

# Completed acquisition by FNZ of GBST

Final report

5 November 2020

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The Competition and Markets Authority has excluded from this published version of the 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 Some numbers have been replaced by a range.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.

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### Glossary

# Summary

## Introduction

1. The Competition and Markets Authority (CMA) has 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 horizontal unilateral effects, in the supply of Retail Platform Solutions in the UK.

## Background

### The reference

2. On 8 April 2020, the CMA, in exercise of its duty under section 22(1) of the Enterprise Act 2002 ('the Act') referred the Merger of FNZ with GBST for further investigation and report by a group of CMA panel members (the Inquiry Group).
3. 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 an SLC within any market or markets in the United Kingdom for goods or services.

### The Parties and transaction

4. FNZ is a global wealth management technology and investment administration services firm, set up in 2003 and headquartered in the UK since 2005.
5. FNZ is active in the supply of technology solutions in the UK, 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 to financial advisers and employers.
6. GBST is a financial technology company which provides software to support pension administration, investment management and stockbroking. GBST is



headquartered in Australia and was listed on the Australian Stock Exchange before being acquired by FNZ.

7. GBST has two main activities in the UK:
  - (a) A wealth management 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 business that provides software to stockbroking firms to enable the settlement and clearing of trades in listed securities and margin lending.
8. 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.
9. Prior to its acquisition by FNZ, GBST had been engaging in negotiations with two other parties regarding its potential acquisition and it had received bids from Bravura Solutions (Bravura) and SS&C Technologies (SS&C).

## **Industry background**

10. The Parties are both active in the UK in the supply of Platform Solutions to Investment Platforms in the investment management sector.
11. 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) 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.
12. Platform Solutions are the software and services which enable Investment Platforms.
13. Investment Platforms source Platform Solutions using a range of 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).

## **Findings**

### **Relevant merger situation**

- 14. We found that the Merger has resulted in the creation of a relevant merger situation because it 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.
- 15. In accordance with section 35(1) of the Act, we considered whether the creation of that situation has or may be expected to result in an SLC within any market or markets in the UK for goods or services.

### **Competitive effects**

#### ***The counterfactual***

- 16. 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.
- 17. Prior to its acquisition by FNZ, GBST had been engaged in negotiation with, and had received bids from, two other parties: Bravura and SS&C. The evidence shows that, absent the competing offer from FNZ, an acquisition of GBST by SS&C was plausible.
- 18. The evidence also shows that GBST was not undergoing a distressed sale so we also consider it plausible that, absent a sale, GBST would have remained in independent ownership.
- 19. We do not however need to conclude on which of these two plausible scenarios was more likely for the purposes of the counterfactual. We consider that neither scenario would produce a meaningfully different competitive result to the prevailing conditions of competition:

- (a) Evidence from SS&C's internal documents indicates that it intended to continue to operate GBST on a similar basis; and
  - (b) if no sale eventuated, evidence from GBST's internal documents indicates it would have remained active in the market.
- 20. Therefore, under either scenario, GBST would have remained as an active competitor, and there is no basis to conclude that its competitive presence would have been meaningfully different.
- 21. On the basis of the findings set out above, we concluded that the appropriate counterfactual is the conditions of competition prevailing prior to the contemplation of the Merger.

### ***Market definition***

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

### ***Product market***

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

#### ***Type of Investment Platform***

- 24. We found that Retail and Non-Retail Platforms have different propositions and serve different groups of investors. Retail Platforms offer more commoditised products, with the provision of tax wrappers such as pensions being a more important element of their offer. They have a large number of investors and, therefore, are built to be highly automated. Conversely, we found that Non-Retail Platforms offer more bespoke products and have more manual processes to serve the needs of a smaller number of wealthier investors with more sophisticated requirements.
- 25. The different requirements of Retail and Non-Retail Platforms have led to suppliers of Platform Solutions tending to specialise in serving one or the other type of platform. We found that:
  - (a) While there has been some convergence between the two types of Investment Platforms, significant differences remain between Retail and Non-Retail Platforms and between the suppliers of Platform Solutions that they regard as close alternatives;

- (b) there is limited competition in tenders for Retail Platforms from suppliers that focus on serving Non-Retail Platforms;
  - (c) Non-Retail Platform Solution suppliers consider that it would be lengthy and costly to adapt their offering and difficult to lower their costs to compete strongly in the supply of Retail Platforms; and
  - (d) Retail Platforms do not see Non-Retail Platform Solution suppliers as credible alternatives as they lack experience and a track record in serving Retail Platforms.
26. We found that suppliers of Non-Retail Platform Solutions are generally not close alternatives to Retail Platform Solution suppliers, and we have not included them within the relevant market.

#### *Delivery model*

27. We found that Software-only and Combined Platform Solutions Suppliers are part of the same product market.
28. This is because some customers consider Software-only Solutions (either alone or in partnership with servicing suppliers) and Combined Platform Solutions by a single supplier as credible alternatives.
29. Software-only suppliers and Combined Platform Solution suppliers compete with each other in a significant number of tenders for Retail Platform customers, even up to the final stage of the tender.
30. We found that some customers prefer one delivery model over another. These customers may not be affected by the Merger to the same extent as other customers (as FNZ and GBST have different delivery models). The preferences of some customers for a specific delivery model is not enough to draw a distinction between these delivery models as part of our market definition.

#### *In-house provision of software and servicing*

31. We found that Retail Platforms consider developing software in-house to be difficult and unattractive but are more open to the servicing component being supplied in-house.
32. We therefore concluded that the relevant product market should include the supply of servicing in-house but exclude the in-house supply of software.

### *Conclusion on the product market*

33. On the basis of the findings set out above, we concluded that the relevant product market for examining the effects of this Merger is the supply of Retail Platform Solutions, excluding the in-house supply of software.

