Parties and from third parties, our analysis of tender data and our review of internal documents from the Parties.

FNZ/GBST submissions

7.34 FNZ submitted that:

(a) The Parties are not each other's closest competitor, primarily because they have different delivery and pricing models.[237] FNZ considers that it competes more closely with other suppliers of Combined Platform Solutions[238] and that different delivery models cannot be close substitutes;[239]

(b) most customers chose a delivery model before the tender process and certainly before the commercial negotiations stage; [240] [241]

(c) it has only lost one tender to GBST in the past ten years, which was for a very small platform which had indicated a preference for a Software-only Solution; [242]

(d) GBST offers [✂][243] that [✂][244] and it only [✂].[245] FNZ submitted that GBST is getting [✂].[246] FNZ submits that GBST's [✂] is demonstrated by the [✂];[247] and

[237] [✂
[238] FNZ said that this point was supported by its tender data.

[240] ✂.

[242] ✂.
[243] ✂.
[244] FNZ Initial Phase 2 Submission, paragraph 1.2(vi) and ✂.
[245] FNZ Initial Phase 2 Submission, Table 2.1.
[246] FNZ Initial Phase 2 Submission, paragraphs 7.1-7.4 and ✂.
[247] ✂.. See Chapter 2, the Parties, the Merger and the rationale for valuation of GBST.

(e) FNZ might exert a stronger constraint on GBST than GBST does on FNZ but, due to different supply models, this constraint is not significant overall, relative to that from other software-only suppliers. [248]

7.35 GBST submitted that:

(a) It can compete with suppliers of Combined Platform Solutions when customers have not decided which type of solution they require, or when it partners with a third party to offer a Combined Platform Solution (see below);[249]

(b) it has a strong competitive offering, as shown by its recent customer wins[250] and [✂]. It submits that recent customer losses were based on changes in the customer's activity in the market and that its pipeline of new customers [✂][251]

(c) in response to FNZ's submission on [✂], GBST submitted that it has been providing a SaaS proposition since 2009[252] and that, post-Evolve (GBST's R&D programme), Composer will be a market-leading product';[253]

(d) in response to FNZ's submission that GBST has been [✂], GBST submitted that it had [✂]. GBST submitted that [✂]; [254] and

(e) there was a bidding war to acquire GBST and FNZ paid a significant price for it.[255]

7.36 Regarding the different models of supply, we note that FNZ offers a Combined Platform Solution and GBST a Software-only Solution, but that GBST formed a partnership with Equiniti in 2018 in order to offer a Combined Platform Solution.[256]

7.37 Both Parties have submitted their respective views on the extent to which this partnership has allowed them to compete more closely:

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248 ✂.
249 ✂.
250 A [✂] deal with [✂], worth £[✂] in revenue ✂.
251 ✂.
252 ✂.
253 ✂.
254 ✂.
255 ✂.
256 ✂.

(a) FNZ submitted that the partnership did not enable GBST to compete with FNZ. It said that the partnership has been unsuccessful as it [✂] and that partnerships are a weaker option than a single supplier; [257] [258] and

(b) GBST submitted that the partnership was set up in order to enable it to [✂] for customers wanting a Combined Platform Solution and that, absent the Merger, it would have been an effective competitor. GBST noted that it could take [✂] to [✂] and that Bravura's first bid to acquire GBST was only nine months after the announcement of the GBST/Equiniti partnership. [259]

Third party evidence

7.38 We have considered evidence from third parties on the closeness of competition between FNZ and GBST and on how the role of the GBST/Equiniti partnership changed the constraint they place on each other.

Closeness of competition between GBST and FNZ

7.39 Evidence from third parties was mixed but most considered FNZ and GBST to be close competitors as they are both established suppliers of Retail Platform Solutions in the UK.

7.40 Third parties told us that FNZ is a very strong competitor with capabilities in both software and servicing, both proven at scale. For example:

(a) One third party told us that FNZ is currently the only credible supplier offering a Combined Platform Solution.

(b) Another noted that FNZ has a simpler, more efficient operational model than other competitors.[260]

7.41 Third parties submitted that GBST has scale, proven experience and a strong reputation in pensions software and so is also a leading supplier of Retail Platform Solutions in the UK.[261] Third parties considered that the upgrade of GBST's software was necessary, as it had fallen marginally behind FNZ, but believed that the upgrade should re-establish its credibility.[262]

[257] ✂.
[258] FNZ Initial Phase 2 Submission, paragraph 7.19.
[259] ✂.
[260] ✂.
[261] For example, [✂]
[262] ✂.

7.42 Customers noted that FNZ targets a broader range of customers than GBST, with FNZ supplying both Retail and Non-Retail Platforms while GBST only has Retail Platform customers.

7.43 We asked competitors and consultants to list suppliers of Retail Platform Solutions in the UK and to provide a score to indicate how close an alternative they are to FNZ and GBST.[263]

7.44 We suggested six suppliers[264] to respondents to ask whether they were potential alternatives to the Parties, and we asked for their suggestions for any other suppliers. The six we suggested were Bravura, SS&C, SEI, Pershing, Avaloq and Temenos.

7.45 The responses showed:

(a) In total, 18 alternative suppliers to the Parties were mentioned;

(b) The six suppliers we proposed were agreed to be competitors to the Parties frequently (nine or ten times each) by customers.; and

(c) The other 12 alternative suppliers were each suggested far less frequently (less than four times each).

7.46 Figure 1 below shows the average 'closeness scores' given by competitors and consultants to each of the six suppliers that were mentioned nine or ten times, as well as the Parties.[265] [266]

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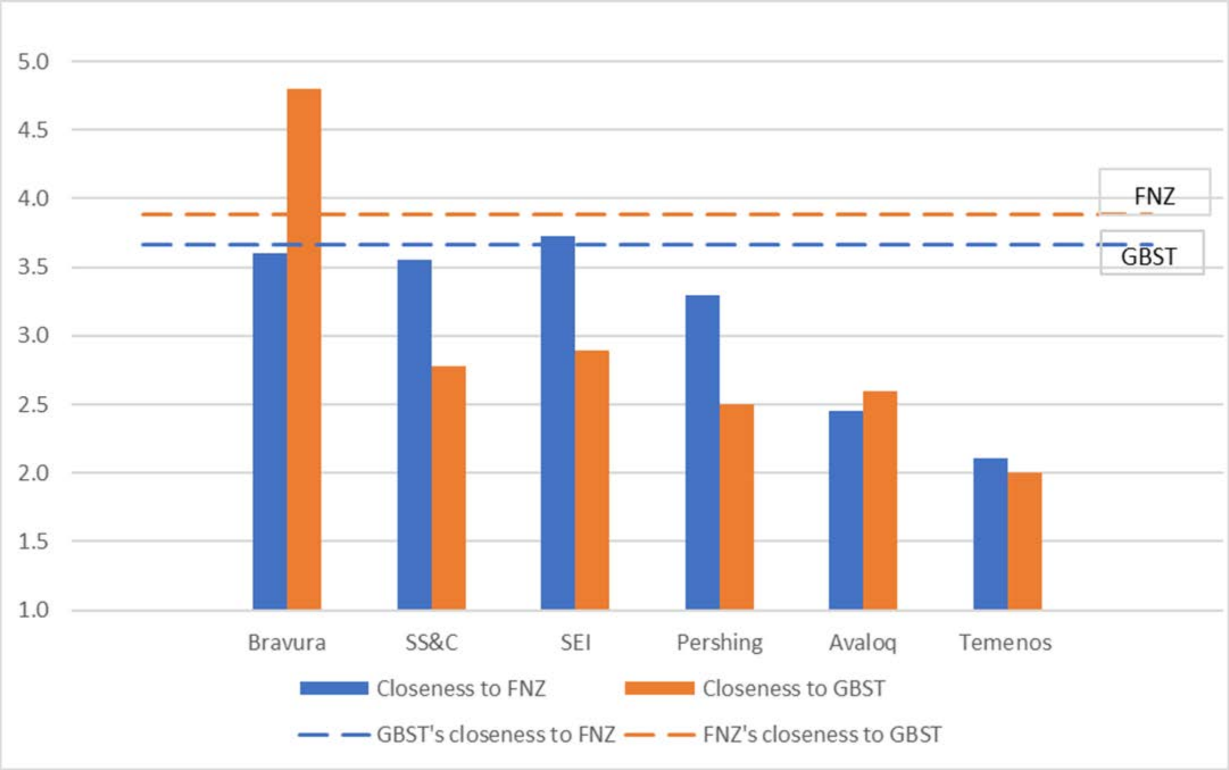
[263] We have primarily relied upon our analysis of tenders to assess customer views. Only customers that had not completed a tender in recent years were asked to provide a score in the questionnaire. As set out in Appendix C, we have given less weight to the views of customers that have not tendered recently and therefore decided not to include these scores alongside those of competitors and consultants in Figure 1. However, Figure 1 is reproduced in Appendix D with these customer scores also included (see Figure 4).
[264] These six had been identified as the most relevant suppliers in phase 1 of the inquiry. We take this into account when drawing any inference from the number of times a supplier was mentioned.
[265] Options given for scores ranged from 1 = 'not at all a close alternative' to 5 = 'a very close alternative'.
[266] Further details on the responses are provided in Appendix D

Figure 1. Average closeness of competition scores for alternative suppliers to FNZ and GBST (1 = not at all a close alternative, 5 = a very close alternative), competitor and consultant responses



Source: CMA analysis of competitor and consultant Phase 2 questionnaire responses.

7.47 The scores given to each supplier show that competitors and consultants consider, on average, that the closest competitors to FNZ are:

(a) SEI, GBST, Bravura and SS&C are the closest, each with scores between 3.5 and 4;

(b) They are followed by Pershing, which does not appear to be as close but is only moderately behind GBST (with a score between 3 and 3.5); and

(c) Avaloq and Temenos are seen as less close alternatives to FNZ (with scores between 2 and 2.5).

7.48 The same data show that GBST is seen to have fewer close competitors:

(a) Bravura is seen as by far the closest competitor to GBST, with a score between 4.5 and 5;

(b) FNZ is seen as the next closest competitor, with a score between 3.5 and 4; and

(c) SEI, SS&C, Avaloq and Pershing are some way behind FNZ (with scores between 2.5 and 3) as alternatives to GBST, with Temenos (with a score of 2) less close still.

7.49 We note that our share of estimates set out at the start of this chapter show that FNZ was already the largest supplier of Retail Platform Solutions in the UK pre-Merger, with GBST's position being more moderate. We therefore consider that it is broadly consistent with the Parties' existing market positions that third parties would consider FNZ as a stronger constraint on GBST than GBST is on FNZ.

