

# SLAUGHTER AND MAY

**FNZ RESPONSE TO NOTICE OF POSSIBLE REMEDIES  
DATED 5 AUGUST 2020**

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**Case No. ME/6866/19**

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

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**WJT/JFH/MQUB/KQC**

**24 August 2020**

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## Case No. ME.6866.19 - FNZ/GBST Response of FNZ to Notice of Possible Remedies (NPR)

### 1. Executive summary

- 1.1 FNZ strongly disagrees with the CMA's provisional conclusion in the Provisional Findings (PFs) that the Transaction will result in an SLC in the market for the supply of 'Retail Platform Solutions' (excluding in-house supply of software) in the UK.<sup>1</sup> The PFs contain important errors that FNZ will address in a separate response to the PFs (**Response to the PFs**).
- 1.2 FNZ considers that its Response to the PFs will demonstrate clearly that no SLC will result from the Transaction and so no remedies will be required. For example:
- (i) the CMA's proposed 'Retail' product market is artificially narrow and entirely at odds with the evidence showing that the requirements of Retail and Non-Retail platform customers are the same or very similar. In addition, the CMA has failed to consider the supply-side constraint exerted by Non-Retail suppliers;
  - (ii) even within the CMA's artificial 'Retail' segment, FNZ and GBST are not close competitors. There are several strong, actual and potential, alternative suppliers. The consequence of adopting a narrow market definition is that out of market constraints are significant – these constraints have not been adequately assessed; and
  - (iii) to the extent the Transaction results in any lessening of competition (which FNZ refutes), the loss would be much more limited than the PFs suggest as any lost competition would be limited to the (small) constraint exercised by FNZ on GBST – i.e. the impact on GBST customers.
- 1.3 FNZ's comments below on possible remedies are entirely without prejudice to this position.
- 1.4 If the CMA were to remain of the view that an SLC will result from the Transaction and that a remedy is therefore necessary, it must ensure that the remedy adopted is reasonable and proportionate. See further Section 2 below.
- 1.5 A full divestiture of the global GBST business would be entirely unreasonable and disproportionate as:
- (i) less onerous remedies are available that would be fully effective in addressing the SLC;
  - (ii) it would impose significant costs on FNZ (including the loss of synergies resulting from the Transaction worldwide) and on the merged entity's customers in Australia (comprising lost customer benefits resulting from the merger) when the

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<sup>1</sup> For convenience, in this response FNZ adopts terms defined in the PFs. This should not be taken as endorsement of the underlying concepts.

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CMA's SLC finding relates solely to the UK wealth management Retail Platform Solutions market; and

- (iii) it would result in the loss of relevant customer benefits (**RCBs**) in the UK that have been conservatively estimated to be between [§<] and [§<] per annum. In addition there would be lost synergies and lost benefits to non-UK customers. The total lost benefits (including RCBs) would be between [§<] and [§<] per annum.<sup>2</sup> This is equivalent to total lost benefits of between [§<] and [§<] over three years. This is significantly higher than GBST's UK wealth management revenue of c. £23 million. See further Sections 3 and 5 below.

1.6 A partial divestiture remedy would be fully effective in addressing the SLC, but would still be disproportionate (given the alternative Source Code Licensing Remedy FNZ proposes below). Out of the options presented in the NPR, the divestiture of GBST's UK wealth management business is the best targeted to the SLC identified by the CMA. This remedy would:

- (i) allow the purchaser to be an effective and credible competitor in Retail Platform Solutions in the UK, providing them with GBST's software and technology for UK Retail Platform Solutions, GBST's current UK customer contracts, GBST's experience, track record and brand, as well as the necessary supporting resources such as staff (e.g. software engineers and developers, product design, sales and customer support staff) and premises;
- (ii) be an attractive business to potential buyers, including to suppliers of WMP Platform Solutions that are not currently active in the UK and/or that do not currently focus on servicing the Retail segment, who would avoid any time and costs associated with creating a UK Retail Platform Solution. It would also be attractive to smaller players currently active in Retail Platform Solutions in the UK; and
- (iii) have an acceptable risk profile, with FNZ being prepared to offer any reasonable transitional services agreement, if required by the buyer. As explained further below, this would allow the remedy to be implemented quickly.

1.7 However, it would result in lost benefits of between [§<] and [§<] per annum, including lost RCBs conservatively estimated to be between [§<] and [§<].<sup>3</sup> This is equivalent to lost benefits of between [§<] and [§<] over [§<] years. See further Sections 3 and 5 below.

1.8 FNZ has proposed an alternative Source Code Licensing Remedy that would also be fully effective in eliminating the SLC – as well as actually enhancing competition – whilst being more proportionate in the circumstances. Under this remedy, suppliers of Platform Solutions would be offered a royalty-free licence to the GBST UK Source Code, enabling

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<sup>2</sup> Based on a consolidation of the estimated cost of lost synergies and lost RCBs from a full divestiture. See further paragraph 5.4 and 5.5.

<sup>3</sup> Based on a consolidation of the estimated cost of lost synergies and lost RCBs from a partial divestiture. See further paragraph 5.23 and 5.24.

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them to offer GBST software to UK customers. They would be free to modify and develop the GBST UK Source Code as they wished.

- 1.9 The Source Code Licensing Remedy is a comprehensive structural remedy that would be effective in ensuring that the alleged SLC is eliminated. It would be more proportionate than a full or partial divestment of GBST as it would reduce the costs of the remedy and maintain important RCBs, whilst also being quick to implement, effective, reasonable and practicable.
- 1.10 The Source Code Licensing Remedy would prevent the merged entity from being (allegedly) able to increase prices or reduce services/quality to UK customers using GBST Software post-merger, as these customers would have a credible option to switch away from the merged entity to alternative suppliers with minimal switching costs (if any). In other words, GBST customers would have the costs of switching supplier substantially reduced compared to the pre-merger scenario. See further Section 4 below.
- 1.11 The Source Code Licensing Remedy would also enhance competition by increasing the range of competitors able to bid credibly for customer contracts with Retail Platforms in the UK, since they would be able to offer a proposition based on an established, proven software solution. This would boost the ability of alternative suppliers to compete with the merged entity in tenders for Retail Platform Solutions and would be effective in removing the alleged SLC provisionally identified by the CMA.
- 1.12 [§].

## 2. The legal framework for imposition of remedies

- 2.1 Where the CMA concludes at Phase 2 that a relevant merger situation would result in, or may be expected to result in, an SLC, it must also conclude what action is to be taken to remedy, mitigate or prevent such SLC.<sup>4</sup> In deciding what measures shall be taken, Section 36(4) of the Enterprise Act notes that the CMA shall “*have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.*”
- 2.2 The CMA Merger Remedies Guidance observes:

*“The CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will then select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. The CMA may also have regard, in accordance with the Act, to any relevant customer benefits (RCBs) arising from the merger.”<sup>5</sup>*

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<sup>4</sup> See Section 35 of the Enterprise Act 2002.

<sup>5</sup> Paragraph 3.4 of the CMA guidance on merger remedies: *CMA87 Merger Remedies* dated 13 December 2018 (**CMA Remedies Guidance**).