### *Geographic market*

34. We found that suppliers of Retail Platform Solutions must ensure that their products meet specific and complex tax and regulatory requirements in the UK and in other countries. Suppliers cannot easily and quickly enter into a new country, given these requirements, as well as the importance of experience and reputation in serving customers in a particular jurisdiction.
35. Accordingly, we concluded that the relevant geographic market for the supply of Retail Platform Solutions is the UK. We consider competition from outside of the UK, to the extent that it is relevant, as an out of market constraint within our competitive assessment.

### *Conclusion on market definition*

36. Based on the findings set out above, we concluded that the relevant market for examining the effects of this Merger is the supply of Retail Platform Solutions in the UK excluding the in-house supply of software (Retail Platform Solutions in the UK).
37. However, we do not consider that market definition is a determinative part of our competitive assessment and we took into account differences in delivery models and out-of-market constraints including from Non-Retail Platform Solution suppliers and in-house software.

### ***The nature of competition***

38. We assessed how competition operates in the supply of Retail Platform Solutions in the UK in terms of:
- (a) The degree and ease of switching by customers;
  - (b) the main parameters of competition; and
  - (c) the procurement processes and contractual mechanisms employed by customers.
39. We found that switching costs are high for Retail Investment Platforms. Switching to a new supplier of Platform Solutions involves a complex, risky,

lengthy and expensive migration from one system to another. Recent failures of such migrations have highlighted the risks for both customers and suppliers. The Financial Conduct Authority has recognised these risks in a letter to Investment Platforms that sets out the key harms relevant to this sector. 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 Retail Platform Solution is usually a long-term decision.

40. As a result, and because a Platform Solution is critical to enable a Retail Platform to effectively serve customers and satisfy regulatory obligations, Investment Platforms require a high degree of confidence in the capability of their chosen supplier. Established suppliers with good track-records therefore have a significant competitive advantage over others.
41. Even if customers only switch supplier infrequently, they use lengthy procurement processes to maintain competitive tension and extract the best possible terms from incumbent or potential suppliers.

### ***Competitive assessment***

42. We assessed whether the Merger removed a competitor from the Retail Platform Solutions market which previously provided a significant competitive constraint, and whether that 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.
43. We 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 considered the competitive constraints on the Parties from other suppliers, including those from outside of the relevant market.

### ***Shares of supply***

44. Shares of supply provide an 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 with their competitors.
45. We found that FNZ and GBST are two of the four largest suppliers which 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 almost twice the size of the next largest supplier, Bravura.

### *Closeness of competition*

46. We assessed how closely the Parties compete with each other, relative to other competitors. Generally, the more closely two firms compete, 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.
47. Our assessment is based on submissions from the Parties and from third parties, analysis of tenders since 2016 and a review of the Parties' internal documents.
48. 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.
49. 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 in the UK. In general, only Bravura was seen by third parties to be as close a competitor to each of the Parties as they are to each other.
50. Our analysis of tender data since 2016 showed that the Parties overlapped in a significant number of Retail Platform tenders compared to their overlaps with other competitors. Qualitative evidence also showed that customers tendering for a supplier considered the Parties' solutions as close alternatives.
51. Each Party's internal documents, to the extent that they provide insight into competitive conditions, characterise FNZ and GBST as two of a limited number of significant suppliers of Retail Platform Solutions.
52. Product development is important as a parameter of competition in this market and we considered the extent to which competition between the Parties is a driver of their product development. The Parties' internal documents indicate that competition with FNZ was a key driver of GBST's product development. We did not find similar evidence relating to GBST having influence on FNZ's product development, but we found that the close constraint imposed by each Party on the other incentivises them to improve their product development in order to win customers.

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

#### *Competitive constraints from alternatives*

54. 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. As set out above, we found that Bravura is the only supplier that imposes a similar competitive constraint on the Parties to the constraint that the Parties exert on each other.
55. We assessed the constraint on the Parties from other suppliers, including smaller suppliers and suppliers that are more active in the supply of Platform Solutions to Non-Retail Platforms, and from in-house supply. We found that, in general, they offer a weak constraint, both individually and collectively.

#### *Conclusion on competitive assessment*

56. We concluded that, subject to our findings on countervailing factors, the Merger has resulted, or may be expected to result, in an SLC in the market for the supply of Retail Platform Solutions in the UK.

### **Countervailing factors**

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

#### ***Entry and expansion***

58. We 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.
59. We found that potential entry from suppliers of Non-Retail Platform Solutions is unlikely, based on evidence from those suppliers. We found 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.
60. We concluded that entry or expansion would not be timely, likely and sufficient to outweigh the SLC.



### ***Buyer power***

61. 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.
62. We 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 found that larger customers may have more bargaining power than smaller customers.
63. 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.
64. After the Merger, customers will have lost one of the few major suppliers which could credibly provide an alternative and consequently will have reduced negotiating leverage with their suppliers. 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***

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

### ***Conclusion on countervailing factors***

66. Based on the findings set out above, we concluded that there are no countervailing factors which would mitigate the adverse effects of the Merger on competition.

### **Conclusion**

67. We concluded 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 in the UK.

### **Remedies**

68. Having concluded that the Merger has resulted or may be expected to result in, an SLC, we are required by the Act to decide what, if any, action should be

taken to remedy, mitigate or prevent that SLC or any adverse effect resulting from the SLC.

69. In deciding on the appropriate remedy, we seek remedies that are effective in addressing the SLC and its resulting adverse effects. We will then select the most proportionate remedy that we consider to be effective, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable.