Closeness of competition between the GBST/Equiniti partnership and FNZ

7.50 Third parties gave mixed views on the strength of partnership models in general, relative to Combined Platform Solutions from a single firm.[267]

(a) Eleven of the 18 customers that gave a view said that they were open to partnership models or even preferred them. Reasons give included that: a partnership could bring together specialists to create a strong solution, [268] they would not be dependent on a single supplier,[269] and they could replace one partner, giving them greater control over supply. [270]

(b) The other seven customers indicated that they prefer a Combined Platform Solution through a single supplier to a partnership. They found that a single supplier was more efficient, that software and servicing would be more complementary, and that the supplier relationship was simpler.[271]

(c) Two competitors noted that the successful provision of Combined Platform Solutions from a single supplier has been proven, whilst partnerships have so far failed to gain customers.[272]

7.51 Many customers and consultants were unable to give a view on the ability of the GBST/Equiniti partnership to compete as a credible alternative to FNZ in providing Combined Platform Solutions, but the majority of those who could believed that it was credible:

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267 ✂.
268 [✂]
269 ✂..
270 ✂..
271 ✂..
272 ✂.·

(a) Of 34 customers, 22 said they did not know enough to give a view, but eight thought that the GBST/Equiniti partnership provided a credible alternative and four said that it did not;

(b) of eight customers that are current FNZ customers, [273] [274] three provided a view and all said that the GBST/Equiniti partnership was a credible alternative;[275] and

(c) two out of five consultants who gave a view on this issue considered that, absent the merger, GBST and Equiniti could have competed effectively with the Combined Platform Solution provided by FNZ.[276]

7.52 The majority of competitors who responded were less positive about the ability of the partnership to compete with FNZ because they consider that it is untested at scale and may need significant investment to develop and win clients:

(a) Six out of eight suppliers provided a view and four of these considered that GBST/Equiniti would have struggled to compete against FNZ in Combined Platform Solutions absent the merger.[277]

Tender analysis

7.53 Our analysis of recent tenders which the Parties have participated in, and the nature of their participation in these tenders, informs our assessment of the degree to which they compete against each other.

FNZ tender analysis

7.54 FNZ submitted its own analysis of [✂] tenders since 2016 where it is aware of the identity of the winning supplier. This showed that:

(a) Of [✂] tenders, there were [✂] where the customer indicated a willingness to consider both Software-only and Combined Platform Solutions; [278]

(b) the Parties met each other in just [✂]% of their tenders, showing that FNZ is not a close competitor to GBST and FNZ has not lost a tender to

273 ✂.
274 ✂).
275 ✂.
276 ✂.
277 [✂]
278 ✂..

GBST. FNZ said that it is not aware of having competed with GBST [✂] tender. [279]

(c) JHC (a Software-only Supplier bought by FNZ in August 2019) has only lost [✂] tender to GBST;[280] and

(d) of the [✂] tenders which GBST has competed in, it [✂].[281]

Our assessment

7.55 We have carried out an analysis of tender data from a wide range of sources in order to assess the closeness of competition between the Parties.[282]

7.56 We considered:

(a) How often the Parties overlap in tenders in the various stages of the process (the commercial negotiations stage);[283]

(b) how often the other Party was the runner-up in tenders;

(c) how tender requirements (such as for a Software-only Solution) affect how closely the Parties compete; and

(d) qualitative evidence from customers' tender evaluations, including any rankings.

7.57 Our analysis shows that the Parties have participated in [✂] tenders since 2016. Of these, [✂] tenders were for Retail Platforms ('Retail tenders') and [✂] were for Non-Retail Platforms ('Non-Retail tenders').[284] Our assessment below focuses on the [✂] Retail tenders.

7.58 Of the Parties' participation and success in [✂] Retail tenders:

(a) FNZ participated in [✂] tenders and won [✂] (a [✂]% win rate);[285]

(b) JHC participated in [✂] tenders and won [✂] (a [✂]% win rate);[286] and

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[279] ✂.
[280] ✂..
[281] ✂.
[282] See Appendix C for a description of our evidence base for this analysis and Appendix F for a list of the Investment Platforms that carried out tenders that the Parties participated and the classification used for each.
[283] Appendix E sets out how a tender process works, including the typical stages of a tender process.
[284] The results of the analysis of Non-Retail Platforms are set out in Appendix M
[285] [✂]
[286] [✂]

(c) GBST participated in [✂] tenders and won [✂] (a [✂]% win rate).[287]

7.59 We found [✂] tenders in which the Parties overlapped. These are set out in Table 2 below. The Parties met in a greater proportion of tenders ([✂]%) in our analysis than in FNZ's analysis (which showed a [✂]% overlap). We believe that this difference is because FNZ considered any tender in which the Parties overlapped, whether this was Retail or Non-Retail and, while GBST has competed in some Non-Retail tenders, its participation in these is much less frequent overall.

7.60 We note that these [✂] tenders account for a significant proportion of each Party's total participation in Retail tenders:

(a) they account for [✂]% of the [✂] tenders where FNZ or JHC bid; and

(b) they account for [✂]% of the [✂] tenders where GBST bid.

7.61 Our data shows that FNZ overlapped with GBST at the early stage [✂] times, and JHC and GBST overlapped [✂].[288]

7.62 It also showed that the Parties overlapped in [✂] out of these [✂] tenders at a late stage.[289] Of these:

(a) FNZ won [✂] against [✂] [290] and

(b) GBST won [✂] against [✂][291] and [✂] against [✂].[292]

Table 2. Retail tenders where the Parties overlapped since 2016.

Customer	Year	Bidders at the RFI stage	Bidders at the RFP stage	Bidders at the Commercial Negotiations	Winner
[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

[287] GBST won the Retail tenders for [✂]
[288] Retail tenders where FNZ (excluding JHC) and GBST met are [✂]. According to [✂]
[289] FNZ and GBST reached the commercial negotiations stage in tenders for[✂]. FNZ has not stated which stage JHC reached in the[✂] , but in Phase 1 FNZ submitted that JHC [✂] Similarly, the data submitted by FNZ in the Phase 2 investigation does not inform which stage FNZ reached in the [✂] tender, but in Phase 1 FNZ submitted that FNZ [✂]".
[290] [✂]. According to the tender data submitted by FNZ ("[✂] , submitted alongside the FNZ Response to the Issues Statement), [✂], which had an AUA of £[✂] at the time, and [✂], which had an AUA of £[✂] at the time.
[291] ✂.
[292] . [✂]

[✂][293]

Source: CMA analysis based on information from the Parties, customers and competitors. Two tenders did not proceed. Information of bidders at each stage may not be accurate and complete for [✂] and [✂] as we did not receive information from the customer, only the Parties and competitors.

7.63 We note that the tenders show that some customers which choose a Combined Platform Solution will consider a partnership alongside a single supplier at a late stage in the tender process.

7.64 Qualitative evidence from customers which ran these tenders showed that they considered the Parties as suitable alternatives, including the GBST/Equiniti partnership as an alternative to FNZ and JHC as an alternative to GBST, as JHC has been building functionalities often required by Retail Platforms.[294]

7.65 When we consider all Retail tenders which the Parties participated in, no other supplier overlapped with FNZ or JHC and GBST as many times as the other Party did at a late stage. (See Competitive constraint from alternatives section for this assessment.)

Internal documents

7.66 We have examined evidence from the Parties' internal documents which shows how closely they compete with each other and how they position themselves in the market relative to other competitors.

7.67 We collected 16,000 documents in total, but, having filtered these, our analysis is predominantly based on a small number of documents which are of most relevance to our assessment. Our summaries of the internal documents described in this chapter are set out in Appendix H, the document extracts themselves are in Appendix G and our approach to the review of internal documents is in Appendix C.

FNZ submissions

7.68 FNZ submitted that its internal documents do not provide a reliable basis from which to draw conclusions because so few documents have been used in our assessment;[295] few of the documents were used by sufficiently senior FNZ

[293] According to information from customers and competitors, [✂] were considered in a pre-RFI shortlist.
[294] [✂]
[295] FNZ submitted that 'of the 26 FNZ documents referenced in the Internal Documents Working Paper , just two are final versions of documents prepared for senior management: '[✂]and '[✂]. The remaining documents are

management, and some documents were produced by third parties and their findings are ‘unreliable’ and ‘inaccurate’. [296]

7.69 FNZ also submitted that we have misinterpreted statements within the documents and taken them out of context,[297] and have not taken into account those documents which show that GBST is not a strong competitor.[298]

7.70 FNZ submitted that [✂] and that tender data is a more reliable source of evidence on competition. It also pointed to its share of supply estimates as a better view on the competitive landscape. [299]Our approach

7.71 We have carefully considered FNZ’s comments and taken them into account in our assessment of its internal documents. We agree with the broad principle underpinning FNZ’s submissions that the relevance of a given internal document depends not only on the information provided within that document but the context in which that document was produced.

7.72 In general, we consider that internal documents are a useful source of evidence, as they reflect how the merging parties consider the market in the ordinary course of business. Evidence of how competition operated in the market prior to a merger helps us to understand how rivalry is likely to be affected by it. This is true even when there are relatively few documents to review.

7.73 As noted above, our treatment of any internal document takes into account both its content and the purpose for which it was prepared – for instance, we tend to place greater weight on documents prepared to inform senior-level decision-making. We also consider the context of any mentions of competitors – we do not just conduct a quantitative analysis of the number of times a given supplier is mentioned, but will rather consider the nature of a reference to a competitor, and to what extent that informs the nature of the constraint offered by the competitor.

7.74 With regard to specific points submitted by FNZ on our use of internal documents as evidence:

(a) FNZ submitted that [✂], and we agree that this is consistent with the relatively low number of internal documents that were focussed on the

drafts prepared for potential investors or customers, customer pitch documents, unreliable third-party documents and responses to RFIs and email discussions between senior management.’ ✂.

[296] FNZ noted that it provided submissions in relation to these third-party documents ✂. and paragraph 6.23 of the Phase 2 Initial Submission.

[297] For example, FNZ submitted that [✂].

[298] ✂..

[299] ✂.

competitive landscape. However, this does not detract from the probative value of the few documents that do, in our view, indicate FNZ's contemporaneous view of its competitive landscape. We note, in this regard, that it is not uncommon for a merger investigation to gather a large number of documents but for only a relatively small proportion of those documents to be ultimately relevant for the purposes of competitive assessment.

(b) FNZ also submitted that we have misinterpreted statements within the documents and taken them out of context, and have downplayed those documents which show that GBST is not a strong competitor. We have taken into account FNZ's descriptions and explanations of the content and context of these documents, where provided, and have incorporated them into our assessment below. It is important to note that the competitive assessment does not contain an exhaustive analysis of each and every internal document submitted by the Parties, but of a subset consisting of those internal documents identified as most relevant to the assessment following our initial review, the methodology for which is described in Appendix C. We have taken into account documents where GBST is not identified as a competitor within our assessment of the probative value of all documents in the round.

(c) Our assessment of the Parties' internal documents is taken together with other sources of evidence, rather than on a stand-alone basis, before we draw any conclusions. We note, in this regard, that many of the themes that we observe in the Parties' internal documents (for example in relation to the existing market position of FNZ and the nature of the competitive interaction between the Parties) are also reflected in other sources of evidence, such as the shares of supply and the tender data.

(d) We note that some of the documents produced for FNZ by third parties were based on input from key staff at FNZ and that others were subsequently incorporated into management presentations. While FNZ has expressed its dissatisfaction with these documents to us during the course of our investigation, it has not provided any contemporaneous evidence to show that these documents were questioned by FNZ at the time. We therefore consider that these documents are relevant evidence, although we have (in keeping with the general principle set out above) sought to carefully consider the context of each third-party document. On this basis, documents produced by third parties, even with FNZ management input, are typically given less weight than documents of a similar nature produced directly by FNZ senior management.