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- 2.3 In assessing effectiveness the CMA will consider the following factors:<sup>6</sup>
- (i) *Impact on SLC and resulting adverse effects*: the remedy should address any SLC and distortions in the market comprehensively;
  - (ii) *Timing and duration*: a remedy that addresses any competition concerns quickly is preferred to one with a more long-term effect or where the timing of the remedy impact is uncertain;
  - (iii) *Practicality*: the remedy needs to be capable of effective implementation, monitoring and enforcement, without requiring elaborate and intrusive monitoring and compliance programmes; and
  - (iv) *Acceptable risk profile*: the CMA will seek remedies that have a high degree of certainty of achieving their intended effect.
- 2.4 Once the CMA has identified an effective remedy, it must consider the cost of the remedy. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective.<sup>7</sup> Where two remedies are equally effective, the CMA will choose the least costly or least restrictive remedy.
- 2.5 RCBs that will be lost as a result of a particular remedy “*may be considered to be a relevant cost of the remedy*”<sup>8</sup> that should be taken into account by the CMA in both: (i) its assessment of the costs of the possible remedies in order to identify the least costly option; and (ii) its assessment of whether the costs of possible remedies would be disproportionate to the SLC identified and the adverse effects arising from it. As such, the CMA may modify a remedy to ensure the retention of an RCB or may change its remedy selection, for example to implement a remedy other than prohibition<sup>9</sup> or to decide that no remedy is appropriate.<sup>10</sup>

## 3. Relevant Customer Benefits

- 3.1 RCBs are benefits to relevant customers:
- (i) in the form of lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not in the market(s) in which the SLC has occurred or may occur) or greater innovation in relation to such goods or services;<sup>11</sup>

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<sup>6</sup> Paragraph 3.5 of the CMA Remedies Guidance.

<sup>7</sup> Paragraph 3.6 and 3.11 of the CMA Remedies Guidance.

<sup>8</sup> Paragraph 3.16 of the CMA Remedies Guidance.

<sup>9</sup> See for example, Final Report published 11 March 2008 in the Macquarie/National Grid Wireless merger.

<sup>10</sup> See for example, Final Report published 1 August 2017 in the anticipated merger between Central Manchester University Hospitals NHS Foundation Trust and University Hospital of South Manchester NHS Foundation Trust.

<sup>11</sup> Section 30(1) Enterprise Act 2002.

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- (ii) that are merger-specific (i.e. they would not be obtained without the merger); and
  - (iii) that accrue within a reasonable period of time.
- 3.2 The Transaction will result in the following key RCBs that meet the criteria in paragraph 3.1:
- (i) improved quality of GBST products (including from enhanced FNZ product functionality that is not currently available with GBST) and increased innovation;
  - (ii) reduced ongoing operational costs following migration to SaaS or PaaS; and
  - (iii) lower cost to GBST customers of migration to SaaS or PaaS (if they wish to migrate), owing to FNZ's existing data-centre infrastructure (and accompanying support functions).

### ***Improved quality of GBST products, increased innovation at GBST and reduced ongoing operational costs***

- 3.3 Post-merger, FNZ would be able to provide the following key benefits to GBST customers:
- (i) ***Improved quality of GBST products:*** integrate GBST's Composer software with existing FNZ products and services (which would enhance the functionality available to customers quickly). These enhancements would include multilingual capabilities, income capital protection, and retail insurance (in addition to the wholesale insurance that GBST currently offers its customers) as well as products from FNZ such as: (i) FNZ X-Hub; (ii) FNZ Digital Advisor; (iii) FNZ Clear; (iv) FNZ Glass; (v) FNZ Chain for managed fund dealing; (vi) FNZ Impact; (vii) FNZ Open Banking; and (viii) FNZ App Store.<sup>12</sup> Such enhancements are consistent with the revised offering to JHC's customers after it was acquired by FNZ, with JHC customers being offered expanded front-office capabilities and back-office automation based on core FNZ Services as well as additional FNZ products, such as FNZ Clear and FNZ Glass, which provide JHC's customers with an enhanced and seamless end-to-end digital solution;<sup>13</sup>
  - (ii) ***Reduced ongoing operational costs:*** migrate Composer from customer premises to FNZ's data centres (i.e. FNZ's private cloud), so that regular upgrades to Composer could be delivered on a timely basis centrally by FNZ without customer cost, risk and disruption;
  - (iii) ***Reduced costs and risks for customers switching to PaaS solution:*** provide customers with the option of switching to an end-to-end PaaS solution so that the back-office function is run more efficiently at significantly reduced ongoing costs, whilst transferring the regulatory and operational risk to FNZ and away from the customer; and

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<sup>12</sup> See Annex A for a description of these products.

<sup>13</sup> See also paragraphs 4.7-4.9 of FNZ's response to the AIS and WPs.

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- (iv) **Increased innovation at GBST:** upgrade Composer from FNZ data centres, including completing the [§<]. Doing this centrally from FNZ data centres will enable a faster and significantly more cost effective roll-out of improved solutions, with much less disruption to customers. Otherwise, such upgrades would have to take place on a premise-by-premise basis. FNZ's commitment to upgrading Composer is consistent with FNZ's approach following the acquisition of JHC, where enhanced investment in Figaro has led to an expanded and enhanced proposition for customers.<sup>14</sup>

3.4 These benefits meet the criteria set out in paragraph 3.1 for the reasons set out below.

3.5 With access to GBST's UK source code, FNZ will provide a higher-quality product within a short timeframe and at lower cost, and with greater scope for innovation. The benefits of reduced costs would be passed on to customers in the form of lower prices and customers would also benefit from greater innovation which would otherwise not be available to them absent the transaction.<sup>15</sup> The product enhancements ([§<]) that JHC's customers are able to enjoy following its acquisition by FNZ provide a good illustration of the benefits that the Transaction will offer to GBST's customers. In particular, FNZ has committed to all JHC customers that they can remain on Figaro (JHC's original software – which FNZ is continuing to invest in), irrespective of their delivery model choice (on-premise, SaaS or PaaS), whilst at the same time offering them additional enhancements.<sup>16</sup> Similarly, FNZ will continue to maintain and upgrade Composer whilst also offering GBST customers the opportunity to take up additional FNZ enhancements should they want to do so.<sup>17</sup>

3.6 While it is difficult to estimate the resulting gain in consumer surplus for customers, the value to customers of the updated product would at least be equal to the price that customers would be willing to pay for that product absent the Transaction. This means that the minimum RCBs resulting from the merger may be estimated based on the customers' annual cost savings on the amount paid for these products/services, drawing on FNZ's experience with integrating JHC products. These benefits can be grouped into a number of categories:

- (i) First, JHC customers have been offered the opportunity to move to a SaaS operating model [§<]. FNZ Glass allows customers to [§<]. This offer of a move to a SaaS operating model [§<]. For example, FNZ's recent offer to [§<] (a JHC customer) provided scope to make annual savings of [§<] by moving to a SaaS

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<sup>14</sup> See also paragraphs 4.7-4.9 of FNZ's response to the AIS and WPs.

<sup>15</sup> FNZ has already demonstrated to the CMA that it has a track record of lowering prices to its customers where possible, having offered its customers price reductions in [§<] instances since 2008 (See further FNZ's response to the Switching Costs Working Paper at page 2). At the same time, FNZ continues to invest approximately [§<] of its global annual revenues in R&D and has a wider breadth of software functionality compared to GBST.

<sup>16</sup> See FNZ's Response to AIS and WPs, paragraphs 4.7-4.9.