## **Remedy options**

70. We considered the following remedy options:
- (a) Full divestiture of GBST;
  - (b) partial divestiture of GBST: either of a UK Wealth Management business or a global Wealth Management business; and
  - (c) A source code licensing remedy, proposed by FNZ.
71. We found that full divestiture of GBST would be an effective remedy.
72. We found that neither of the partial divestiture options would be an effective remedy:
- (a) The UK Wealth Management divestiture had substantial composition, asset and purchaser risks. These risks arise because the UK Wealth Management business is integrated into, and benefits from being part of, the wider GBST group. In addition, the element of this remedy option in which FNZ would have access to the core IP of GBST's main Wealth Management product, Composer (by retaining a copy of its source code for use outside of the UK), gave rise to a significant additional risk.
  - (b) The global Wealth Management divestiture also had composition, asset and purchaser risks arising from its close integration with GBST's Capital Markets.
73. With both partial divestiture options, we found that, while there may be initially interested purchasers, this would not be sufficient to mitigate the asset and composition risks we found.
74. We found that the source code licensing remedy would not be effective as it would be highly unlikely to address the SLC we found and its resulting adverse effects.

75. Having found that the only effective remedy would be full divestiture of GBST, we considered whether it would be proportionate.
76. We assessed the loss of relevant customer benefits that FNZ submitted would result from the Merger. These were that GBST customers would benefit from improved product quality, lower priced access to FNZ functionality and lower-priced, faster, and less-disruptive transition to other solutions offered by FNZ.
77. We found that these claimed benefits would not be expected to accrue as a result of the Merger and that they could accrue without it.
78. We have considered whether the claimed benefits submitted by FNZ constitute RCBs for the purposes of the Act and we conclude that there are no RCBs arising from the Merger.

### **Decision on remedies**

79. We decided that a full divestiture of GBST would be an effective and proportionate remedy to address the SLC and the resulting adverse effects that we found.

# 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 This document, together with its appendices, constitutes the Inquiry Group's findings published and notified to FNZ and GBST in line with the CMA's rules of procedure.<sup>1</sup>
- 1.4 Further information can be found on our webpage. Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A.

## 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.

### FNZ

#### *Background*

- 2.2 FNZ is a global wealth management technology and investment administration services firm, established in 2003 and headquartered in the UK since 2005.

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<sup>1</sup> [Rules of procedure for merger, market and special reference groups \(CMA17\)](#), paragraphs 11.1 to 11.7.

- 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,<sup>2</sup> 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.<sup>3</sup>
- 2.4 FNZ is active in the supply of technology solutions in the UK, including 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.<sup>4</sup>

### ***Financial information***

- 2.7 In the financial year to 31 December 2019, FNZ had UK turnover of £172 million.<sup>5</sup> In 2018, [x] % of its revenue was generated in the UK.
- 2.8 FNZ profits increased by 150% to £28 million in 2019. FNZ did not attribute this increase to any specific factor, but noted its efforts to continue to 'invest in enhancing automation of the control and operations (asset servicing) environment to further mitigate operating risks as the Company continues to add scale'.<sup>6</sup>
- 2.9 Table 2.1 below shows FNZ's UK revenue and profits from 2014 to 2019.

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<sup>3</sup> FNZ (UK) Ltd Financial statements 2018, at Companies House

<sup>4</sup> JHC's established software solutions include JHC Figaro, JHC Neon, JHC Xenon and JHC Digitize (a consultancy service).

<sup>5</sup> FNZ (UK) Ltd Financial Statements 2019

<sup>6</sup> FNZ (UK) Ltd Financial Statements 2019, page 3, Strategic Report for the year ended 31 December 2019

**Table 2.1: FNZ UK: revenue and profits 2014 to 2019**

	2014	2015	2016	2017	2018	2019
Revenue (£m)	56,646	72,459	94,748	107,613	126,822	172,376
Profit for the year (£m)	1,623	12,500	28,793	20,314	11,098	27,790

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

## **GBST**

### ***Background***

- 2.10 GBST Holdings Limited (GBST), is a company headquartered in 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.
- 2.11 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.<sup>7</sup>
- 2.12 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.
- 2.13 GBST does not provide Combined Platform Solutions but 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, [X].

### ***Financial information***

- 2.14 In the year to 30 June 2019, GBST had worldwide turnover of £52.1 million, of which £ [X] million (X%) was generated in the UK. 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.<sup>8</sup>

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<sup>7</sup> GBST 2019 Annual Report.

<sup>8</sup> GBST 2019 Annual Report.

## The rationale for the Merger

### *FNZ rationale*

- 2.15 FNZ submitted that the main strategic rationale for the Merger is to [REDACTED].
- 2.16 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.
- 2.17 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 (Combined Platform Solutions) would be made available to all of GBST's current customers. FNZ stated that it will invest 'AUD\$[REDACTED] into genuine R&D that will lead to enhanced functionality and better outcomes for customers'. **Error! Bookmark not defined.** FNZ stated this was [REDACTED].
- 2.18 FNZ went on to specify that the AUD\$[REDACTED] budget would be used to:
- (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 [REDACTED], as contemplated in the Evolve programme, albeit more incrementally than proposed by GBST, so as to [REDACTED].
- 2.19 FNZ internal documents broadly support the rationale which FNZ submitted to us:
- (a) FNZ documents noted that (GBST's) '[REDACTED]'. It also noted that [REDACTED].
  - (b) FNZ stated that there would be a '[REDACTED]' and said: '[REDACTED]'.
- 2.20 FNZ documents also set out expected cost synergies, noting [REDACTED] and [REDACTED] as the main contributors to this.

2.21 In our view, this evidence indicates that FNZ intended to [REDACTED]. We discuss the impact of FNZ's plans for investment in GBST [REDACTED] further in Chapter 8.<sup>9</sup>

### ***GBST rationale***

2.22 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.

### **The transaction**

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

2.24 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.