Our assessment

7.75 FNZ’s internal documents, including documents for the FNZ board, indicate that it characterises itself as the most significant supplier of Retail Platform Solutions in the UK, with a unique and strong position in providing Combined Platform Solutions. Examples include:

(a) Referring to itself as [✂];[300,301] and

(b) Referring to [✂].[302]

7.76 Third party reports produced for FNZ and for the industry clearly [✂].[303,304]

7.77 In internal documents that consider the competitive landscape, FNZ [✂]. The documents, which include a senior management presentation, indicate that:

(a) [✂];[305]

(b) [✂]; [306]

(c) [✂]; [307,308]

(d) [✂].[309]

7.78 Documents provided by FNZ generally [✂].[310,311]

7.79 We have identified only two FNZ documents that [✂]. [312] [313]

7.80 The GBST internal documents we have seen that analyse competitive conditions, including board reports, documents relating to the bids made for

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300 [✂]
301 [✂]
302 [✂]
303 [✂]
304 [✂]
305 [✂]
306 [✂]
307 [✂]
308 [✂]
309 [✂]
310 [✂]
311 [✂]
312 [✂]
313 [✂]

GBST in 2019 and those prepared for GBST by consultants, [✂].[314,315,316,317,318]

7.81 We found relatively few internal documents from GBST that [✂]. One document considered why some [✂]. Reasons given related to [✂].[319]

Provisional conclusion on closeness of competition between the Parties

7.82 Overall, we consider that the evidence consistently indicates that FNZ and GBST compete closely with each other. We have found that:

(a) Customers' tender evaluations demonstrate that, where FNZ and GBST both bid, they are considered close alternatives. Tender analysis shows that the Parties regularly compete with each other to supply Retail Platforms, including overlapping frequently at the later, commercial negotiations stage;

(b) third parties generally consider the Parties to be close competitors; and

(c) 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 in the UK and highlight a significant degree of competitive interaction between the Parties.

7.83 We note that, as the larger competitor, FNZ is viewed (by itself and others) to impose a stronger constraint on GBST than GBST does on FNZ.

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

Competitive constraint from alternatives

7.85 We have assessed the competitive constraint that other suppliers of Platform Solutions, including in-house provision, exert on the Parties. We have considered suppliers that offer Platform Solutions to Non-Retail Platforms as possible out of market constraints.

314 [✂]
315 [✂]
316 [✂]
317 [✂]
318 ✂]
319 [✂]

FNZ/GBST submissions

7.86 FNZ submitted that:

(a) FNZ and GBST are subject to significant competitive constraints from many other competitors, including from other Platform Solution suppliers as well as from in-house provision.[320] FNZ submitted that suppliers of Combined Platform Solutions and suppliers of Software-only Solutions are both credible alternatives for customers.[321]

(b) There is strong competition between suppliers of Platform Solutions for all Investment Platforms, both Retail and Non-Retail, due to the commonality in their requirements.[322]

(c) The following 16 suppliers of Platform Solutions are competitors: Avaloq, SS&C, Temenos, Pershing, Bravura, SEI, Platform Securities, IRESS, TCS BaNCS, 3i Infotech, Equiniti, ERI Bancaire, State Street, Broadridge, Objectway and PSL.[323] It noted that the many software-only alternatives to GBST[324] would ensure that GBST customers could not be harmed by the Merger.[325]

(d) All customers can self-supply all or part of their Platform Solution, and some switch back to in-house provision. [326] FNZ submitted that this is demonstrated by the example of [✂].[327]

7.87 GBST submitted that:

(a) It has a narrower focus than FNZ and its software is typically only targeted at Retail Platforms where it has a strong offering, due in part to the depth of its functionality around pensions.[328] It considers that it competes closely with FNZ in the supply of Retail Platform Solutions in the UK[329] and it has also monitored the following alternative suppliers who are active in this segment: Bravura, SS&C, SECCL, Ohpen, Sapiens, Hubwise and InvestCloud.[330]

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320 ✂..
321 ✂..
322 FNZ Initial Phase 2 submission, paragraph 1.2(iii).
323 ✂..
324 ✂.
325 ✂.
326 ✂..
327 ✂..
328 ✂.
329 ✂.
330 ✂.

(b) Among these competitors, the ones that it monitors more closely are [✂] and [✂] [331] while others are a weaker constraint on it.

7.88 Of the other suppliers we asked GBST about, it submitted that each was a weaker competitive constraint on it than [✂] or [✂]:

(a) Avaloq, SEI and Temenos do not focus on Retail Platform Solutions in the UK (Avaloq and Temenos are private banking solutions[332]) and do not have the functionality to administer pension tax wrappers, annuities, UK onshore and offshore bonds.[333]

(b) SS&C is a competitor, but its main product is 'a very bespoke implementation' and 'the cost of turning that into a competitive product has proven to be prohibitive for SS&C'.[334]

(c) GBST sees itself as competing [✂] with SEI and Pershing. It sees Pershing as 'between a Retail and a private client solution' and said that it [✂].[335]

(d) TCS [✂].[336]

(e) Hubwise is a small competitor and GBST does not see it as able to take and serve GBST's customers.[337]

(f) Objectway is not a strong competitor due to weakness in its technology.[338]

(g) Investcloud focusses on Platform Solutions to private client investment managers and on the US market, rather than the UK.[339]

(h) Ohpen [✂] the cost of entering was too high.[340]

(i) Sapiens [✂].[341]

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331 ✂.
332 ✂.
333 ✂.
334 ✂.
335 ✂.
336 ✂.
337 ✂.
338 ✂.
339 ✂.
340 ✂.
341 ✂.

(j) IRESS, Evalue[342] and Wealth Wizards[343] do not have back office solutions that Retail Platforms need.[344]

(k) Torstone is a small supplier to private client investment managers without a full Retail offering, so does not compete with GBST in this market.[345]

(l) Fusion Box and Embark offer technology which is not comparable to FNZ or GBST's Platform Solutions.[346]

Third party evidence

7.89 We asked competitors and consultants to agree with, or name alternative suppliers of Retail Platform Solutions in the UK and consider the extent to which each is a close alternative to FNZ and GBST.[347]

7.90 The scores of the Parties and each of the other six suppliers that we suggested as alternatives are set out in Figure 1 and paragraphs 7.46 and 7.47. They show that:

(a) For FNZ: GBST, SEI, Bravura and SS&C were considered to be the closest alternative suppliers, closely followed by Pershing, with Avaloq and Temenos seen as less close alternatives.

(b) For GBST: Bravura was deemed to be a very close alternative, with FNZ being a close alternative. SEI, SS&C, Pershing and Avaloq were some way behind, as moderately close alternatives, with Temenos being the least close alternative.

7.91 This is consistent with the wider qualitative evidence from customers, competitors and consultants which indicates that:[348]

(a) Bravura is the closest alternative to the Parties: Bravura's technology is comparable to FNZ and GBST and it has similar experience and a good reputation in the UK market. Bravura was the most frequently mentioned alternative supplier of Retail Platform Solutions in the UK by the Parties' customers;[349]

342 ✂.
343 ✂.
344 ✂.
345 ✂.
346 ✂.
347 See Figure 1 above and Appendix D for a more detailed assessment of the responses to this question.
348 See Appendix I for further details.
349 ✂

(b) SS&C, SEI and Pershing provide a limited constraint on the Parties:

(i) Third parties said that although SS&C does supply Retail Platform Solutions in the UK, it is a weaker player than GBST, FNZ and Bravura because its only material relationship is with St. James's Place in the UK for which it provides a closed architecture solution, it therefore has gaps in its product capability, and suffered a high-profile failure to implement a Platform Solution for Quilter (Old Mutual Wealth).

(ii) SS&C submitted that it is trying to compete in the supply of Retail Platform Solutions in the UK but is not as strong a competitor as it would like due to [✂]. In particular, SS&C explained that in order [✂] with FNZ and GBST's offerings [✂].[350]

(iii) [✂] third parties indicated that the breadth of SEI's offering is restricted, it uses 'older technology' than the Parties and has limited scale in the UK.

(iv) Pershing submitted that although it can supply both Retail and Non-Retail Platforms, its typical customers are Non-Retail Platforms[351]. Other third parties shared this view and noted that Pershing is focused on Non-Retail Platforms;[352] and

(c) Avaloq and Temenos both told us that they do not compete with the Parties in the supply of Retail Platform Solutions in the UK: Temenos said that it is not active in the retail banking market.[353] This is consistent with the view of most other third parties.

7.92 Appendix I also sets out third party evidence on a number of other suppliers including Hubwise, SECCL and TCS, which indicates that they appear to offer only a limited competitive constraint on the Parties.

7.93 We have gathered third-party views on whether in-house supply was a viable option. As set out below, evidence from third parties generally suggests that in-house supply is not a significant constraint on the Parties because, as set out in Chapter 6, the supply of software in-house is not an option for the majority of the Parties' customers (but is only an option where the customer

[350] ✂ See Appendix I for further details.
[351] ✂.
[352] ✂
[353] ✂

already has an in-house solution).[354] Further details on in-house supply are provided in Appendix I.

Tender analysis

7.94 We consider that participation and success in recent tenders for Platform Solutions provides useful insight into assessing the alternative constraints on the Parties.

FNZ tender analysis

7.95 Using its own tender analysis, FNZ, stated that, since 2016, the following suppliers had won tenders in which it had competed: [355]

(a) [✂];

(b) [✂];

(c) [✂];

(d) [✂];

(e) [✂];

(f) [✂];

(g) [✂]

(h) [✂].

7.96 Based on its own tender analysis, FNZ submitted that the Parties encountered [✂] competitors, of which at least [✂] won tenders in which either or both of the Parties participated.[356] FNZ noted that it has also lost a tender [✂].[357]

7.97 FNZ submitted that its bidding data showed that there is no distinction between Solutions for Retail and Non-Retail platforms with suppliers operating across all types of platform.[358]

[354] 20 of 23 customers that gave a view indicated that the supply of software in-house was not an option for them. P2 customer questionnaire responses.
[355] ✂.
[356] ✂.
[357] FNZ Initial Phase 2 Submission, Annex 2.
[358] ✂.

Our assessment

7.98 Our tender analysis includes both Retail and Non-Retail tenders, in order to assess the alternatives and constraints from within and outside the relevant market. The analysis captures:

(a) How often the Parties and competitors overlap in tenders, at both an early and late stage;

(b) how often competitors win tenders; and

(c) qualitative evidence from customers' tender evaluations.

- *Alternatives to the Parties in Retail tenders*

7.99 Since 2016, FNZ/JHC and GBST participated in [✂][359] and [✂]Retail tenders, respectively.

7.100 In terms of the Parties' overlap with other suppliers:

(a) [✂] had by far the greatest overlap with the Parties in Retail tenders. It overlapped with GBST in [✂] tenders and with FNZ/JHC in [✂] tenders;

(b) [✂] overlapped with FNZ/JHC in [✂] tenders;

(c) [✂] overlapped with GBST in tenders; and

(d) no other supplier overlapped with the Parties more than [✂] times.

7.101 Figure 2 below summarises this position by showing the frequency with which other suppliers overlapped with GBST or FNZ/JHC in Retail tenders.