<sup>17</sup> See FNZ's Initial Submission, paragraphs 9.10-9.18. See also FNZ's Response to AIS and WPs, Section 4.

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operating mode for [§<].<sup>18</sup> If a similar discount were offered to [§<] and [§<], this would give rise to annual savings for these customers of [§<] and [§<] respectively in respect of [§<] provision only.<sup>19</sup>

- (ii) Second, if the customer previously procured other functionalities for its overall software solution (i.e. functionalities that are not offered as part of GBST's Composer) from third-party providers (or has had to build and maintain these in-house at a high ongoing cost) but now chooses to source these functionalities from FNZ, this will also yield quantifiable benefits.<sup>20</sup> In particular, FNZ intends to offer the full suite of additional functionality (which would be added to GBST's Composer offering) at a lower price than what these customers would pay if procuring individual components from different third-party providers. Such price reductions arise because FNZ will internalise the benefits that a price reduction for one component will deliver in terms of increased demand for complementary functionalities. This would not be taken into account by the separate third-party providers.<sup>21</sup> Customers would also benefit from the removal of indirect costs resulting from a lack of seamless integration and the inefficiencies derived from procuring add-ons from multiple providers. By way of comparison: for [§<], referenced above, FNZ has proposed to charge [§<] for these additional functionalities, which [§<] currently procures from third-party providers for [§<]. The switch to FNZ will, therefore, lead to a saving of [§<] per annum over and above the [§<] annual savings in respect of core IAS described above (representing total annual cost savings of [§<]). The equivalent saving for [§<] would amount to around [§<] annually.<sup>22</sup> [§<] has procured a smaller range of additional software functionality from third-party providers. As a result, the saving implied by comparison with the [§<] illustration in that case would be smaller – [§<] annually.<sup>23</sup>
- (iii) Third, GBST's customers will also be able to take advantage of additional enhancements offered by FNZ alongside GBST's Composer. These include FNZ Glass, FNZ Neon, FNZ Chain, FNZ Digital Adviser, FNZ Impact, FNZ Open Banking and FNZ App Store. Most of these enhancements are innovative

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<sup>18</sup> FNZ recently proposed to [§<] that it would charge [§<] per annum if the customer [§<] for the same level of service. With an [§<], this means that the customer would pay [§<], which is lower than its current license fee for on-premise [§<] of [§<]. This means savings of around [§<] annually.

<sup>19</sup> Based on the high-level information provided to FNZ as part of the Due-Diligence process when acquiring GBST, FNZ estimates that GBST's recurring revenues from [§<] are around [§<] annually and GBST's recurrent revenues from [§<] are around [§<].

<sup>20</sup> These functionalities include infrastructure and support functionality, customer and advisor portal functionality, third-party integration functionality, e-Onboard functionality and model management functionality.

<sup>21</sup> This "Cournot effect" is akin to the elimination of double marginalisation identified in the CMA's Merger Assessment Guidelines, at paragraph 5.7.7. This states that supply-side efficiencies arise from the removal of double marginalisation. In this case, equivalent effects arise from combining complementary products.

<sup>22</sup> Based on Annex 004 to FNZ's Initial Phase 2 Submission, GBST supplies two [§<] platforms ([§<]) with [§<]. The benefits accruing to [§<] as a result of the discount offered by FNZ would therefore be [§<].

<sup>23</sup> Based on Annex 004 to FNZ's Initial Phase 2 Submission, [§<] is estimated to be [§<]. This means that the benefits accruing to [§<] are equal to [§<].



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solutions developed by FNZ and are not replicated by GBST or other third-party providers.

- (iv) Fourth, if the customer chooses to take up FNZ's PaaS proposition, the customer would further benefit from also procuring BPO services from FNZ rather than a third-party provider (or in-house), and integrating this with software provision, including Composer. By way of example, FNZ estimates that it would charge customers an incremental fee of around [§<] for its BPO services, which is around [§<] lower than what customers would pay to procure these services separately from third-party providers (or in-house).<sup>24</sup> This reflects the complementarities that arise between software and service provision within a PaaS proposition, as well as the scale benefits that FNZ is able to offer. That is, GBST's customers would be able to save around [§<] per annum on the BPO element.<sup>25</sup> The estimated additional benefits that would accrue to GBST's customers from savings of [§<] per annum are significant – around [§<] for [§<] and [§<] for [§<].<sup>26</sup>

3.7 The benefits are merger-specific – they could not be obtained without the merger since (i) FNZ does not have access to GBST's UK source code which is essential for quick implementation of the functionalities and enhancements described above (and absent the Transaction GBST would not have licensed the use of its source code to FNZ or any other supplier); and (ii) GBST customers would not have access to FNZ's products and services (other than FNZ Neon) in the absence of the Transaction. Moreover, to the best of FNZ's knowledge, GBST is unlikely to be able to offer similar enhancements absent the merger as [§<]. This is consistent with the CMA's PFs, which note that "*all customers that expressed views on Project Evolve stated that the programme is an essential modernisation programme required to update Composer to the current technological standards.*"<sup>27</sup> Also, FNZ is aware that GBST's customers have had to source additional functionality elsewhere recently. For example, Aegon had to source new MPS capabilities [§<], as well as procure Dunstan Thomas to develop enhancements to its pension proposition, as GBST "*was unable to deliver some essential online user journeys in time for scheduled 'go live.'*"<sup>28</sup> Similarly, [§<] has also had to procure additional functionality from [§<], and FNZ understands that [§<] has had to source [§<] for its [§<] proposition from another provider.

3.8 The benefits will accrue within a reasonable period of time, with customers expected to benefit from the integration of GBST's Composer software with existing FNZ products and services within [§<]. The migration of Composer to SaaS is also expected to be quicker as a result of the Transaction, with the migration of Composer from customer premises to FNZ's data centres occurring within [§<] because the relevant FNZ

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<sup>24</sup> This [§<] estimate is based on cost savings by FNZ's customers historically when they switch to procuring FNZ's PaaS solution from in-house or third-party providers.

<sup>25</sup> The cost of procuring BPO services from third-party providers is estimated to be [§<]. The benefits arising from cost savings when switching to FNZ are equal to [§<] per annum.

<sup>26</sup> [§<].

<sup>27</sup> Provisional Findings Appendix K, paragraph 128(a).

<sup>28</sup> See FNZ's Initial Submission, paragraph 7.10. See also [http://www.dthomas.co.uk/content/fs/clients/clients\\_aegon.shtml](http://www.dthomas.co.uk/content/fs/clients/clients_aegon.shtml).

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infrastructure is already in place. In particular, FNZ's large-scale infrastructure means that it will be able to migrate Composer to SaaS rapidly whilst still meeting the high level of resilience that FNZ offers to all of its customers. Moreover, the 'invisible' and non-disruptive [§<] from FNZ data centres would be completed within [§<]. This more rapid and less disruptive [§<] is possible because FNZ has the know-how and resources to build and host web applications in its infrastructure. Notably, GBST customers will also benefit in monetary terms as a result of the more rapid transition to SaaS:

- (i) First, the more rapid transition to SaaS eliminates the need for customers to source infrastructure (either on-site or on third-party premises) to host Composer at an earlier date.
- (ii) Second, following the transition to SaaS, customers do not need to hire staff to (i) deploy and run Composer on-premise and (ii) support the (on-premise or third-party) infrastructure. The more rapid migration to SaaS means that such cost savings can be realised at an earlier date. Moreover, the SaaS provider would ensure that the infrastructure and applications are upgraded, scaled and secure with the latest cyber-security patches. A SaaS offering would also allow the supplier to conduct more efficient and regular testing and releasing of updates to the application.<sup>29</sup> This means that customers would benefit from better quality at an earlier date as a result of the merger, as compared to the standalone scenario.