2.25 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'.

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

2.27 In April 2019, Bravura made an initial, unsolicited bid for GBST, after which SS&C and FNZ entered the bidding process. Figure 2.1 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.

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<sup>9</sup> [REDACTED]



**Figure 2.1: 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 offer A\$3.15	Updated FNZ offer A\$3.50	Updated FNZ offer A\$3.65	Updated FNZ offer A\$3.95				FNZ entered into binding offer A\$3.85

Source: CMA Analysis

## **Evidence from FNZ**

2.28 FNZ has submitted that the following were the main events leading up to its final offer for GBST:

- (a) Following Bravura’s updated 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, parties were contacted and encouraged to submit proposals by 28 June.
- (d) On 28 June, both SS&C and FNZ expressed a 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 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.

(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.

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

2.30 Internal documents show that FNZ valued GBST '[REDACTED]' <sup>10</sup>

(a) The '[REDACTED]' analysis showed that GBST had a market capitalisation of '[REDACTED]'

(b) '[REDACTED]'.

(c) '[REDACTED]'.

2.31 '[REDACTED]'.

2.32 FNZ's final, accepted offer of AUD\$3.85 was '[REDACTED]'.

### **GBST valuations**

2.33 A valuation of GBST '[REDACTED]'. <sup>11</sup>

2.34 We note that this is '[REDACTED]'.

2.35 A separate, sum-of-the-parts valuation<sup>12</sup> '[REDACTED]'.<sup>13</sup> '[REDACTED]' 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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<sup>10</sup> Discounted cash flow valuations are often used in the appraisal of major investments for companies or to value other companies they may wish to acquire. The technique derives a value for the company by calculating the present value of the projected future cash flows of the business.

<sup>11</sup> '[REDACTED]'

<sup>12</sup> 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.

<sup>13</sup> '[REDACTED]'

(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 An RMS 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.<sup>14</sup>

3.4 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’.<sup>15</sup> 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’.<sup>16</sup>

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 satisfied that FNZ and GBST is each a ‘business’ within the meaning of the Act and their activities are ‘enterprises’ for the purposes of the Act.

3.6 The Act provides that enterprises cease to be distinct if they are brought under common ownership or common control.<sup>17</sup> 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 carried on by FNZ and GBST have ‘ceased to be distinct’ for the purposes of the Act.

3.7 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.<sup>18</sup> The four-month period may be extended under [section 25](#) of the Act.

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<sup>14</sup> [Section 23](#) of the Act.

<sup>15</sup> [Section 129\(1\)](#) of the Act.

<sup>16</sup> [Section 129\(1\)](#) and [\(3\)](#) of the Act.

<sup>17</sup> [Section 26](#) of the Act.

<sup>18</sup> [Section 24](#) of the Act.

3.8 The Merger completed on 5 November 2019 and was made public on the same date. Following two extensions, the statutory deadline was 14 April 2020.<sup>19</sup> 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 within 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 £[~~8~~] [20-30] million, so the turnover test is not met.

3.11 The share of supply test is satisfied where, as a result of enterprises ceasing to be distinct, a share of supply of goods or services in the UK, or a substantial part of the UK, of at least 25% is created or enhanced.<sup>20</sup>

3.12 The Parties overlap in the supply of Retail Platform Solutions in the UK namely, software and/or servicing to investment platforms with a mainstream retail proposition. This broad description encompasses the services offered by the Parties.

3.13 FNZ disputed this characterisation of the market, preferring a broad description of wealth management platform solutions which included a broader range of customers. We discuss this further in Chapter 6, Market Definition. For the purposes of establishing jurisdiction, the Act provides us with a wide discretion in describing the relevant goods or services. 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.<sup>21</sup>

3.14 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

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<sup>19</sup> 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.

<sup>20</sup> Section 23(2), (3) and (4) of the Act.

<sup>21</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraph 4.56.

Parties must together supply or acquire the same category of goods or services.

### ***Views of the Parties***

- 3.15 FNZ submitted that the share of supply test, based on ‘the narrowest plausible product market of wealth management platform solutions in the UK on the basis of recurring revenue,’ 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. 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.
- 3.16 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’. 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.
- 3.17 FNZ made no further submissions on shares of supply in relation to the RMS.

### ***Our assessment***

- 3.18 The Act provides us with 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.
- 3.19 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 considered 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.
- 3.20 We considered the supply of Retail Platform Solutions on an assets under administration (AUA) basis as a reasonable and appropriate measure for the purposes of the RMS test. We did not receive any 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 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%] and that the share of supply test in section 23 of the Act is met.

## **Conclusion on the relevant merger situation**

3.22 In the light of the above, we concluded that the Merger has resulted in the creation of an 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.

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).<sup>22</sup>

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 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.

4.4 Providers of Investment Platforms include banks, insurers, asset managers and wealth managers.

4.5 All Investment Platform operators need to combine the two components of a Platform Solution – software and servicing. The Parties submitted that platform software and investment transaction and custody services are two of the elements of a Platform Solution that may be outsourced by Investment Platform operators.

4.6 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.

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<sup>22</sup> A tax wrapper is a tax treatment that an investor can 'wrap' around their investment.

- 4.7 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;
  - (b) a Combined Platform Solution, including both software and servicing. Generally provided by one supplier or from separate third-party software and servicing providers; or
  - (c) software and servicing provided in-house (an in-house solution).
- 4.8 Some Platform Solutions providers, such as those offering custody services, are regulated in the UK by the Financial Conduct Authority (FCA). FNZ offers a Combined Platform Solution which includes transaction processing and asset custody which require it to be regulated by the FCA. 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.<sup>23</sup> 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.<sup>24</sup>
- 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.<sup>25</sup>
- 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.<sup>26</sup>

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<sup>23</sup> MAGs, paragraph 4.3.1.