Figure 2. Number of times each supplier overlapped with GBST and FNZ/JHC in Retail tenders

[✂]

Source: CMA analysis using the Parties, customers and competitor's data.
Note: [✂]The graph includes only competitors that overlapped with the Parties at least twice and excluded in-house Platform Solutions.
Suppliers which overlapped with GBST once include [✂].
Suppliers which overlapped with FNZ/JHC once include [✂]
The participation of competitors in tenders may not be accurate or complete as for most tenders we relied on information from the Parties only.
GBST was in partnership with Equiniti in [✂] tenders, overlapping with [✂] met GBST twice [✂] and [✂] met FNZ [✂] times [✂], and [✂] and [✂].

[359] Including [✂]

7.102 We have also analysed the winners of these Retail tenders, as this shows the suppliers against which the Parties competed most closely. This shows:

(a) FNZ/JHC lost [✂] tender to each of[✂] and [✂] (It also lost [✂] tenders to GBST); and

(b) GBST lost [✂] tender to [✂] and [✂] to an unknown supplier. (It also lost [✂] tenders to FNZ/JHC).

7.103 Figure 3 below shows these findings.

Figure 3. Number of times each supplier won a Retail tender in which GBST or FNZ/JHC participated

[✂]

Source: CMA analysis using the Parties, customers and competitor's data.
Note: This includes all competitors who have won a Retail tender when overlapping with the Parties, including tenders in which a winner was chosen but the customer abandoned the project. The graphs exclude in-house Platform Solutions, on-going tenders and abandoned tenders that concluded without a winner.

7.104 The [✂] tenders won by [✂] against the Parties (one against [✂] and the other against [✂]) were for a particular type of platform. This is consistent with third party views that [✂] Platform Solution is most suitable for these platforms and not for many other Retail Platforms.[360]

7.105 The provision of in-house Platform Solutions was identified as an option in [✂] of the [✂] Retail tenders, seven of which were already in-house, and one was partly in-house. This means that an in-house solution was never considered where the incumbent Platform Solution was already fully outsourced. FNZ has [✂] to in-house supply from [✂]. This is consistent with in-house supply being a constraint only when the customer is considering switching from in-house to outsourced Platform Solutions.

Alternatives to FNZ in all tenders

7.106 We have considered the constraint imposed on FNZ and GBST by alternative suppliers in all tenders (Retail and Non-Retail). We have focussed on the late (commercial negotiations) stage, in order to identify which suppliers compete most closely with the Parties.

7.107 In terms of FNZ/JHC's participation and success in all tenders:

[360] See Appendix I.

(a) They participated in [✂ Retail tenders and [✂] Non-Retail tenders; and

(b) They reached the late stage in [✂] tenders ([✂] were Retail).

7.108 Table 3 below shows the frequency with which FNZ or JHC met other suppliers in the [✂] tenders in which they reached a late stage.

Table 3. Frequency at which competitors overlapped with FNZ or JHC at the commercial negotiations stage in tenders.

Competitor	Overlaps at late stage in Retail tenders	Overlaps at late stage in Non-Retail tenders	Overlaps at late stage in all tenders
	A	**B**	**A + B**
[✂]	[✂]	[✂]	[✂]

Source: CMA analysis using the Parties, customers and competitor's data.
Note: numbers may not be accurate as we did not receive responses from all customers and all competitors. For these, we use evidence from the Parties' on other participants.

7.109 The table shows that FNZ/JHC overlapped the most with the following suppliers at the late stage in tenders:

(a) [✂] times in total, [✂] of which were Retail and [✂] was Non-Retail.

(b) [✂] times in total, all of which were Retail tenders;

(c) [✂] and [✂] twice each in Non-Retail tenders;

(d) [✂] and [✂] each in Non-Retail tenders.

(e) [✂], [✂] each in Retail tenders.

Alternatives to GBST in all tenders

7.110 In terms of GBST's participation and success in all tenders:

(a) It participated in [✂] Retail tenders and [✂] Non-Retail tenders; and

(b) It reached the late stage in [✂] tenders ([✂] were Retail).

7.111 Table 4 below summarises the frequency with which GBST met other competitors in the [✂] tenders in which it reached a late stage.

Table 4. Frequency at which competitors overlapped with GBST at the commercial negotiations stage in tenders.

Competitor	Overlaps at late stage in Retail tenders	Overlaps at late stage in Non-Retail tenders	Overlaps at late stage in all tenders
	A	B	A + B
[✂]	[✂]	[✂]	[✂]

Source: CMA analysis using the Parties, customers and competitor's data.
Note: numbers may not be accurate as we did not receive responses from all customers and all competitors. For these, we use evidence from the Parties' on other participants.

7.112 The table shows that GBST overlapped the most with the following suppliers at the late stage in tenders:

(a) [✂] in [✂] Retail tenders and in [✂] Non-Retail tender;

(b) [✂]: in [✂] Retail tenders;

(c) [✂] and [✂]: twice each in Retail tenders;

(d) [✂] in Retail tenders; and

(e) [✂] and [✂] once each in Non-Retail tenders.

7.113 The assessment from Tables 3 and 4 above shows that the other Merging Party was the competitor with which each Party overlapped the most at a late stage across all tenders.

7.114 After the Merging Parties, [✂] overlaps most with the Parties at a late stage in these tenders: [✂] against GBST and [✂] times against FNZ. It only competed against the Parties in Retail tenders.

7.115 Other suppliers competed less frequently against the Parties in all tenders:

(a) [✂] and [✂] competed at least twice against either Party at a late stage in these tenders; and

(b) [✂] and [✂] competed at least once against either Party at a late stage in these tenders.

7.116 We therefore consider that our tender analysis indicates that only Bravura offers a similar constraint on the Parties to the one the Parties exert on each other.

7.117 Our assessment also shows a predominantly different set of suppliers competing in tenders for Non-Retail Platforms to those competing for Retail Platforms.[361]

Internal documents

7.118 Below we set out the evidence that we found in internal documents on the competitive constraints on FNZ and GBST from alternative suppliers and in-house supply.

7.119 FNZ submitted that its internal documents mention many other suppliers, as well as GBST and Bravura,[362] and that internal documents demonstrate the level of competition between FNZ and other suppliers.[363]

7.120 Overall, FNZ's internal documents show that FNZ [✂].

7.121 Reports prepared for FNZ and for the industry by third parties state that[✂].[364,365] Some FNZ documents, including management presentations from 2018 and 2019, refer [✂].[366,367]

7.122 Other competitors, such as [✂]. Further the context of such mentions [✂].

7.123 [✂].[368,369] This view is supported by documents from third parties.[370,371]

7.124 We note that many FNZ internal documents consider the wider Platform Solutions sector in which FNZ operates, not just the Retail Platform Solutions

361 see Chapter 6, Market definition.
362 [✂]
363 These include [✂].
364 [✂]
365 [✂]
366 [✂]
367 [✂]
368 [✂]
369 [✂]
370 [✂]
371 [✂]

in the UK market which we are considering. GBST's documents are more focussed on the Retail market as this is where it is most active.

7.125 GBST's internal documents (as described in paragraph 7.81) primarily [✂]. [✂].[372,373,374,375]

7.126 These documents refer to [✂]. A few GBST documents mention [✂].[376,377] The documents typically [✂].

7.127 A consultant's reports for GBST treat [✂].[378] One document identifies [✂].[379]

7.128 Like FNZ, GBST's internal documents show that [✂].[380]

Provisional conclusion on competitive constraint from alternatives

7.129 We have provisionally found that, alongside the constraint they impose on each other, Bravura is the only close competitor to the Parties in the supply of Retail Platform Solutions in the UK. SS&C and SEI exert a limited constraint.

(a) Third parties told us that Bravura is focused on supplying Retail Platform Solutions in the UK and provides a strong constraint on the Parties, and especially on GBST. SS&C is also considered to be active in the supply of Retail Platform Solutions in the UK but is a weaker constraint than the Parties and Bravura. Third parties had mixed views on the strength of constraint exerted by SEI on the Parties.

(b) Our tender analysis shows that Bravura is the closest competitor to the Parties, with SS&C and SEI exerting a limited constraint on the Parties but much less than Bravura.

(c) Alongside the Merging Party, internal documents show that Bravura is monitored closely as a supplier. Both Parties' documents identify SS&C and SEI as competitors, but as less of a constraint than Bravura. Other suppliers have far less prominence in the Parties' documents and the treatment of these suppliers does not indicate that the Parties see them as a material constraint.

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372 [✂]
373 [✂]
374 [✂]
375 [✂]
376 [✂]
377 [✂]
378 [✂].
379 [✂].
380 [✂].

7.130 We have also assessed the competitive constraint on the Parties from other suppliers, including those which focus on supplying Non-Retail Platforms. Evidence from third parties, tender analysis and internal documents shows that they also offer a weak constraint.

(a) Our tender analysis demonstrated that there is a predominantly different set of suppliers competing for Non-Retail tenders, compared to Retail tenders. These suppliers include Objectway, Pershing, Avaloq, Temenos and Third Financial.

(b) Third parties indicated Hubwise and SECCL were possible suppliers of Retail Platform Solutions in the UK but not at the same scale as the Parties. Third parties indicated that the constraint from Pershing, Avaloq, and Temenos is generally limited, especially on GBST, due to their focus on Non-Retail, rather than Retail Platforms. TCS also appears to offer only a limited competitive constraint on the Parties based on third party evidence.

(c) Competitors, such as Avaloq, Pershing and Temenos, are mentioned noticeably less frequently in the Parties' documents and the context of such mentions does not support the position that these other suppliers are material constraints on the Parties.

7.131 We also consider that in-house supply of software and servicing does not impose a significant constraint on suppliers of Investment Platform Solutions.

(a) Third parties indicated that in-house supply of software is only viable for very few customers. Third parties also indicated that, while Platforms may provide some aspects of servicing in-house, the trend is towards outsourcing;

(b) our tender analysis showed that in-house supply of software is primarily an option for customers who already self-supply and who are considering outsourcing against continuing this model; and

(c) the Parties' documents view in-house Platform Solutions as an opportunity to sell more business rather than a competitive constraint.

Switching costs

7.132 If the costs of switching from one supplier to another are high, the Merged Entity may be able to raise prices or degrade the quality of products without losing many customers.[381] In addition, high switching costs can increase barriers to entry as customers may be even less willing to switch to a new supplier.[382] High switching costs may weaken the bargaining position of customers and make them less sensitive to changes in the price, quality or service levels.

7.133 We assessed the costs for customers who switch suppliers of Platform Solutions. These costs include, but are not limited to, financial costs (such as implementation fees, exit fees), financial risks (such as the risk of disruption) and time costs (such as time taken to move to the new supplier).

7.134 We took account of the Parties' submissions, the Parties' internal documents, third party views and evidence from tenders and customers' tender evaluations. [383]

FNZ/GBST submissions

7.135 FNZ submitted that costs of switching can vary significantly depending on whether the customer has a high risk appetite and whether the switch is from a newer or older Platform Solution, as well as [✂].[384]

7.136 FNZ submitted that the main risks for customers and Platform Solution suppliers are: [385]

- *(a)* [✂];
- *(b)* [✂]; and
- *(c)* [✂].