### ***Lower cost of migration to SaaS or PaaS***

- 3.9 The Transaction also would allow customers of GBST who wished to transition from 'on-premise' software to SaaS or PaaS to do so at a significantly lower cost.
- 3.10 Absent the Transaction, GBST's customers would need to be migrated to a modern software solution. GBST would have had to undertake substantial investment in, and assume responsibilities for, infrastructure engineering (for resilience, performance and availability), cybersecurity, production service monitoring and capacity planning.<sup>30</sup> Such cost duplication is unavoidable because platforms are relatively large financial institutions which prefer their supplier to own the infrastructure for the SaaS proposition (which would contain all of their clients' personal data) as opposed to outsourcing to another third-party data-centre provider. These costs would most likely have been passed on to customers, at least in part. By contrast FNZ already has the infrastructure and support services in place to easily support SaaS and PaaS operations, as well as considerable experience and expertise providing cloud-based solutions. For example, FNZ's global data centres serve most regions and have capacity for hosting additional servers, storage and network capacity. FNZ's London data-centre alone hosts over [§<] client platforms, with each client benefitting from shared enterprise-grade data centre, network, security and storage capability whilst having logical segregation at the operating system and application layer. As such, FNZ would be able to undertake such migrations for customers at much lower cost and risk.

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<sup>29</sup> See FNZ's Response to the AIS, paragraph 4.7.

<sup>30</sup> See paragraph 5.6 of the Response to the Issues Statement for further details.

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3.11 Moreover, as there are some economies of scale associated with SaaS and PaaS infrastructure and operations (e.g. the round-the-clock monitoring), customers will also be able to benefit from FNZ's scale and resources more broadly, whilst continuing to use Composer software.

3.12 These benefits meet the criteria set out in paragraph 3.1 since:

- (i) customers would benefit from lower prices to migrate to a SaaS (or PaaS) solution. This arises because the cost of transitioning to SaaS is significantly lower as a result of the merger as compared to the standalone case.
  - (a) FNZ estimates that, on a standalone basis, GBST would incur upfront build costs of around at least [§<] to provide a SaaS infrastructure that is highly available, has high performance, is scalable and secure.<sup>31</sup> As a result of the Transaction, GBST can leverage on FNZ's existing expertise and infrastructure, leading to upfront (fixed) costs that are under [§<] of those from the standalone build (i.e. less than [§<]);
  - (b) In addition to the upfront build costs, there are also annual costs associated with supporting the SaaS infrastructure. This includes costs for infrastructure, hardware and software, as well as the costs of hiring additional staff (e.g. architects, engineers, support, security and assurance). Such costs can be material: FNZ's costs for infrastructure, hardware and software are approximately [§<].<sup>32</sup> On a standalone basis, FNZ estimates that GBST would incur annual costs of around [§<]. On the other hand, as FNZ already has existing data centres and there are economies of scale, FNZ estimates that the annual incremental cost for FNZ to service a large customer such as [§<] that transitions to SaaS would be less than [§<];
- (ii) the benefits are merger-specific – they could not be obtained without the merger since GBST does not have FNZ's capabilities, experience or economies of scale in the supply of SaaS or PaaS services, and nor would GBST have been able to “rent” capacity in FNZ's private data-centres in the absence of the merger; and
- (iii) the benefits will accrue within a reasonable period of time, with customers able to benefit immediately post-merger from these cost savings.

### **Conclusion on RCBs**

3.13 The RCBs resulting from the Transaction are substantial and should be considered by the CMA when assessing the appropriateness of remedies to address any SLC.

3.14 The RCBs should be taken into account by the CMA in both: (i) its assessment of the costs of the possible remedies in order to identify the least costly option; and (ii) its

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<sup>31</sup> [§<].

<sup>32</sup> These costs can be broken down into: [§<].

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assessment of whether the costs of possible remedies would be disproportionate to the SLC identified and the adverse effects arising from it.

## **Remedy costs in the form of lost RCBs**

- 3.15 If the CMA were to require a full or partial divestiture of GBST, this would result in the loss of all RCBs with an estimated value of between [§<] and [§<] per annum.<sup>33</sup> This is a conservative estimate because FNZ has not included RCBs arising from GBST's customers taking up FNZ's enhancements such as FNZ Neon and FNZ Digital Adviser.
- 3.16 By contrast, the Source Code Licensing Remedy proposed by FNZ would enable the majority of the RCBs to be retained from either FNZ or competing suppliers using the Source Code Licensing Remedy, and is therefore a lower cost remedy that would be effective in removing the SLC.

## **4. Source Code Licensing Remedy**

- 4.1 FNZ proposes a Source Code Licensing Remedy that would effectively resolve the CMA's alleged SLC at lower cost, whilst maintaining many of the RCBs arising from the Transaction. This is a structural remedy that is capable of being quickly implemented and easily monitored.
- 4.2 Under this remedy, FNZ would make legally binding commitments for a five-year period to offer a non-exclusive, royalty-free, irrevocable and perpetual licence to GBST UK Source Code in an agreed form to any Supplier of UK wealth management platform solutions requesting a licence.<sup>34</sup> The GBST UK Source Code base could easily be copied and isolated from the remaining GBST business to be provided to licensees.<sup>35</sup>
- 4.3 The following definitions apply for these purposes:
- (i) **GBST UK Source Code** is the source code to GBST Software;
  - (ii) **GBST Software** is GBST's UK wealth management software including the UK tax/pensions wrapper. It does not include GBST's Australia tax/pensions wrapper (which is of no relevance in the UK); and
  - (iii) A **Supplier** is any current supplier of UK wealth management platform solutions and any prospective new entrants to the UK market. It would not be possible to allow open access to any party given the security risks for customers and

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<sup>33</sup> These RCBs include [§<]. Paragraph 8 of Appendix J to the PFs states that the CMA "did not reassign the software provider to Aegon's workplace platform from GBST to SS&C, as proposed by FNZ... as Aegon noted 'that all three retail platforms have their books and records software provided by GBST.'"

[§<].

<sup>34</sup> For the avoidance of doubt, the GBST Australia Source Code, any updates and improvements to the GBST Australia Source Code and the Australia-specific tax/pension wrapper developed in the relevant period (outside the common changes made as part of Project E-volve) would not be provided to the licensees of the GBST UK Source Code

<sup>35</sup> Even after the completion of Project E-volve the code base could be separated.

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Suppliers of doing so, and so the Supplier would need to be an existing player or bona fide entrant to the UK wealth management platform market.