<sup>24</sup> MAGs, paragraphs 4.3.1 and 4.3.6.

<sup>25</sup> MAGs, paragraph 4.3.6.

<sup>26</sup> MAGs, paragraph 4.3.6.

- 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. The foreseeable period can sometimes be relatively short. 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. 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 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.<sup>27</sup>
- 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 decrease the prospect of finding an SLC.<sup>28</sup>
- 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.<sup>29</sup>

## Our assessment

- 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:
- (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.<sup>30</sup>

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<sup>27</sup> MAGs, paragraphs 4.3.2 and 4.3.6.

<sup>28</sup> MAGs, paragraph 4.3.4.

<sup>29</sup> 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)*”.

<sup>30</sup> More detail about the bidding process is set out in Chapter 2, The Parties, the Merger and its rationale



5.8 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.

#### *Main Party views and evidence*

5.9 We note that FNZ and GBST hold different views on various aspects of the competitive effect of the Merger, including in relation to the appropriate counterfactual, the competitive assessment and the remedies that would be effective and proportionate to address competition concerns. FNZ has told us that [§<].

5.10 We recognise that submissions from both Parties and from third parties may be influenced by commercial and other incentives. However, we consider that the submissions from both Parties are informed by senior executives with considerable industry experience, so they should be taken into account in our assessment.

5.11 More broadly, in the conduct of our inquiry we seek to corroborate all submissions and the weighting we give submissions is determined by the extent to which we are able to corroborate them. We considered carefully, with due scepticism, the extent to which the evidence contained within each Party's submissions, and from third parties, supports their views and, where appropriate, we sought further evidence to enable us to form our own view. We reminded both Parties, as well as all third parties, that it is a criminal offence to knowingly or recklessly mislead us.

#### *FNZ*

5.12 FNZ submitted that:

- (a) The relevant counterfactual was one where an alternative party (currently active in supplying platform solutions for wealth management platforms) acquired GBST. 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, including from both Bravura and SS&C;
- (b) absent the transaction, 'SS&C would have sought to conclude the acquisition of GBST.' 'SS&C was well advanced in the purchase process' and 'ASX announcements noted that the GBST board was going to recommend SS&C proposal unanimously to its shareholders, in absence of a superior offer.';

- (c) a 'plausible alternative counterfactual is that [X] the GBST [X]. GBST's [X], and GBST's [X]. GBST [X].
- (d) using pre-Merger conditions of competition as the counterfactual 'underestimates the existing competitive strength of SS&C and, critically, [X]; and
- (e) any 'residual uncertainty' around the completion of the acquisition should not be sufficient to displace the most likely counterfactual. Moreover, the CMA's conclusion that GBST would (or could) have remained viable as an independent competitor [X].

## GBST

5.13 GBST submitted that the pre-Merger conditions of competition are the most likely counterfactual to the Merger because:

- (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'.

5.14 GBST further told us that:

- (a) '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. It noted that 'this competitive tension resulted in the best outcome for GBST's shareholders.
- (b) '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'.
- (c) 'At the time that FNZ made binding offers for GBST, SS&C had only made non-binding indicative bids and had not committed to proceeding with a binding offer. [...] This is in contrast to the binding offer at a

superior price from FNZ, which provided certainty for shareholders and was therefore recommended by the Board.'

- 5.15 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.<sup>31</sup> We found no evidence in GBST's internal documents indicating that it considered its viability as an independent market participant was uncertain.<sup>32</sup>

#### *Third party evidence*

- 5.16 Bravura told us that its bid was prompted by GBST's falling share price on the Australian Stock Exchange. GBST's undisturbed share price<sup>33</sup> was AUD\$1.97, and the low share price made a potential acquisition attractive.
- 5.17 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 (a 20-30% premium on the 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'.
- 5.18 SS&C made two offers to acquire GBST. It told us that it was 'surprised and disappointed not to win the acquisition'.
- 5.19 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 this 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 investment spend necessary to make Composer fully competitive with Bravura's Sonata system'.
- 5.20 SS&C's internal documents show that [REDACTED] and '[REDACTED]'.

#### *GBST response to bids*

- 5.21 GBST's responses to the bids from SS&C and FNZ were made in public announcements to the ASX:

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<sup>31</sup> [REDACTED].

<sup>32</sup> [REDACTED].

<sup>33</sup> The share price prior to any announcement.

- (a) On 28 June, the GBST Board having reviewed the first proposals made by both SS&C and FNZ, '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 resolved to grant SS&C exclusive due diligence;
- (c) On 1 July FNZ made a second non-binding proposal on an unsolicited basis;
- (d) On 2 July, following an 'Updated Indicative Proposal' from SS&C of AUD\$3.60 and offer of expedited due diligence, GBST announced 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 a third non-binding indicative proposal from FNZ on an unsolicited basis for AUD\$3.65 per share.
- (f) Following the third offer from FNZ, GBST concluded that SS&C's proposal was still superior due to the scope of its due diligence and other matters including uncertainty as to whether FNZ's non-binding offer would translate into a binding offer. The GBST Board noted that it 'intends to unanimously recommend the Updated Indicative Proposal from SS&C to shareholders in the absence of a superior proposal'.