7.137 FNZ submitted that switching costs may range from £[✂] to £[✂]. It submitted that, even in the worst case, the switching costs were likely to be small in the context of the customer's total revenue and may lead to cost reductions and enhance the customer's ability to grow.[386]

7.138 FNZ submitted that the supplier [✂][387]

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[381] MAGs, paragraph 5.4.9 (c).
[382] MAGs, paragraph 5.8.7.
[383] We obtained extensive evidence about this topic during Phase 1. Gathering of further evidence during Phase 2 has therefore been limited and most of evidence presented in this section was collected during Phase 1.
[384] ✂ This submission regarding switching costs applies to both the Software-only Solution and to the Combined Platform Solution.
[385] ✂.
[386] ✂.
[387] ✂.

7.139 FNZ submitted that the time taken to switch in Platform Solutions can also vary but estimated could be between [✂] and [✂], although it has known of switches that have taken up to six years.[388]

7.140 FNZ submitted that switching does happen, as shown by its tender analysis where it found [✂] instances of Retail customers switching over the last ten years.[389] It said that there is a market trend towards outsourcing which gives Platform Solution suppliers many opportunities.[390]

7.141 FNZ submitted that there are no significant barriers to customers switching back from third-party supply to an in-house Platform Solution. [391] It noted that:

(a) Investment Platforms have the necessary IT skills to build a Platform Solution and they can use consultancies;

(b) many customers retain part of their servicing in-house, even when using a third party supplier; and

(c) customers can choose which elements of the Platform Solution to supply in-house.

7.142 FNZ submitted that the Merger does not impact switching costs or reduce the threat of switching as a competitive constraint.[392]

7.143 Finally, FNZ submitted that tenders create a competitive constraint even when switching does not result.[393]

7.144 GBST submitted that customers rarely switch as it is a significant task.[394] It told us that switching generally occurs when the supplier cannot serve the customer. [395]

7.145 It also submitted that Investment Platforms that are going through significant business change (such as acquiring a new platform) and want to review all aspects of the contract may decide to tender and then switch.[396]

7.146 GBST submitted that it believed that switching costs can vary from £5 million to £80million.[397]

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Third party evidence

7.147 We asked third parties to rate how easy it is to switch supplier of software and servicing, with 1 and 5 corresponding to 'very easy' and 'very difficult' respectively:

(a) For the 23 customers and two potential customers that provided a response, the median rating was 5 for both software and servicing; and

(b) for the ten competitors that provided a response, the median rating was 4.75 for both software and servicing.[398]

7.148 No third party told us that switching software was easy. Customers listed several reasons for why they consider switching suppliers is difficult. These included:

(a) It is risky, complicated, technical and expensive and it can go wrong;[399]

(b) One customer that switched to FNZ via another supplier said it has taken up to three and a half years at a total cost of around £185m.'[400]

(c) One customer noted that the complexity in changing software was because it required data, records and client communications to be moved and needed customer re-training.[401]

(d) One customer said that switching is likely to require a minimum of two years,[402] while another said it would take between 18-30 months.[403]

7.149 Submissions from consultants who are often heavily involved in customers' tendering and switching projects suggest that switching costs are high. These consultants characterised the switching process as follows:

(a) 'Providers rarely switch. Clients are wary of changing providers as the associated cost, risk and potential for disruption is exorbitant. Most renewals are an opportunity to renegotiate on aspects of the service that either party is concerned about e.g. pricing, SLAs, KPIs etc.'[404]

(b) 'Based on our observations, the majority of UK Retail Platforms that have undergone a re-platforming exercise were replacing Platform Solutions

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398 CMA analysis of Phase 1 third party questionnaires.
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400 [✂][✂] Response to the CMA's Phase 1 third party questionnaire. We note that the figure of approximately £185m is [✂]
401 ✂.
402 ✂.
403 ✂.
404 ✂.

that were between 15 – 25 years in age, indicating re-platforming is an infrequent activity. In addition, based on our observations in the market, switching providers and re-platforming is often costly and difficult and as such there is significant inertia within the market with limited examples of providers switching in the market. From our experience in the market in recent years, we consider most of the major providers of Retail Platform Solutions in the UK to have selected their strategic platform for the near to medium term, however continued M&A activity in the market may give rise to demand for consolidation.'[405]

7.150 Despite these costs and challenges, the evidence we have gathered shows that some switching does take place.

7.151 SS&C and FNZ both told us that there has been a general removal of older technology by Investment Platforms in recent years. A significant number of Investment Platforms had legacy Platform Solutions which were stopping them from remaining competitive, so they considered that they had no option but to switch onto more modern technology. [406] [407]

7.152 SS&C noted that now that many of the legacy systems have been updated, there is little appetite left in the market to change underlying core systems. It said that platforms are less likely to switch from their current suppliers now than they might have been in the recent history of the market. [408]

7.153 The FCA also considers that re-platforming can be risky and expensive for Investment Platforms. In a 'Dear CEO' letter to the Investment Platform portfolio,[409] it stated that 'poorly planned and executed technology migrations' are exacerbating risks to 'business continuity'.[410] An article from the trade press about this letter also notes that the 'cost of re-platforming using third party firms like FNZ, GBST, Bravura and IFDS (SS&C) has spiralled [sic] in recent years'. [411]

[405] ✂.
[406] ✂.
[407] ✂. FNZ further submitted that this reflects the recent emergence of Platform Solutions and in particular the Combined Platform Solution model, meaning many Suppliers of Platform Solutions have not yet had the opportunity to consider switching between Combined Platform Solution suppliers.
[408] ✂.
[409] The letter set out the FCA's supervisory strategy for regulated firms. It set out its role relating to operational resilience so the focus was on how firms should plan and execute migrations. See CMA file note of FCA call.
[410] https://www.fca.org.uk/publication/correspondence/platforms-portfolio-letter.pdf, 6 February 2020.
[411] https://www.moneymarketing.co.uk/news/fca-replatforming-a-key-risk-for-platform-sector/

Tender analysis

7.154 Evidence from tender documents sent to the Parties by potential customers indicates that a substantial part of the procurement process is devoted to understanding the suppliers' ability to help a switch work well, in terms of their planning and history of successful migrations. We have seen that customers ask for extensive evidence from suppliers about previous migrations and contact suppliers' current customers to hear about their experiences.[412]

7.155 There have been some high-profile examples of switches which have not gone smoothly and resulted in significant disruption for the Investment Platform and their end-investors. In particular, one customer noted that SS&C had experienced significant difficulty in implementing a Platform Solution for St James's Place and Old Mutual with 'high-profile delays, cost overruns and functional defects'. [413]

7.156 Our tender analysis indicates that, even when tendering, customers may not switch suppliers: [✂] out of [✂] tenders did not. [414] It also shows that most switching occurs from in-house to outsourced Platform Solutions: [✂] out of [✂] tenders, compared with [✂] out of [✂] for tenders that were already outsourced[415] which suggests that customers are more willing to switch when they are seeking to outsource the technology provision for the first time, but they are more cautious of switching when the Platform Solution is already outsourced.

7.157 More specifically, the customer switched suppliers in only [✂] out of [✂] Retail tenders for existing Investment Platforms:

(a) In the [✂] tenders where the incumbent Platform Solution was already outsourced, there are only [✂] where the customer changed supplier.[416] In [✂], the winning supplier was already one of the customer's incumbent suppliers[417] while in [✂], the incumbent Platform Solution was kept.[418]

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[412] See Appendix E.
[413] [✂]. [✂]
[414] [✂] out of the [✂] Retail tenders we have in the CMA data are not included in the switching analysis. [✂] tenders are for new Platforms and, therefore, do not have an incumbent solution to switch from. [✂] of the tenders is on-going, and there is [✂] where we do not know the winner of the tender.
[415] As shown below, in addition to the [✂] customers that switched, [✂] outsourced tender switched from using two suppliers to one where the winner was previously one of the two suppliers.
[416] [✂]
[417] [✂]
[418] [✂]

(b) In the [✂] tenders for Retail Platforms with in-house Platform Solutions, [✂] customers switched to an outsourced Platform Solution[419] and [✂] kept the in-house Platform Solution.[420]

7.158 Evidence from customers' tender evaluations indicates that the switching experience is specific to each system, with migrations from legacy systems being more complex than migrations from more modern systems.[421] Migration from a legacy system seems to be such a complex task that one customer considered exiting the market or selling the platform instead of re-platforming.[422]

7.159 Our analysis indicates that switching is less frequent than FNZ had suggested. We believe that this is because our analysis (which found evidence of switching by [✂] customers) is based on switching events since 2016 for Retail Platforms, which we consider is the most useful evidence for the assessment of the competitive effects of the Merger, whereas FNZ's analysis (which found evidence of [✂] customers switching) is based on tenders for both Retail and Non-Retail Platforms over the last ten years.

Internal documents

7.160 We also found very consistent evidence in both Parties' internal documents, including those produced by or for senior management, that they believe switching to be [✂]. [423] [424] [425] [426]

Provisional conclusion on switching costs

7.161 Switching costs vary across customers, and some customers have switched in the past. However, taking account of all of the above evidence, we have provisionally found that switching is complex, risky, lengthy, and expensive.

7.162 Evidence indicates that re-platforming is 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

419 [✂].
420 [✂]
421 [✂][✂]
422 [✂]. [✂].
423 ✂
424 [✂]
425 [✂]:.
426 ✂

growth). Customers may invite other suppliers to tender to create competitive tension and get a better deal from the incumbent supplier.

Benchmarking and other contractual arrangements

7.163 FNZ's contractual arrangements with its customers include benchmarking provisions and an asset-based pricing model. FNZ submitted that these contractual arrangements often protect customers to ensure they are always on the most advantageous pricing available.[427] We consider the merit of this position below.

7.164 We note that contractual arrangements are, in general, unlikely to protect customers from the loss of rivalry that might be brought about by a merger. Contractual arrangements can be renegotiated or terminated over time and even where this could only be done with bilateral consent, the bargaining power held by each of the parties and wider commercial considerations could have a bearing on their incentives to agree to such changes. Accordingly, we consider that, both in principle and in practice, such contractual arrangements would not serve to protect customers following a reduction in rivalry caused by a merger. We have, however, in light of FNZ's submissions, considered the potential impact of the specific benchmarking provisions and asset-based pricing model cited by FNZ in this case.

7.165 Benchmarking provisions seek to maintain the long-term competitiveness of Platform Solutions compared to others in the market and may arise in two different ways:

(a) Clauses that compare the terms that a customer receives from its supplier with the terms offered by similar suppliers; and

(b) Clauses that compare the contractual terms of a customer with the contractual terms of other customers of the customer's supplier (Most Favoured Customer Clauses).

7.166 FNZ's asset-based pricing model involves [✂]. Should FNZ deteriorate its offering as a result of the Merger, this could reduce the competitiveness of the Investment Platforms that it serves, the assets they administer and consequently the overall fees that FNZ earns. If significant, such a mechanism could weaken any incentives of the Merged Entity to deteriorate FNZ's offering.

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[427] ✂

7.167 [✂].

FNZ/GBST submissions

7.168 Notwithstanding FNZ's view that benchmarking arrangements could protect customers, information provided by FNZ indicates that benchmarking is used infrequently by its customers:

(a) Although [✂] of its [✂] UK customer contracts included benchmarking provisions, [✂] list specific comparators, and [✂] for inclusion in the benchmarking exercise. It noted [✂].