- 4.4 Licensees would be able to modify and develop the GBST UK Source Code as they wished, with no obligation to share the modifications and developments with FNZ or other Licensees. Licensees would also be permitted to on-license the GBST software (including any modifications and developments) to their UK wealth management platform solutions customers.
- 4.5 Licensees would be given access to the GBST UK Source Code as at the date of the licence (i.e. including any updates/improvements made between now and then). Licensees would also be provided with essential updates and 'patches' to GBST UK Source Code during the five-year commitments period, such as technological 'bug' fixes and security patches.<sup>36</sup>
- 4.6 FNZ will continue to fund GBST's budgeted expenditure for Project E-evolve<sup>37</sup>, which GBST estimates would be completed by September 2021. Licensees that acquire the GBST UK Source Code prior to the completion of Project E-evolve would also be given access to any resultant product upgrades and changes <sup>38</sup> – which, according to GBST, would make the software a 'market leading product.'<sup>39</sup>
- 4.7 FNZ is willing to transfer some GBST technical experts to Licensees to help them understand and use the GBST UK Source Code. Alternatively, FNZ would provide additional assistance to Licensees, on request, through access to a technical expert and appropriate training and guidance on the use of the GBST UK Source Code, for a reasonable fee. Suitable firewall arrangements would be put in place to prevent any exchange of Licensee confidential information with/via FNZ.
- 4.8 Licensees would be able to use Composer as a standalone solution (i.e. the core investment accounting software (**IAS**) functionality along with existing additional features such as the on-platform pensions administration software (**PAS**) function) or to combine GBST core platform/functionality with the Supplier's existing functionality. They would gain enhanced expertise on the GBST Retail Platform Solution and the ability to modify and develop this, through access to the GBST UK Source Code.
- 4.9 Since the Source Code Licensing Remedy is a structural remedy it would not require complicated monitoring, however if the CMA deemed it necessary, a monitoring trustee could be appointed, e.g. to ensure that FNZ enters into licences (in a form agreed upfront with the CMA) with Suppliers who request one. Once the GBST UK Source Code had been transferred to the Licensee, there would be no ongoing reliance on FNZ for updates of the technology or know-how since the Licensees will be free to update and modify the

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<sup>36</sup> The Licensee would be responsible for consolidating these updates with their version of the GBST UK Source Code where they have modified or changed the GBST UK Source Code.

<sup>37</sup> [§<].

<sup>38</sup> The Licensee would be responsible for consolidating any updates following Project E-evolve with their version of the GBST UK Source Code where they have modified or changed the GBST UK Source Code.

<sup>39</sup> See paragraph 7.35(c) of the PFs.

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GBST UK Source Code themselves. However, as mentioned above, Licensees will receive essential updates and 'patches' to GBST UK Source Code during the five-year commitments period and may request technical assistance from FNZ for a reasonable fee.

4.10 Customers (i.e. UK wealth management platforms) wishing to use GBST Software would therefore be able to procure a Retail Platform Solution based on GBST Software not only from FNZ/GBST, but also from any other platform solutions provider. A customer could, for example, invite a number of alternative suppliers to tender to supply a UK wealth management Retail Platform Solution based on GBST Software. This could bring into play a very wide range of rivals able to compete using GBST Software, including:

- (i) existing UK PaaS providers (ranging from large, established players, such as SS&C, SEI, Pershing, Avaloq and TCS BaNCS – including those that might largely serve 'Non-Retail Platforms' – to smaller players, such as Hubwise and Seccl) that wanted to incorporate all or some of the GBST Software (e.g. pensions capabilities) into their own software-and-servicing offer and/or to enable customers to transition to their own PaaS (and/or SaaS) solutions in an efficient, cost-effective manner;
- (ii) existing UK BPO providers (such as Equiniti and Atos) that wanted to offer a combined software-and-servicing solution (effectively, an enhanced version of the partnership model that gives the service provider greater control over IAS and PAS, reducing issues that would arise when relying on the provision of software solutions by a partner);
- (iii) existing software-only providers (such as Avaloq, Temenos, IRESS, Dunstan Thomas and Sapiens) that wanted to incorporate elements of the GBST Software (e.g. pensions capabilities) into their own offer or facilitate seamless interoperability with GBST core IAS, PAS and other solutions. For instance if the source code to the GBST Composer system had been available, software providers like JHC (prior to the FNZ acquisition) would have been able to tender to offer a SaaS contract for [§<]. This would have enabled software providers to offer a better overall solution to [§<] whose current core platform and architecture is sub-optimal.<sup>40</sup> If JHC had access to the GBST UK Source Code it would have been able to make system architecture decisions. When GBST's UK customers next re-tender their requirements, the Source Code Licence Remedy would ensure there was very significant competition for such contracts; and
- (iv) new entrants including platform solutions providers that currently have no/limited presence in the UK, global financial institutions, etc.

4.11 In addition to increasing competition in the provision of UK wealth management Retail Platform Solutions as described in paragraph 4.10, the Source Code Licensing Remedy would be effective in addressing the alleged SLC identified by the CMA:

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<sup>40</sup> FNZ also understands that [§<] would be interested in moving to a SaaS solution.

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- (i) it would prevent FNZ/GBST from being able to increase prices or reduce services/quality to GBST UK customers post-merger, by giving them a credible option to switch away from the merged entity to an alternative Supplier with very minimal (if any) switching costs (which would otherwise arise if they were unable to keep using a solution based on GBST Software). Indeed, it would significantly increase the options available to GBST UK customers compared to the pre-merger situation. With access to GBST UK Source Code, a number of other Suppliers would be in a position to compete effectively with FNZ/GBST and so provide a strong competitive constraint on the merged entity;
- (ii) the Source Code Licensing Remedy would be more effective at enhancing competition than a divestment as multiple suppliers will be able to compete using GBST software, as well as other suppliers offering alternative software. FNZ notes that even if only two Suppliers license the GBST Software, this would result in three players being able to compete strongly in providing a solution using GBST software, while a divestment would result in only one player being able to do so;
- (iii) it would enhance competition by increasing the range of competitors able to bid credibly for customer contracts with Retail Platform Solutions in the UK, since they would be able to develop a solution based on an established software solution (either in its original form or an enhanced version) without incurring any licence fees;
- (iv) it would also enhance competition (and therefore benefits to UK customers) in the Non-Retail Platform Solutions segment. The CMA acknowledges in the PFs that the distinction between these two segments is blurred, with some degree of overlap. Therefore, the enhanced capability to serve Retail Platforms would also mean greater scope to serve Non-Retail Platforms, e.g. where such platforms are interested in on-platform pension solutions. The ability to deploy the GBST Source Code in solutions for both Retail and Non-Retail Platforms would further enhance the attractiveness of the licence to Suppliers. Submissions from GBST and third parties referred to by the CMA in the PFs also support the view that the Source Code Licensing Remedy could remove any alleged barrier to entry for Non-Retail suppliers in providing additional on-platform PAS functionality to Composer;<sup>41</sup> and
- (v) it would stimulate product development and innovation through: (a) increased competitive pressure on the merged entity to innovate to retain GBST customers, given their substantially lower switching costs and the risk that they move to a new Supplier whilst retaining their existing GBST software; and (b) incentives on licensees to develop and modify the GBST software to win customers, for example with enhanced functionality.

4.12 Figure 4.1 provides a schematic overview of how the Source Code Licensing Remedy would operate to enhance competition.

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<sup>41</sup> See further submissions of GBST, SEI, Pershing, and Avaloq at paragraphs 6.29(d), 7.87(a), 7.88(a), 7.41 of the PFs.