- 5.22 We see this as indicating that, absent the competing offer from FNZ, it was likely that GBST would have sought to conclude the acquisition by SS&C. However, the GBST announcement included the caveat that there was 'no certainty that the Updated Indicative Proposal will result in an agreed transaction'.
- 5.23 We consider that the evidence shows that the acquisition of GBST by SS&C was plausible. Further, the evidence shows that GBST was not undergoing a distressed sale so we also consider it plausible that, absent a sale, GBST would have remained in independent ownership.
- 5.24 We do not however need to conclude on which of these two plausible scenarios was more likely for the purposes of the counterfactual. We consider that neither scenario would produce a meaningfully different competitive result. Evidence from SS&C's internal documents indicates that it intended to continue to operate GBST. If no sale eventuated, evidence from GBST's internal documents indicates it would have remained in the market. Therefore, under either scenario, GBST would have remained as an active competitor and there is no basis to conclude that its competitive

presence would have been meaningfully different. With regard to FNZ's submission that the prevailing conditions of competition [§<], we do not consider this to be supported by the evidence of GBST's pre-merger financial performance and the evidence considered as part of our competitive assessment.

## Conclusion on the counterfactual

- 5.25 On the basis of the evidence set out above, we conclude that the likely counterfactual is the conditions of competition prevailing prior to the contemplation of the Merger.

## 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.<sup>34</sup>
- 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 an SLC, we may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.<sup>35</sup>
- 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.<sup>36</sup>
- 6.4 We assessed the relevant product market and the relevant geographic market in which the effects of the Merger should be assessed.

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<sup>34</sup> MAGs, paragraphs 5.2.1–5.2.2.

<sup>35</sup> MAGs, paragraph 5.2.2.

<sup>36</sup> MAGs, paragraph 5.1.1.

## 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.<sup>37</sup> Our guidelines state that we will have particular regard to demand-side factors when identifying relevant product markets.<sup>38</sup>
- 6.7 We 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.<sup>39</sup> 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.<sup>40</sup>
- 6.8 We may consider aggregating several narrow markets into a broader market based on supply-side factors where:<sup>41</sup>
- (a) Firms have the ability and incentive to shift capacity between different products quickly, that is, generally within a year; and
  - (b) the same firms compete to supply different products and the conditions of competition between the firms are the same for each product.
- 6.9 We considered whether it is appropriate, within the supply of Platform Solutions, to distinguish between:
- (a) Retail and other types of Investment Platform Solutions;
  - (b) the supply of Software-only Solutions and Combined Platform Solutions (the delivery model used); and
  - (c) in-house provision of software and/or servicing and third-party provision.

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<sup>37</sup> MAGs, section 5.2.

<sup>38</sup> MAGs, paragraphs 5.2.6 – 5.2.7.

<sup>39</sup> MAGs, paragraph 5.2.17.

<sup>40</sup> MAGs, paragraph 5.2.18.

<sup>41</sup> MAGs, paragraph 5.2.17.

6.10 As part of this assessment, we considered where the Parties compete more closely. This helps with assessing the most significant competitive alternatives available to the Parties of the customers and reflects how the strength of these alternatives can vary by customer. This is relevant given that suppliers can tailor their offers in tenders, depending on the requirements and preferences of the customer.<sup>42</sup>

### ***Retail and other types of Platform Solutions***

#### *FNZ/GBST submissions*

6.11 FNZ submitted that:

- (a) The relevant market should be the supply of Platform Solutions for all wealth management platforms for individual end investors. It said that distinctions, such as between Retail, stockbrokers, private client investment managers (PCIMs) and private banks existed historically but have now disappeared 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’;
- (b) while there may still be some differences between Retail Platforms and private banks and stockbrokers, PCIM Platforms should be considered as Retail Platforms<sup>43</sup> 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;
- (c) 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; offer similar front end functionality to investors; and cannot be distinguished according to whether they have ‘open’ or ‘closed’ architecture;
- (d) Retail Platforms also serve high net worth individuals and, therefore, have solutions in place to cater for the needs of this investor group;
- (e) differentiation between delivery models far exceeds any modest differences between Investment Platforms requirements cited by the CMA in justification of its Retail/Non-Retail distinction, and the CMA

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<sup>42</sup> See Chapter 7

<sup>43</sup> See [§<].

should assess whether a customer that wanted a Combined Platform solution would be more willing to consider a Combined Platform Solution supplier with limited Retail experience than a Software-only supplier with greater Retail experience;

- (f) most Investment Platforms (Retail and Non-Retail) offer stocks and shares and so stockbrokers should not be a separate category for the purpose of market definition;
- (g) any differences in supplier focus do not mean that demand-side substitution is limited. 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. The out-of-market constraint exerted by Non-Retail suppliers would be almost as powerful as if they were in the market;
- (h) the CMA needs to assess whether Non-Retail suppliers would expand in the Retail segment if prices rose by 5-10%; and
- (i) suppliers of [X].

6.12 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;
- (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 that '[t]he 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'; 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.



## *Investment Platform type*

- 6.13 We identified the following main types of Investment Platform which have differing Platform Solution requirements:
- (a) Retail Platforms;
  - (b) stockbroker platforms;
  - (c) PCIM platforms; and
  - (d) platforms operated by private banks.
- 6.14 For the purposes of our analysis, we describe Investment Platform types in (b), (c), and (d) together as 'Non-Retail Platforms'.
- 6.15 These Investment Platform types are not formally defined and there is some variation in the terminology used by market participants and in the Parties' internal documents to describe them.<sup>44</sup> In addition, while most Investment Platforms can be defined as Retail or Non-Retail Platforms, some Investment Platforms do not neatly fit into only one category.<sup>45</sup>
- 6.16 Evidence from third parties shows that 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:
- (a) Retail Platforms typically serve high volumes of customers and are primarily focused on the mass affluent part of the market. They are likely to offer a more restricted range of investment products than other platform types (although this is not always the case and they are increasingly using an open architecture that widens the product range) and tend to be focused on providing tax wrapper products such as ISAs and SIPPs.<sup>46</sup> They are built to be highly automated so that they can efficiently manage a very large number of accounts;
  - (b) Retail stockbroking platforms 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; and

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<sup>44</sup> For example, making distinctions between 'retail' and 'wealth management' Investment Platforms, or between 'mass affluent' and 'high net worth' Investment Platforms.