(b) It was not aware of [✂].[428]

7.169 As an alternative to benchmarking, FNZ submitted an example of [✂][429].

7.170 FNZ submitted that, since both FNZ and its customers [✂], irrespective of any contract benchmarking provisions, it would still be in FNZ's interests to remain competitive so that FNZ's customers remain competitive and [✂].[430] To support this position, FNZ provided [✂] for Combined Platform Solutions, which show they are a significant portion of a Retail Platform's costs, with software costing around [✂]% of the platform's total revenue and servicing costing around [✂]%.[431]

7.171 GBST submitted that benchmarking is infrequent, stating that [✂].[432]

Third party evidence

7.172 A minority (seven out of 34) of customers told us that they use benchmarking in their Platform Solution contracts. They consider it to be an important mechanism by which they can ensure that the services they receive continue to be competitive relative to what is available elsewhere in the market.[433] Several customers specified that their benchmarking provisions cover both pricing and quality of service. [434]

7.173 However, more (14) customers stated that they do not use benchmarking at all and that even where it is used it may be relatively ineffective because:

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[428] FNZ's Response to the Issues Statement, paragraphs 1.8, 3.3 and 3.5-3.7. [✂]
[429] [✂].
[430] FNZ's Response to the Issues Statement, paragraphs 3.11-3.13.
[431] [✂]
[432] ✂
[433] ✂
[434] ✂

(a) It may be difficult to make direct comparisons with services provided to other Retail Platforms, especially where a Platform Solution includes bespoke or tailored elements specific to the customer;[435] and

(b) it may be difficult to enforce the application of these provisions.

7.174 While third parties recognised that there is some alignment of incentives when using an asset-based pricing model, they had mixed views regarding whether it provided a strong incentive for suppliers to maintain their offering:

(a) Five customers told us that it can help to encourage the Platform Solution supplier to maintain high levels of service and invest in the development of new capabilities for the platform customer. [436]

(b) However, the majority of third parties did not consider it to be of primary importance.[437] Eight considered competition between Platform Solution suppliers to win or keep customers as the key driver of price and quality.[438]

Scope of benchmarking and other provisions

7.175 We have seen some contracts for the supply of Platform Solutions that include benchmarking provisions to ensure that the Solution remains in line with those supplied to other Investment Platforms.[439]

7.176 Benchmarking provisions may cover all aspects of the contract (that is, charges, services, other commercial components of the relationship), or they may only cover improvements in terms for the customer (meaning lower charges and/or improvements in service levels).

7.177 The costs of benchmarking are usually shared equally between the customer and supplier.

7.178 There are often restrictions on benchmarking including:

(a) Its timing (not within the first year of the contract for example) or more frequently than every year, or every five years;

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[435] ✂]
[436] ✂.
[437] Only four out of 19 third parties who expressed a view considered aligned incentives to be a primary driver of price and quality of Platform Solutions.
[438] ✂
[439] [✂]

(b) there being mutual agreement on the choice of independent party to undertake the exercise;

(c) the choice of comparison group being the responsibility of the party undertaking the exercise; and

(d) that its outcome must be binding on the supplier and implemented within a set period of time.

7.179 As noted above, the majority of third parties did not consider asset-based pricing to be of primary importance.

Provisional conclusion on benchmarking and other contractual arrangements

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

7.181 In this market benchmarking arrangements are not used widely and there are limitations in their effectiveness. [✂].

7.182 Third party evidence indicates that FNZ's asset-based pricing model is not a key driver of price and quality. We consider it unlikely that it would prevent the Merged Entity from deteriorating its offering.

7.183 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

7.184 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.

7.185 In this market, where product development is a key competitive factor, we consider whether the Merger could have a negative impact on the Merged Entity's incentives to invest in the quality and development of its products.

7.186 This section considers the importance of product development and whether it may be affected by the Merger. [440]

[440] Our assessment includes all forms of product development including adopting already existing technologies or creating new technologies altogether.

Importance of product development

7.187 FNZ submitted that the supply of Platform Solutions is dynamic,[441] and that the most important factor considered by customers when evaluating bids is [✂] which includes [✂] by the supplier.

7.188 GBST submitted that factors generally considered important by customers when selecting a supplier include [✂]. [442]

7.189 Customers, consultancies and competitors all highlighted the important role of R&D. [443] For example:

(a) Aegon stated that ‘It is very important that there is suitable provision for R&D to keep the pace with the market and have an element of competitive edge if possible, so underlying investment is key.’ [444]

(b) Lloyds stated that ‘R&D and innovation is highly important as it influences the scope, features and functionality of the solution, the channels through which customers interact and therefore is critical to the customer journey. It also influences speed and efficiency therefore costs and service, which are important to the client and the end customer.’[445] It also explained that ‘[t]he tender would also require the provider to present their technology / R&D roadmap to outline what is firm and in plan in addition to indicative projects.’[446]

(c) A consultant explained that R&D investment maximises efficiency because it increases automation, ‘enables the provider to keep up with innovation in the market,’ and ‘ensures that technology stays relevant because products can become legacy technology very quickly.’[447]

(d) Bravura stated that its ‘R&D investment is to keep the functional and technical capabilities of our solutions up to date and ensure that we can meet the needs of our current and prospective clients.’[448]

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441 ✂.
442 ✂.
443 For more details, see appendix D and E.
444 ✂
445 ✂.
446 ✂.
447 ✂]
448 ✂.

R&D and the role of competition

7.190 GBST's Project Evolve provides a 'live' example of how suppliers compete through product development. The project was to update GBST's main software product, Composer. GBST submitted that it planned for Project Evolve to be completed [✂].[449] Evolve accounts for [✂].

7.191 GBST internal documents, [✂], show that it was clearly [✂]. [450] [451]

7.192 We have seen no evidence that FNZ responded to GBST's Project Evolve, although its board minutes show that [✂][452] A third party report for FNZ [✂] [453] but FNZ has submitted to us that [✂].[454]

7.193 FNZ submitted that it typically engages with [✂]through [✂] to them. This allows FNZ [✂].This, in turn, means that most of FNZ's R&D and related spending can be [✂].[455] We consider that its characterisation of the product development process, while not identifying specific competitors, is consistent with competition for customers playing a role in product development.[456]

FNZ plans for GBST product development

7.194 FNZ's internal documents suggest that FNZ's intention is to [✂].[457] For example:

(a) FNZ board minutes from [✂].[458]

(b) An email from [✂]. [459,460]

7.195 FNZ submitted to us that, as part of the acquisition process, its intention is to replace GBST's programme '[✂].' [461]

7.196 FNZ submitted that [✂] and that, compared to Evolve, its [✂].' [462]

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450 [✂]
451[✂],
452 [✂]
453 [✂]
454 FNZ Initial Phase 2 Submission, paragraph 6.23(iii).
455 ✂
456 See Appendix K
457 See Appendix K for these documents
458 ✂.
459 [✂].
460 ✂
461 ✂
462 ✂.

7.197 In particular, FNZ stated that [✂].[463] In support of this position, FNZ referred to a document [✂][464] and noted that [✂].'[465] Our review of FNZ's documents confirms that [✂], but it is not clear whether this relates to R&D or other expenditure such as the cost of migrating existing GBST customers onto FNZ technology.

Our assessment

7.198 Both the Parties and third parties submitted that product development is a key driver of customer demand.

7.199 The evidence shows that competition is a key driver of product development. For example, GBST invested in Project Evolve to make it more competitive, particularly with regard to FNZ. Its internal documents show that [✂].

7.200 FNZ board minutes suggest that GBST's R&D was developed as a direct response to FNZ, although we found no evidence that FNZ responded to this.

7.201 We found evidence that FNZ intends to [✂], but there is no clarity about this plan. FNZ's internal documents indicate that FNZ [✂] as the Merged Entity [✂]

Provisional conclusion on competition in relation to product development

7.202 The Merger will remove the rivalry between GBST and FNZ who we have provisionally concluded are close competitors. Consequently, any future product development will be subject to reduced incentives to innovate, as a result of a substantial reduction in rivalry resulting from the Merger.

7.203 We are therefore of the view that the Merged Entity will have less incentive to undertake product development and/or its product development will generate significantly less competitive tension in the market than the Parties would otherwise have created absent the Merger, and we believe that this will worsen outcomes for customers.

7.204 We note that FNZ's intention is to [✂] GBST intended to enhance its offering to compete more effectively against FNZ. FNZ disputes the [✂] and the available evidence indicates that it is committed to [✂].

463 ✂
464 ✂
465 ✂

7.205 While we do not have to put any weight on FNZ's [✂] for the purposes of our assessment, we note that the [✂] would be consistent with a reduced incentive to innovate being brought about as a result of the Merger.

Provisional conclusion on the competitive effects of the merger

7.206 On the basis of our competitive assessment, we provisionally find that:

(a) FNZ and GBST are among the largest suppliers of Retail Platform Solutions in the UK. As a result of the Merger, the Merged Entity is by far the largest supplier in the market, being twice the size of the next largest supplier;

(b) FNZ and GBST compete closely with each other and, alongside the constraint they impose on each other, only Bravura is a close competitor to them. Other suppliers exert only a limited constraint. The aggregate constraints from these suppliers will be insufficient to prevent the Merged Entity worsening its offering;

(c) switching costs vary across customers, and some customers have switched in the past. However, we have provisionally found that switching is complex, risky, lengthy, and expensive;

(d) the Merged Entity, would not be prevented from deteriorating its offer due to benchmarking and other contractual provisions;

(e) as the Merger will remove the rivalry between GBST and FNZ, the Merged Entity will have significantly less incentive to improve its offering including any future product development; and

(f) overall the impact of the Merger is likely to be that outcomes for customers are worsened in terms of price and quality.

7.207 We therefore provisionally find that, subject to our findings on any 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 excluding the in-house supply of software in the UK.

8. Countervailing factors

8.1 When considering whether a merger may be expected to result in an SLC, we consider factors that may mitigate the initial effect of a merger on competition ('countervailing factors') which in some cases may mean that there is no SLC. These factors include:[466]

(a) the responses of other suppliers (such as rivals or potential new entrants) to the merger, for instance the entry into the relevant market of new providers or expansion by existing providers;

(b) the ability of customers to exercise buyer power; and

(c) the effect of any rivalry-enhancing efficiencies arising as a result of the merger.

8.2 We take each of these in turn below.

Entry and expansion

8.3 As part of the assessment of the effect of a merger on competition, we look at whether entry by new firms or expansion by existing firms may mitigate or prevent an SLC from arising. In doing so, we consider whether entry or expansion would be timely, likely, and sufficient. [467]

8.4 In this section, we consider whether there is evidence that entry and/or expansion within the UK market for retail platform solutions will occur, and the implications this might have on the provisional SLC we have found.

Views of FNZ

8.5 FNZ told us that the barriers to entry and expansion 'are not such as to discourage any credible competitor and are reducing further as a result of continuing regulatory convergence'.[468]

FNZ provided a list of examples of recent new entrants into the platform solutions market, including UBS, Hubwise, SECCL, Aladdin (Blackrock), Multrees and GPP Wealth Solutions.