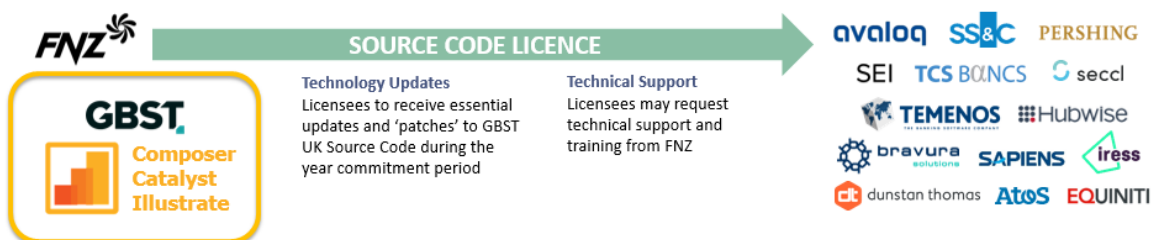


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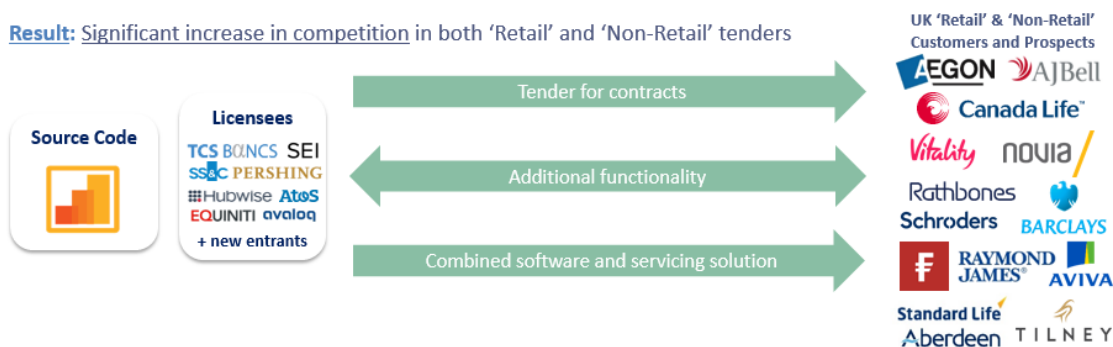
**Figure 4.1: Source Code Licencing Remedy**

**Source Code Licencing Remedy:**

Licence provided to Suppliers on demand on a non-exclusive, royalty-free and perpetual basis



**Result:** Significant increase in competition in both 'Retail' and 'Non-Retail' tenders



- 4.13 The Source Code Licencing Remedy would be easy to implement. This is demonstrated by the fact that [§<].<sup>42</sup>
- 4.14 The Source Code Licencing Remedy therefore fully addresses the CMA's provisional concerns, whilst enabling FNZ to proceed with the Transaction, to the benefit of customers in the UK and Australia. The costs of the remedy are lower than the prohibition and UK divestment remedies since:
- (i) FNZ would be able to retain [§<] of synergies<sup>43</sup> per annum in UK and Australia;
  - (ii) the [§<] of RCBs per annum would be retained rather than being lost, with the additional benefit that GBST UK customers might be able to obtain some of these benefits from either FNZ or competing suppliers using the Source Code Licencing Remedy. As such, FNZ would be under intense competitive pressure to deliver the RCBs set out above, since GBST customers would have substantially lower

<sup>42</sup> [§<].

<sup>43</sup> Comprising [§<] from WM Australia customer synergies, [§<] in synergies from the capital markets division and [§<].



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switching costs (if any) through being able to switch supplier near-instantly and retain their existing Composer functionality; and

- (iii) FNZ would not incur other costs of implementing a full or partial divestment remedy (see Section 5 below).

### 5. Full or partial divestiture options

#### *Full divestiture would be disproportionate*

- 5.1 As noted above, FNZ strongly disagrees that an SLC will result from the Transaction. However, even if the CMA were to conclude in its final report that there was an SLC in the supply of UK Retail Platform Solutions, a full divestiture remedy would be entirely disproportionate to address the SLC identified by the CMA.
- 5.2 The CMA Remedies Guidance<sup>44</sup> makes clear that to be reasonable and proportionate the CMA will seek to select the least costly remedy, or package of remedies, of those remedy options that it considers will be effective. If the CMA is choosing between two remedies that would be equally effective, it will choose the least costly or least restrictive option.
- 5.3 A full divestiture would be neither reasonable nor proportionate as:
  - (i) less onerous remedies are available that would be fully effective in addressing the SLC, which is limited to Retail Platform Solutions in the UK. For the reasons set out above, the Source Code Licensing Remedy would be an effective remedy that would address the alleged SLC. If required, GBST's UK wealth management business is easily severable from the global wealth management business and the capital markets division (see further paragraph 5.11);
  - (ii) it would impose significant costs on FNZ (including the loss of synergies resulting from the Transaction worldwide) and on the merged entity's customers in Australia (comprising lost customer benefits resulting from the merger) when the CMA's SLC relates solely to the UK wealth management Retail Platform Solutions market. For instance post-Transaction FNZ would be able to offer the merged entity's customers in Australia benefits equivalent to those described in paragraph 3.2 for UK customers, which is crucial, since GBST's business model suffers from several limitations as a software-only offering. Further, in addition to losing out on benefits of the Transaction, GBST's Australia wealth management customers may have to incur additional costs in shifting to an alternative supplier as their current solutions cease to be workable given technological limitations;
  - (iii) FNZ would also be able to offer GBST's capital markets customers a more efficient, fully-outsourced third-party clearing and settlement service, in addition to the current software provision. This would significantly reduce the operating costs for GBST's capital markets customers; and

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<sup>44</sup> Paragraph 3.6 of the CMA Remedies Guidance.

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- (iv) all RCBs arising out of the Transaction to UK customers would be lost.

5.4 Specifically, relevant costs<sup>45</sup> of full divestiture per annum would include:

- (i) **Costs to FNZ:** Lost synergies of approximately [§<]<sup>46</sup> [§<] and from losing the ability to scale up FNZ's Australian business quickly. FNZ would lose a further [§<]<sup>47</sup> in synergies relating to the UK wealth management business and [§<] from the capital markets business, resulting in the loss of total synergies of between [§<] and [§<];<sup>48</sup>
- (ii) **Costs to Australian wealth management customers:** Lost benefits of [§<]<sup>49</sup> to customers in Australia in the form of operational cost savings from benefits equivalent to the RCBs for UK customers described in paragraph 3.2;
- (iii) **Costs to capital markets business customers:** Lost benefits of lowered costs to customers from synergies earned due to the removal of third party clearing costs of [§<];<sup>50</sup> and
- (iv) **Costs to UK Customers:** Between [§<] and [§<] of RCBs would be lost if the Transaction were to be prohibited.

5.5 The total relevant cost of a full divestiture is therefore estimated to be between [§<] and [§<] per annum. This is significantly higher than GBST's WM UK revenue of approximately £23 million.<sup>51</sup> The total costs over three years are also substantial at between [§<].

5.6 A full divestiture remedy would therefore be disproportionate and unreasonable, especially given that other lower-cost and less restrictive remedy options are available that would be effective in addressing the SLC identified in the PFs.

### ***Partial divestiture would be effective and practicable, but still disproportionate***

5.7 In the NPR, the CMA proposes three alternative possible partial divestitures:

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<sup>45</sup> These costs are in addition to the costs that FNZ would suffer from value erosion of the target and the legal and administrative costs of the divestment itself.

<sup>46</sup> Comprising [§<] and [§<] in Australia wealth management customer synergies.