<sup>45</sup> See chart in Appendix D, paragraph 2 illustrates this overlap across segments. We set out how we took into account these considerations when collecting and interpreting evidence from third parties in Appendix B.

<sup>46</sup> We also consider suppliers of workplace pensions to be Retail Platforms.

(c) PCIM Platforms and private banking platforms 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.<sup>47</sup> These Investment Platforms are built to provide a more customised service for investors.

6.17 FNZ provided data on the distribution of customers by size of assets for a number of different Investment Platforms. FNZ submitted that this showed that [REDACTED].

6.18 In our view, FNZ's analysis does not show that Non-Retail Platforms would require the same or similar solutions to Retail Platforms as FNZ [REDACTED].

6.19 While the examples provided by FNZ are illustrative rather than a comprehensive assessment, they indicate that [REDACTED].

6.20 Figure 6.1 below presents the number of accounts by size of assets for the examples of Investment Platforms provided by FNZ.

**Figure 6.1. Number of accounts by size of assets**

[REDACTED]

Source: [REDACTED]

6.21 We classified the Investment Platforms presented in Figure 6.1 as Retail and Non-Retail. Consistent with the lack of a clear line of delineation between some Retail and Non-Retail Platforms, we classified one Investment Platform (Charles Stanley) as borderline because it told us that that its Platform has both Retail and Non-Retail elements and the Parties had different views on the Investment Platform classification.<sup>48</sup> Figure 6.1 shows:

(a) [REDACTED]

(b) [REDACTED].

6.22 FNZ's examples therefore support the view that Retail Platforms would require different solutions to Non-Retail Platforms in order to efficiently manage a significantly larger number of accounts than Non-Retail Platforms.

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<sup>47</sup> 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.

<sup>48</sup> See Appendix G for further details of our approach to classifying platforms. Charles Stanley response to the CMA's September questionnaire. Reflecting the customer response and the Parties' views, we have also considered Charles Stanley alongside the Retail Platforms as part of our sensitivity analysis (see Appendices G and J).

Retail Platforms serving significantly more customers with lower asset values than Non-Retail Platforms is also consistent with Retail Platforms offering a more automated and lower cost service than the more bespoke and higher cost services that Non-Retail Platforms provide.

- 6.23 Taking as our starting point the different types of Investment Platform set out above, we consider that the supply of Retail Platform Solutions is the narrowest plausible candidate product market in which the Parties overlap.
- 6.24 The specific requirements and preferences of Retail Platforms may vary. For example, we found that certain Retail Platforms were set up to be used by independent financial advisers, whereas others are intended to be used only by that Retail Platform's in-house financial advisers. Rather than seeking to define various markets to reflect differences in the specific requirements and preferences of different Retail Platforms, we took these differences into account as part of our competitive assessment where relevant.<sup>49</sup> This is a common approach to focussing on the most significant competitive alternatives available to customers of the Parties where products and services are tailored to customer requirements and preferences to some extent.<sup>50</sup>
- 6.25 Using Retail Platform Solutions as our starting point, we consider below whether Non-Retail Platform Solutions should also be included as part of the relevant product market, based on demand-side or supply-side considerations.

#### *Demand-side substitution*

- 6.26 From a demand-side perspective, the relevant product market is the set of products that customers see as close substitutes when they respond to a worsening offer (such as a price increase) in one product.<sup>51</sup> In bidding markets, the products which customers select towards the final stage of a tender indicate which products customers see as closely competing.
- 6.27 We assessed whether differences existed between the requirements of Retail and Non-Retail Platforms and, if so, whether those differences meant that some suppliers are better suited to serve one group of customers than another and, therefore, can be considered to be close substitutes.

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<sup>49</sup> See Chapter 8.

<sup>50</sup> For example, see [MAGs](#), paragraph 5.2.18.

<sup>51</sup> [MAGs](#), paragraph 5.2.5.

- 6.28 In our view, this approach allows us to focus not only on specific capabilities, but also to take account of the roles played by brand, reputation, user experience, and track record, which evidence shows are key considerations for customers when selecting a Platform Solution.
- 6.29 The rest of this section looks at the differentiation of customer requirements for Platform Solutions and convergence of Investment Platform requirements.
- 6.30 In general, greater convergence between Investment Platforms would be liable to lead to Investment Platforms and their Platform Solution requirements becoming more similar and, consequently, to a greater likelihood of demand-side substitution. On the other hand, the greater the degree of differentiation between Platform Solution suppliers, the less likely customers will be to switch between them.

*Differentiation of customer requirements for Platform Solutions*

- 6.31 We examine whether different suppliers of Platform Solutions can meet the requirements of both Retail and Non-Retail Platforms and the extent to which customers consider them to be alternatives.
- *Third party evidence*
- 6.32 Evidence from third parties indicated that there are differences between Platform Solution suppliers that affect the extent to which they can compete to supply different types of Investment Platforms.
- 6.33 Evidence from customers, suppliers and consultants indicated that Retail Platform Solutions accommodate more commoditised investment products such as pensions and have highly automated and efficient systems for operating at scale and managing a large number of investor accounts. Conversely, Non-Retail Platforms Solutions are less automated and have more manual processes in place to accommodate more complex and bespoke requirements. Pensions capabilities are either not required or are significantly less important to Non-Retail Platforms.
- (a) An FNZ customer, [X], told us that there is a relatively clear demarcation between Retail and Non-Retail Platforms and its required functionalities. It said that Retail Platforms typically automate key functionalities that must be directly accessed by both end-investors and advisers and enable Retail Platforms to operate at scale. It said that while tax wrappers such as ISAs and General Investment Accounts are simple to administer, pension wrappers are more complex, require skills

and experience that are in short supply in the market, and are typically offered by suppliers of Retail Platform Solutions. It said that ‘advisers and DFMs [Discretionary Fund Managers] operating in Retail Platforms will demand more sophisticated functionalities, however this demand is limited by the need to ensure the instrument is appropriate for a retail investor’.<sup>52</sup>