8.6 FNZ told us that examples of likely entry or expansion are, by their nature, difficult to predict, but that FNZ is aware of the following current examples of expansion:[469]

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[466] MAGs, sections 5.7 – 5.9.
[467] MAGs, paragraph 5.8.3.
[468] ✂
[469] ✂.

(a) ‘Avaloq and Temenos: actively bidding for supply of Solutions for Advised Platforms in the ‘open’ advice sector in Australia.

(b) SS&C: actively looking to win business in the advised segment (specifically the IFA sub-segment). IFDS (now SS&C) has already won two large customers, St James’s Place and Old Mutual Wealth (now Quilter) (although as noted above it subsequently lost the Old Mutual Wealth contract, which FNZ believes was due to cost overruns).

(c) Entry by start-up companies such as Hubwise, SECCL (acquired recently by Octopus to support its aggressive expansion).

(d) BlackRock: expanding Aladdin into a WMP Solution to directly compete with FNZ.’

8.7 FNZ also mentioned two further ‘challenger Solution providers’ companies: Focus Solutions and Third Financial. [470]

8.8 FNZ told us that companies which supply similar markets internationally do not need to redevelop their products for the UK, allowing them to enter cost-effectively.[471] FNZ noted the following examples:[472]

(a) ‘Avaloq: processes c.320,000 customers with BT Panorama servicing legacy Financial Planning Firms in Australia;

(b) Pershing: with $2 trillion in AUA globally, has significantly more scale than FNZ;

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

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

8.9 FNZ told us that the requirements of Non-Retail Platforms encompass those of Retail Platforms and enable them to serve Retail Platforms quickly and at lower cost, as technology and administration requirements are the same.[473] For example, FNZ told us that acquiring pensions administration capabilities is not necessary and is, in any case, comparatively straightforward. [474] It gave

[470] ✂.
[471] FNZ Initial Phase 2 submission, paragraph 4.41
[472] FNZ Initial Phase 2 submission, paragraph 4.41 (i)-(iv). These comments were in relation to entry into platform solutions more broadly and not just the retail segment.
[473] FNZ Initial Phase 2 submission, paragraph 4.33
[474] FNZ Initial Phase 2 submission, paragraphs 4.35 – 4.38

examples of Avaloq doing so in Australia and suggested that a provider of Combined Platform Solutions could work with a software-only provider to access the pensions solution.

8.10 FNZ told us that the barriers to enter and expand, particularly for large global providers that are already present in the UK (such as Pershing, Avaloq, TCS BaNCS and Temenos), are low.[475]

8.11 FNZ submitted that the timely, likely and sufficient criteria can be satisfied by Pershing, Avaloq, TCS BaNCS and Temenos.

(a) Timely: 'Where contracts are determined in tender processes, the relevant question is how quickly a non-Retail focused supplier could, at the commercial negotiations stage, reach a position to make a credible bid to serve a Retail platform. This is the stage […] at which substantive competition takes place.'[476]

(b) Likely: FNZ told us that these entities already operate at scale and within the UK; have the necessary expertise and financial resources to supply Retail Platforms and a track record of competing against FNZ in the UK and internationally. It noted that CMA evidence showed that Avaloq and Pershing were recognised by the CMA's survey participants as credible alternatives to GBST more often than FNZ, and Temenos was recognised the same number of times, highlighting their strong reputation. [477]

(c) FNZ submitted that Retail Platforms represented a sufficient incentive for these suppliers in terms of their annual recurring revenue. [478]

(d) Sufficient: FNZ told us that a new or expanded competitor would be able to compete against the merged entity on comparable terms, in respect of goods, services and price [479]

8.12 FNZ said that entry and expansion are enabled by platforms switching and that its tender data showed [✂] instances of Retail customers switching over the last ten years. It said that the market trend towards outsourcing provided further opportunities: it identified [✂] instances of major Retail customers outsourcing Platform Solutions over the past ten years. It noted that platforms using proprietary solutions still account for more than [✂] of AUA held on Investment Platforms and that, if only a modest proportion of these platforms

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would switch to an outsourcing model that would imply substantial new opportunities.'[480]

8.13 GBST internal documents provide [✂].[481] GBST internal documents [✂].[482]

Views of third parties

8.14 We contacted competitors, consultants and customers seeking views on barriers to, and potential for, entry and expansion in the UK market for Retail Platform Solutions.

8.15 Competitors told us that developing a new software solution for the UK Retail Platform market is challenging. They said that it takes time, money and requires a lot of specific expertise to develop the software and enhance its functionality to support customer and regulatory requirements.[483] No competitor told us that entry into this market was easy.

8.16 Some third parties mentioned scale as a barrier: SECCL told us that customers select on the basis of capital strength; [484] Hubwise mentioned that the supplier's balance sheet would be taken into account;[485] and Avaloq mentioned scale as a factor.[486]

8.17 SS&C told us that the unwillingness of platform operators to consider moving to a new platform is a challenge, particularly for a new entrant. [487]

8.18 Competitors mentioned that international companies entering the UK can face challenges:

(a) Bravura told us that [✂][✂], [✂] supplier, had won a large, initial client in the UK but that implementation was not successful and [✂][✂] had subsequently closed its UK business.[488]

(b) Hubwise said that some international companies fail in the UK market because it is unique.[489]

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481 See Chapter 6, Market Definition
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Evidence of potential entry or expansion from third parties

8.19 SS&C told us that it would be keen to build a significantly larger presence in the UK retail advisory, direct-to-customer and institutional wealth management sectors.[490]

8.20 SS&C told us that new entrants Parmenion and Hubwise have made some headway in the last couple of years, having launched using their own software, but that both remain relatively small and with restricted capabilities.[491]

8.21 Equiniti told us that it is focused on delivering solutions to the Retail Platforms marketplace through its partnership with GBST and that it expects to continue in this market but recognises that with the GBST/FNZ merger it will need to look at alternative software partnership options. [492]

8.22 Avaloq told us that it is currently focusing on its existing strategy with wealth managers and private banks but is exploring other areas (see paragraph 9.35 for further details on Avaloq's views). Avaloq told us that there have been two entrants of note to the market: SECCL and Hubwise.[493]

8.23 Temenos said that it is not active in the retail wealth market, but this side of the market is growing. [✂].[✂][494]

8.24 Temenos said that it does not get invited to Retail tenders. [✂].[✂]. Temenos said that it [✂].[495][✂].[496]

8.25 TCS BaNCS said that it wants to expand its UK business and replicate the success it has had with [✂][✂] in the next three to five years. It said that its lack of presence today is because it is new to the UK market, it is not due to lack of intent or product incapability but that it takes time to increase market presence. It said that UK market participants tend to be in it long-term and customers are resistant to changing providers. It said that it will be tough to win business from FNZ due to its strength in the market.[497]

8.26 Pershing told us that it is an existing provider.[498] However, we have not identified any UK Retail Platform clients served by Pershing.

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8.27 Evidence from customers and consultants was more limited but the five companies most often cited as entering and/or expanding into the market were Hubwise, SECCL, Multrees, Third Financial and GPP Wealth Solutions. Evidence from customers and consultants was more limited, but the five companies most often cited as entering into and/or expanding in the market were Hubwise, SECCL, Multrees, Third Financial and GPP Wealth Solutions.

8.28 Hubwise was mentioned to us as a new entrant by several third parties. [499] [500] It told us that is already active in the market and aiming to be able to compete head to head with FNZ 'soon'. Hubwise considers that it is some way ahead of SECCL in terms of capability and market recognition'.[501]

8.29 SECCL told us it is already in the market and plans to compete strongly and expand as rapidly as possible.[502] However, SECCL told us that it takes time and investment until new providers start making a profit. [503]

Our assessment

8.30 We accept that tendering by Retail Platforms creates the opportunity for entry and expansion, although our tender analysis shows that there were only [✂] occasions where Retail customers have switched supplier since 2016, rather than [✂] cited by FNZ (due to the wider scope of its analysis, which we consider includes tenders that are only of marginal relevance to our assessment of the Merger). We have not seen examples of new entrants winning Retail tenders.

8.31 We have considered the most credible sources of entry and or expansion into the UK market for Retail Platform Solutions and we have considered the most credible sources of entry and or expansion into the UK market for Retail Platform Solutions.

8.32 We consider some of the companies mentioned by FNZ such as UBS and Aladdin (by BlackRock) do not compete for the same customers as FNZ and we have not encountered any evidence that this will change in the medium term.

8.33 We understand that some of the other companies mentioned by FNZ are already active in the UK, such as SS&C, Focus Solutions, Third Financial and

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GPP Wealth Solutions. As such, these are not recent new entrants and we have not seen evidence of expansion plans by any of these suppliers.

8.34 We consider that entry or expansion is more likely to come from one of the following sources:

(a) Entry by large international competitors into the relevant market in the UK such as Pershing, Avaloq, TCS BaNCS and Temenos.[504] We have therefore examined these firms in more detail to assess if they are likely to impose a sufficient competitive constraint against the Merged Entity in a timely manner.

(b) Expansion by recent new entrants such as the three most consistently cited firms, Hubwise, SECCL and Multrees. We have therefore also focussed on the extent to which these three recent entrants could expand to provide a stronger constraint than they currently do.

8.35 Below we set out the evidence in relation to these two sources of potential constraint.

Large international competitors

8.36 FNZ told us it believes that entry or expansion by Pershing, Avaloq, TCS BaNCS and/or Temenos would be timely, likely and sufficient to prevent any SLC. Our competitive assessment (Chapter 7) provisionally found that these companies are not close competitors of FNZ or GBST. We have not seen any evidence of their ambition or intention to expand or grow in competition with FNZ and GBST and/or that they would be likely to achieve such goals.

8.37 We have set out submissions from TCS BaNCS and Pershing above.

8.38 Avaloq told us that [✂].[✂].[505,506] When asked what would make it consider entering the market, Avaloq said that this [✂].[✂] [507]

8.39 [✂][✂] told us that: [✂][✂].’[508] It said that [✂].it [✂].’[509]

8.40 The evidence we have seen from these firms does not indicate that they are well placed to compete for retail customers in the UK and that there will be any material developments in the competitive capability from these companies

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in the near term. They all identified significant barriers to entering the UK market; and, apart from TCS, none had plans to enter the UK. Whilst, TCS has some ambition to expand in the UK, it identified significant challenges in doing so.

Smaller competitors

8.41 The three most consistently cited recent entrants were Hubwise, SECCL and Multrees. We spoke to all three to understand their position in the market and future plans.