<sup>47</sup> [§<].

<sup>48</sup> Based on synergies and cost savings for GBST's capital markets customers in Australia.

<sup>49</sup> The lost benefits assume [§<] annual cost savings for three Australia wealth management customers, which is a conservative estimate given FNZ's experience of being able to provide customers around [§<] annual cost savings from providing PaaS solutions.

<sup>50</sup> Based on the assumption that GBST's capital markets Australia customers would receive at the minimum [§<] reduction in costs post-merger (FNZ understand from discussions with local market participants that this is around half of the actual cost savings of [§<]). [§<].

<sup>51</sup> AUD\$ 42.3 million - based on the revenue for the UK wealth management business for the year ending 30 June 2019, page 53 of GBST's Annual Report and Accounts (Annex 8.7 of the Merger Notice).

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- (i) Option 1 – divestment of GBST’s global wealth management business;
- (ii) Option 2 – divestment of GBST’s UK operations; and
- (iii) Option 3 – divestment of GBST’s UK wealth management business.

5.8 As discussed further below, a partial divestiture remedy would be fully effective in addressing any alleged SLC. Out of the options specifically outlined and presented in the NPR, Option 3 (the divestment of GBST’s UK wealth management business) is the best targeted to the SLC identified by the CMA and is most practical since it is possible to separate the UK wealth management business whilst maintaining its competitiveness.

5.9 Option 1 and Option 2 both involve the divestment of GBST businesses in markets where no SLC has been identified by the CMA and so are more onerous, restrictive and costly options. In the paragraphs below FNZ has addressed why Option 1 and Option 2 would be disproportionate to address the SLC identified by the CMA.

### ***Option 3: GBST UK wealth management divestment business***

5.10 Whilst still disproportionate to the SLC identified (given that the alternative Source Code Licensing Remedy is a lower cost option that would be equally effective), Option 3 would:

- (i) allow the purchaser to be an effective and credible competitor in Retail Platform Solutions in the UK, providing them with GBST’s software and technology for UK Retail Platform Solutions, GBST’s current UK customer contracts, GBST’s experience, track record and brand, as well as the necessary supporting resources such as staff (e.g. software engineers and developers, product design, sales and customer support staff) and premises;
- (ii) be an attractive business to potential buyers, including to suppliers of WMP Platform Solutions that are not currently active in the UK and/or that do not currently focus on servicing the Retail segment, who would avoid any time and costs associated with creating a UK Retail Platform Solution. It would also be attractive to smaller players currently active in Retail Platform Solutions in the UK; and
- (iii) have an acceptable risk profile, with FNZ being prepared to offer any reasonable transitional services agreement if required by the buyer.

### ***Option 3: Description of the Divestment Business***

5.11 A GBST UK wealth management divestment business could readily and quickly be carved out to form a standalone business (**Divestment Business**) that would have the necessary resources to be able to compete successfully on an ongoing basis in the supply of UK Retail Platform Solutions. The Divestment Business would include:

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- (i) **Existing UK legal entities** - GBST UK Holdings Ltd, GBST Wealth Management Ltd and GBST Hosting Ltd;<sup>52</sup>
  - (ii) **Customer contracts** - All existing GBST UK Wealth Management customer contracts;
  - (iii) **IP/IT** - The GBST UK Source Code for wealth management platform solutions and related software and peripheral products used for the UK Wealth Management business, including the post-E-volve version of Composer. As the GBST UK Source Code for wealth management platform solutions could easily be copied and isolated from the remaining GBST business, the full ownership of the code could be transferred easily and quickly to the relevant GBST UK legal entities as part of the divestment to the purchaser.<sup>53</sup> The purchaser would then have complete freedom to pursue independently further development of the IP included in the Divestment Business;
  - (iv) **Management** – [§<]. FNZ would also be willing to provide any reasonable transitional agreements to the purchaser (if required);
  - (v) **Staff** - [§<];
  - (vi) **Property** - Transfer of the lease for UK office located at Linen Court 10 Road East, London; and
  - (vii) **Head office functions** – For any services that are not covered by the above that relate to head office or business enablement functions, FNZ would be prepared to enter into an appropriate transitional agreement.
- 5.12 FNZ would retain GBST's Australian businesses (including the wealth management and capital markets business) and the UK and international capital markets business.
- 5.13 Figure 5.1 below provides a schematic overview of the divestment of the UK wealth management business.

[§<]

[§<]

*Option 3 would be practical*

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<sup>52</sup> The three entities together make up the GBST UK wealth management business, with GBST UK Holdings Ltd being the direct parent entity for the two other entities. GBST Wealth Management Ltd employs the personnel engaged in GBST's UK wealth management business and supplies the Composer software solution to GBST's UK wealth management customers. GBST Hosting Ltd provides intercompany hosting services to GBST Wealth Management Ltd.

<sup>53</sup> FNZ would also transfer any related global third party licences and contracts if relevant.

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- 5.14 It would be practical to carve out the Divestment Business since:
- (i) the GBST capital markets business is run separately from its wealth management business, so that wealth management can be separated easily and quickly. GBST acquired the wealth management business from Infocomp in 2007 and the software product suites for the wealth management business are separate from the capital markets business;
  - (ii) the GBST Retail Platform Solution software in the UK includes UK-specific pension and other tax wrapper solutions, and could easily be copied and isolated from the remaining GBST business to be quickly carved out for the divestment package. FNZ would include in the UK divestment package a full transfer of the GBST UK Source Code for its UK wealth management Retail Platform Solution and related software enabling the buyer to serve its acquired UK customers independent of FNZ and to develop and build on this software in the future; and
  - (iii) it is also easy to identify a divestment package containing all the resources necessary for the Divestment Business to compete effectively in the market, including IP/software/technology, customer contracts, staff and a track record as a credible competitor in the UK Retail Platform Solutions market.
- 5.15 The Divestment Business would be run independently by the purchaser upon completion of the divestment, competing with FNZ and other players in the market. The purchaser would acquire an existing business in the UK that the CMA has identified as competitive and possessing significant scale in Retail Platform Solutions, including substantial contracts with customers such as [§<]. The Divestment Business would also include the executive management team of a business that GBST claims is the fastest growing and largest part of its global business. Further, GBST has repeatedly asserted that the Divestment Business is successful - it generated approximately £23.3 million<sup>54</sup> in revenue for the year ending 30 June 2019 - and that it has a 'strong competitive offering' in the UK. GBST has also indicated that 72% of GBST's global wealth management revenue was generated by the Divestment Business in 2018, and predicted a growth in operating EBITDA to [§<] for the year ending 30 June 2020.<sup>55</sup>
- 5.16 There would be no material implementation risks to a UK wealth management divestment:<sup>56</sup>
- (i) as described in paragraph 5.10 above, the Divestment Business contains all the assets necessary for a suitable purchaser to compete effectively in the UK wealth management industry, together with a track record, that the CMA and GBST believe, demonstrates that the business is a credible competitor in the UK Retail Platform Solutions market; and

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<sup>54</sup> Converted from AUD\$ 42.3 million based on the standalone financials for GBST UK wealth management business included in the GBST Group June 2019 Annual Report.

<sup>55</sup> Annex 9.4, GBST Management Presentation, slide 49 and 50.

<sup>56</sup> See further paragraph 5.3 of the CMA Remedies Guidance.

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- (ii) as described in paragraph 5.14, the Divestment Business could easily be ‘carved out’ from the remaining GBST business and the divestment could be completed quickly to a suitable purchaser.
- 5.17 The potential risks set out in paragraph 15 of the NPR would not arise or could easily be mitigated as follows:
  - (i) a divestment of the Divestment Business would not weaken the competitive capability of the GBST business in the UK. All necessary assets would be included in the Divestment Business, including GBST’s current UK wealth management Retail Platform Solutions customers. The purchaser would immediately have technology (including the post-E-volve version of Composer) and staff with credibility in the market, development, project delivery resources, customer contracts and a proven track record. This would put the purchaser in as good a position as GBST is today to win future contracts;
  - (ii) no material costs and risks would be imposed on GBST customers. Their contractual rights would be preserved and they would not be required to re-platform as a result of the sale of the Divestment Business;
  - (iii) GBST’s partnership with Equiniti has [§<]. The purchaser of the Divestment Business would be free to continue with the Equiniti partnership if it wished to do so, or to create a better offering with its own SaaS or PaaS offerings, or a similar offer with an alternative partner; and
  - (iv) given the importance of R&D in this sector, any purchaser would clearly be mindful of the need to continue appropriate levels of R&D investment. If the purchaser were, for example, an existing Retail Platform Solutions provider outside the UK, an existing player in UK Non-Retail Platform Solutions and/or an existing player in UK Retail Platform Solutions, it would be able to spread R&D costs over a wider revenue base and would be able to use its existing expertise in Platform Solutions, combined with the Composer product, to compete not only in the UK Retail Platform Solutions segment, but also the non-Retail segment. As noted above, the CMA acknowledges that the distinction between the two segments is blurred, therefore the enhanced capability to serve Retail Platforms would also mean greater scope to serve Non-Retail Platforms, e.g. where such platforms are interested in on-platform pension solutions.
- 5.18 Given that there are no material implementation risks to the proposed divestment of the UK wealth management business, FNZ believes that it would be able to identify a suitable purchaser within a reasonable period. Indeed, since Phase 1, FNZ has received unsolicited inbound enquiries from a number of institutions that expressed interest specifically in GBST’s UK Wealth Management business. This includes direct competitors, as well as institutions that offer wealth solutions and form part of the broader wealth management technology and services landscape.

*Option 3 would be effective*

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5.19 The divestment of the Divestment Business would be better targeted to address the alleged SLC identified in the PFs than other specified divestiture options referred to in the NPR, and would be effective in doing so:

- (i) it would recreate GBST as an independent competitor to FNZ and allow the purchaser to be an effective and credible competitor in Retail Platform Solutions in the UK. The purchaser would have access to GBST's software and technology for UK Retail Platform Solutions, GBST's current UK customer contracts, GBST's experience, track record and brand, as well as the necessary supporting resources such as staff (e.g. software engineers and developers, product design, sales and customer support staff) and premises. As such this would address the CMA's concern that post-Merger FNZ and GBST would be among largest suppliers in the market. The divestment of the Divestment Business would also address the CMA's provisional concerns that Bravura is the only other close competitor to GBST and FNZ. GBST's technology would be sold to an independent and effective purchaser thereby giving the purchaser access to a proposition comparable to that of market leaders like Bravura;<sup>57</sup>
- (ii) divestment to suppliers of WMP Platform Solutions that are not currently active in the UK and/or that do not currently focus on servicing the Retail segment, or to smaller players currently active in Retail Platform Solutions in the UK would allow these suppliers to quickly and easily build scale in the market and act as an effective constraint to FNZ and even Bravura; and
- (iii) it would stimulate product development and innovation through: (a) increased competitive pressure on the merged entity to innovate in response to the efforts of the purchaser; (b) incentives on the purchaser to develop, modify and improve the GBST software to win even more customers and enhance its market position.

5.20 The Divestment Business would give the buyer an enhanced ability to compete in the supply of Retail Platform Solutions to the wealth management industry, either in isolation or as part of broader set of wealth-related solutions, to an established customer base.

*Option 3 is more reasonable than full divestment, Option 1 or Option 2*

5.21 Option 3 is the least restrictive and lowest-cost divestment option that is effective in addressing the SLC, since it does not require FNZ to divest a business that is outside the scope of the SLC. It would therefore be more reasonable than a full divestment, Option 1 or Option 2.

5.22 It would allow FNZ to deliver the expected benefits from the merger to Australian customers and to achieve the synergies expected from [§<] and from scaling up FNZ's Australian business quickly (see paragraph 5.4 above).

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<sup>57</sup> See paragraph 7.91 of the PFs where the CMA has observed that GBST's technology is comparable to that of Bravura. The CMA has also observed that other suppliers including SS&C, Pershing and SEI provide a limited constraint due to the inability to compete with GBST and FNZ's propositions. The proposed divestment would address both these concerns.



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*Option 3 is still disproportionate*

- 5.23 However, FNZ considers that a UK wealth management divestment would be disproportionate when considering the per annum costs of this remedy:
- (i) FNZ would lose between [§<] and [§<] of synergies relating to the UK wealth management Retail Platform solutions business; and
  - (ii) between [§<] and [§<] of RCBs would be lost.<sup>58</sup>
- 5.24 The total relevant cost of the UK wealth management divestment remedy is therefore estimated to be between [§<] and [§<] per annum. This is also significantly higher than GBST's WM UK revenue of approximately £23 million. Over three years, the total costs are also substantial at between [§<] and [§<]. This would be disproportionate and unreasonable, especially given that other lower-cost remedy options are available that would be equally effective (and arguably more effective) in addressing the SLC identified in the PFs (specifically, the Source Code Licensing Remedy).

***Option 1 (divestment of GBST's global wealth management business) and Option 2 (divestment of GBST's UK operations) would be disproportionate***

- 5.25 Divestiture of GBST's global wealth management business or of GBST's UK operations (including its UK capital markets business) would be disproportionate and unreasonable. These divestment options would result in significant costs to FNZ, arising from the required divestment of GBST businesses in markets where the CMA has not found an SLC, i.e. markets outside the UK market for Retail Platform Solutions, as well as the loss of customer benefits.
- 5.26 Under Option 1 (divestment of GBST's global wealth management business) the costs of the remedy would include lost benefits to the merged entity's Australian wealth management customers. Under Option 2 (divestment of GBST's UK operations), the costs of the remedy would include lost RCBs relating to UK capital markets customers.
- 5.27 In addition, between [§<] and [§<] of RCBs to UK wealth management customers would be lost under both these divestment options.
- 5.28 The GBST Australian business and GBST UK capital markets business can be easily separated from the GBST's UK wealth management business (see paragraph 5.11 above). In these circumstances, a broader divestment would not be reasonable.

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<sup>58</sup> The identity of the purchaser of the potential divestment business is currently unknown. The loss in RCBs is calculated assuming that the purchaser does not provide any cost savings to GBST's customers (as compared to what these customers currently pay GBST and other third-party providers).



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## Annex A: Description of FNZ products

(i) FNZ X-Hub

[§].

(ii) FNZ Digital Advisor

[§].

(iii) FNZ Clear

[§].

(iv) FNZ Glass

[§].

(v) FNZ ChainClear

[§].

(vi) FNZ Impact

[§].

(vii) FNZ Open Banking

[§].

(viii) FNZ App Store

[§].