8.42 Hubwise was established three years ago and said that it is already supplying Platform Solutions and has strong demand from medium-sized customers which it termed ‘tier 2’ customers with £[✂]£[✂] of assets.[510] It said that it intends that the total assets held on its platforms will reach £[✂]£[✂] this year, £[✂]£[✂] next year and £[✂]£[✂] by [✂].[✂]. It told us that it [✂] [✂][511] [512] can scale up to do so.[513] Hubwise internal documents include a forecast AUA of £[✂]£[✂] AUA by [✂]..[✂].[514]

8.43 SECCL provides Combined Platform Solutions to Retail Platforms and it said that it also aims to supply software-only. [515] [516] It won its first customer in 2018 and was bought by Octopus Group in 2019. It said that it offers the same services as FNZ but at a far smaller scale. It currently supplies platforms with around £[✂] of assets and said that it will have over £[✂] assets managed on its platform. It said that when its system is complete ([✂]), it will be able to attract large customers with assets of around £[✂].[517] It said that it would not currently target FNZ and GBST’s customers directly because they would be looking to transfer at least £[✂] of assets or much more and it does not currently have the ability to handle such clients and they would probably not have the risk appetite to engage SECCL at present.[518]

8.44 Multrees was established in 2010.[519] It said that it differs to most institutional retail platforms because it is not a product (tax wrapper or fund supermarket) provider. It does not create its own products or provide financial advice but is an ‘independent, unconflicted open-architecture business’. It said that FNZ

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targets 'big-ticket deals which leaves the middle of the market open to other suppliers'. [520] It said that it does not need major investment in order to grow because it has scalable infrastructure which means that it can add more business without employing significantly more staff. [✂]. [521]

8.45 We note that each of these firms is much smaller than FNZ, GBST, Bravura and SS&C in terms of size of customer served:

(a) FNZ has over £[✂] AUA and its largest customer is [✂] with over £[✂] AUA.[522]

(b) GBST's largest customer is [✂] with $[✂] AUA.[523]

(c) FNZ told us that St James's Place, served by SS&C, has US$110bn AUA and Fidelity International, a Bravura customer, has US$[✂] AUA.[524]

8.46 We have identified a number of smaller firms supplying Retail Platform Solutions in the UK. However, none of these are currently able to serve the size of customers that FNZ and GBST do and expansion plans are limited. We therefore do not consider that such entry or expansion would be timely, likely or sufficient.

8.47 FNZ told us that switching can and does happen with 22 retail switches in the last ten years. We agree that switching occurs and that there is competition at the start of a tender process. This means that the duration of the switching process may not automatically rule out entry or expansion being timely.

8.48 However, our retail tender analysis (see Chapter 7, Competitive Effects) shows that:

(a) GBST has never bid against Avaloq, Temenos, Pershing, TCS, Hubwise, SECCL or Multrees; and

(b) FNZ/JHC have not bid against Temenos, Pershing, Hubwise, SECCL or Multrees.

(c) FNZ/JHC have bid against Avaloq once and once against TCS in Retail tenders. But there is no evidence of expansion by these competitors based on recent tender analysis.

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Provisional conclusion of whether entry or expansion would be timely, likely and sufficient to prevent an SLC

8.49 We looked at whether entry or expansion would be timely, likely and sufficient to mitigate the initial effect of the merger.

8.50 We considered potential entry from non-retail platform providers. FNZ told us that the requirements of Non-Retail Platforms encompass those of Retail Platforms and enable them to serve Retail Platforms quickly and at lower cost, as technology and administration requirements are the same. However, this was not consistent with the evidence we gathered from non-retail platform providers which indicated that such entry was unlikely.

8.51 We have seen some evidence of expansion by smaller firms over recent years. However, this evidence also shows that such expansion has been limited in nature and would not, either individually or collectively, be of sufficient scale to constrain the merged entity.

8.52 We provisionally conclude that entry or expansion would not be timely, likely and sufficient to outweigh the SLC.

Buyer power

8.53 In some circumstances, a customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. We refer to this as countervailing buyer power. The existence of countervailing buyer power may make an SLC finding less likely.[525]

8.54 The extent to which customers have buyer power depends on a number of factors. A customer's negotiating position will be stronger if it can easily switch away from the supplier or if it can otherwise constrain the behaviour of the supplier. Typically, a customer's ability to switch away from a supplier will be stronger if there are several alternative suppliers to which it can credibly switch, or it has the ability to sponsor new entry or enter the supplier's market itself by vertical integration. Where customers have no choice but to take a supplier's products, they may nonetheless be able to constrain prices by imposing costs on the supplier, for example by refusing to buy other products produced by the supplier.[526]

[525] Merger Assessment Guidelines, paragraph 5.9.1.
[526] Merger Assessment Guidelines, paragraph 5.9.3

FNZ submissions

8.55 FNZ submitted that customers have substantial power to constrain the Parties, and will continue to do so for the foreseeable future. It said that 'customers are typically very large, sophisticated entities, with significant commercial power, in-house IT expertise, and access to advice and assistance from one of several major consultancy firms.' [527]

8.56 FNZ gave the following reasons for customers having substantial power to constrain the Parties:

(a) They control the tender process. Tenders are detailed and extensive, resulting in 'intense competition' amongst suppliers; Tenders give customers a lot of information from potential suppliers which results in an information asymmetry;

(b) individual contracts are not tendered very frequently so the onus is on suppliers to compete fully for every opportunity; there is a strong incentive to reach an agreement with a customer, as failing to win a new contract presents a significant lost opportunity for revenue;[528] and

(c) customers can, and do, review terms if business conditions have changed and they may renegotiate pricing mid-contract. Contracts often contain protections to ensure that customers are on the most advantageous pricing available. [529]

Our assessment

8.57 We assess buyer power below using evidence from our tender analysis and from third parties.

8.58 When tendering for a new supplier, we have found that customers are generally in control. Our tender analysis shows that customers decide whether and when to start a tender process and how it should run. We have also found that, when tendering, customers are able to drive competition amongst suppliers to obtain good terms on their contract.

8.59 For example, a customer told us that: [✂].[530]

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8.60 Customers may engage with other suppliers in order to create competitive tension between them and get better terms. This includes situations when a preferred supplier has been identified. For example, a consultant advising [✂] in its tender process recommended progressing discussions with multiple suppliers to maintain competitive tension even though one supplier was better suited. [531]

8.61 We have also found that customers whose contracts are due to expire may initiate a tender in order to get a better offer from their incumbent supplier.[532] FNZ internal documents show that customers may consider the option of remaining with their current supplier or switching to an in-house solution. [533] [534]

8.62 Customers may refer to other suppliers' terms in order to negotiate and improve contract terms. For example:

(a) An FNZ customer [✂]. [535]"

(b) A GBST customer [✂]. [536]

8.63 We have found that the frequency of tenders (especially for larger customers) is low. For these, we agree with FNZ that there may be greater pressure on suppliers to try to win the contract, as it would account for a significant, and potentially long term, gain in revenue.

8.64 There is also some evidence that some larger customers may have more negotiating power than smaller customers. Aegon told us that because, it may be GBST's largest customer in the UK, there might be reputational damage to the Merged Entity if it lost Aegon as a customer.[537]

8.65 However, we have found that customers are not easily able to switch away from their suppliers of Retail Platform Solutions as switching costs are high. (See Chapter 7.) The costs and difficulties involved in switching may therefore reduce the negotiating strength of a Retail Platform when seeking to renew a contract with an existing supplier.

8.66 Customers' ability to switch away from a supplier will be stronger if there are several alternative suppliers to which they can credibly switch. However, as found in our Competitive assessment (Chapter 7), we consider that the

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Merger would remove an important alternative for Retail Platforms in the UK and so reduce their ability to switch, or to threaten to switch, to a credible alternative supplier.

8.67 Third party customers, competitors and consultants have all commented that there are limited options available for Retail Platforms to choose from and note that the Merger has made this situation worse.

(a) One consultant submitted that 'there is already a scarcity of credible suppliers for large organisations looking for stable, established partners to work with' and the 'merger would significantly reduce choice'.[538]

(b) A customer, AJ Bell, uses two software suppliers (GBST and JHC) because it was unable to get all of the functionality it needed from a single supplier. [✂].[539]

8.68 Finally, as set out above in this Chapter, we have found that the threat of entry or expansion (including sponsored entry by a customer) does not appear to be a credible opportunity for customers seeking alternatives.

Provisional conclusion on buyer power

8.69 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.

8.70 However, other evidence indicates that this does not equate to countervailing buyer power over the Merged Entity:

(a) Our tender analysis and third party views indicate that Retail Platforms do not readily switch suppliers due to the high costs in doing so. The difficulty of switching places customers in a weaker bargaining position with their suppliers.

(b) they face a limited choice of suppliers when they do wish to switch (or threaten to do so) and this reduces their negotiating power.

8.71 We also consider that larger customers may have more bargaining power and may be able to negotiate better terms with suppliers, while smaller customers have a weaker negotiating position.

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8.72 After the Merger, customers will have lost one of the few major suppliers which could credibly provide an alternative and hence they will have less negotiating leverage with their supplier. They will be in a weaker position following the merger, whatever their negotiating strength previously.

8.73 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

8.74 As a further countervailing factor, we have considered whether any efficiencies arising from the merger may enhance rivalry, with the result that the Merger does not give rise to an SLC.

8.75 Rivalry-enhancing efficiencies should be: timely, likely, sufficient, merger-specific, and they should result in increased rivalry in the relevant market(s).

Views of FNZ

8.76 FNZ has not made any specific representations about rivalry enhancing efficiencies but has told us that the transaction will generate significant benefits for UK customers. It has submitted that there may be two key benefits to customers from the Merger:

(a) [✂] R&D spend, improving and enhancing GBST's software; and

(b) an opportunity for GBST customers to transition from an on-site software model to a fully outsourced processing model, saving money in the process.[540]

Our assessment

8.77 Efficiency claims can be difficult for the CMA to verify because most of the information concerning efficiencies is held by the merging firms. We therefore expect the Parties to provide sufficient evidence to demonstrate that rivalry enhancing efficiencies will arise as a result of the Merger.

8.78 Although FNZ has claimed that the Merger will give rise to benefits to GBST's customers, we do not consider that the two benefits set out above amount to potential rivalry-enhancing efficiencies.

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(a) FNZ has provided very little evidence to support its submission and has not demonstrated how the benefits will enhance rivalry in this market; that is, how the Merged Entity will compete more effectively.[541]

(b) In particular, we note that where efficiencies are not passed onto customers, there would be no rivalry-enhancing effect. One example of this would be any cost savings which are not passed on, since these simply result in the merged entity generating more profit. Another example would be where improvements in quality, range, or service are offset by degradation in other parameters.

8.79 While access to FNZ technology might be attractive to some GBST customers if, as a result of the Merger, FNZ is able increase prices and/or invest less in future development, then there is effectively no pass-through of the benefits, and so no increase in rivalry. While access to FNZ technology might be attractive to some GBST customers if, as a result of the Merger, FNZ is able to increase prices and/or invest less in future development, then there is effectively no pass-through of the benefits and so no increase in rivalry.

8.80 In addition, the opportunity to have access to FNZ's technology and expertise is not Merger-specific. It is currently available to GBST's customers who could choose to switch to FNZ absent the Merger.

Provisional conclusion on rivalry enhancing efficiencies

8.81 We have provisionally concluded that FNZ has not demonstrated that the Merger would result in rivalry-enhancing efficiencies which would offset the adverse effects of the Merger on competition.

Provisional conclusion on countervailing factors

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

9. Provisional decision

9.1 As a result of our assessment, we have provisionally found that the acquisition by FNZ (Australia) Bidco Pty Ltd of GBST has resulted in the creation of an RMS.

9.2 We have provisionally concluded that the creation of that RMS has resulted, or may be expected to result, in a substantial lessening of competition as a

[541] MAGs, paragraph 5.7.2.

result of horizonal unilateral effects, in the supply of Retail Platform Solutions excluding the in-house supply of software in the UK.