- (b) Another customer, Lloyds Banking Group said that Retail Platforms are characterised by large volumes of investor accounts, less complex investments, and are focused on operating at scale with low costs as margins are low. It also said that Non-Retail Platforms have wealthier investors and offer more complex and bespoke investments, which makes advice relatively more important.
- (c) A competitor, Bravura said 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. Bravura said that suppliers of Retail Platform Solutions such as FNZ, Bravura and GBST do not readily support bespoke portfolio management, while Non-Retail Platform Solution suppliers such as JHC, Pershing and Third Financial do.
- (d) Another supplier, Avaloq told us that ‘technology sourcing tends to be disparate, there are limited providers that could do it all and that ‘the distinguishing factors between itself and FNZ and GBST is the customer base and complexity of the investment asset class. Avaloq told us that it can deal with different jurisdictions and significantly more complex products than suppliers of Retail Platform Solutions. It said that it does not need to offer pensions functionality to compete for Non-Retail Platforms whereas it would need to develop this capability to compete for Retail Platforms that require this, such as those used by Independent Financial Advisers;
- (e) Another supplier [REDACTED]<sup>53</sup>
- (f) Another supplier, Pershing said that the ability to operate at scale and to offer pension wrappers are critical to Retail Platforms. Pershing noted that while it can serve both Retail and Non-Retail Platforms, its customer base is more weighted towards Non-Retail Platforms with its inherent requirements.

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<sup>52</sup> [REDACTED]  
<sup>53</sup> [REDACTED]

- (g) Another supplier, [REDACTED] said that suppliers like FNZ, GBST and Bravura have direct processes in place to deal with a wide range of assets, are scalable and able to interact with external advisors. [REDACTED] further said that suppliers such as Avaloq have different strengths, especially banking and discretionary functionalities;<sup>54</sup>
- (h) A consultant, the Lang Cat said that different segments of the financial technology market ‘have different customer behaviours in terms of how they invest, how frequently they invest, changes to their portfolio and the channels which they use to distribute their funds’. It said that suppliers such as Temenos and Avaloq deliver a more bespoke experience and would need to invest in automation of processes to be able to supply to retail platforms; and
- (i) Another consultant, Ernst & Young said that, unlike other suppliers (such as Avaloq), GBST and Bravura operate in the ‘retail investment side of the market’ where pension functionalities are more important. It said that FNZ operates in this market but also has wealth management capabilities.

6.34 The qualitative evidence above is consistent with the overall views from customers, suppliers, and consultants when we asked them to provide scores on how close alternative suppliers, including the other Party, are to FNZ and GBST. This indicated that suppliers which solely or predominantly focus on Non-Retail Platform Solutions (Pershing, Avaloq and Temenos) are not as close alternatives to the Parties as other suppliers of Retail Platform Solutions.<sup>55</sup>

6.35 Evidence from third parties also indicates that suppliers are typically focused on either Retail or Non-Retail Platforms. FNZ may be an exception to this with third parties confirming 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.<sup>56 57</sup>

6.36 On the basis of this evidence, we find that there are differences between Platform Solution suppliers that affect the extent to which they can compete to supply different types of Investment Platforms; in particular, suppliers of Non-Retail Platform Solutions are focused on meeting the requirements of

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<sup>54</sup> [REDACTED]

<sup>55</sup> See Chapter 8, section Closeness of competition between the Parties. See also Appendix J.

<sup>56</sup> See the following: [REDACTED]

<sup>57</sup> We have set out third party views on which suppliers focus on Retail and Non-Retail in Appendix I.

those Platforms and are not suited to supplying Retail Platforms. Retail Platforms therefore do not consider them as credible alternatives.

- *Tender analysis*

- 6.37 We analysed tenders in order to ascertain whether there was any demand side substitution between Retail and Non-Retail Platform Solutions.
- 6.38 Our analysis shows limited demand-side substitution: overall, suppliers of Non-Retail Platform Solutions do not tend to participate and win Retail Platform Solution tenders. Evidence from both the early and final stages of a tender shows that Non-Retail suppliers have a limited presence in Retail tenders.<sup>58</sup>
- 6.39 In addition, in Retail tenders where the Parties overlapped, suppliers that specialised in serving Non-Retail Platforms did not compete significantly.<sup>59</sup>
- 6.40 We also found that some suppliers of Non-Retail Platform Solutions compete in some Retail and borderline tenders (tenders which may involve both Retail and Non-Retail elements).<sup>60</sup> However, their participation is unusual and so indicates that these suppliers are not credible alternatives to suppliers of Retail Platform Solutions.
- 6.41 We consider, therefore, that the tender evidence indicates that customers do not consider suppliers of Non-Retail Platform Solutions to be close alternatives to suppliers of Retail Platform Solutions.

- *Internal documents*

- 6.42 We collected over 18,000 documents in total and, having filtered these, focussed our analysis on a small number of documents which are of most relevance to our assessment.
- 6.43 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, a variety of approaches are used, such as the type of 'retail channel' employed by the platform (direct to consumer or via

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<sup>58</sup> See Competitive constraint from alternatives section in Chapter 8 and Appendix G.

<sup>59</sup> Appendix G presents the alternatives to the Parties in Non-Retail tenders, at both early and final stages, and the winners on those tenders. This assessment shows a predominantly different set of suppliers competing in tenders for Non-Retail Platforms to those competing for Retail Platforms.

<sup>60</sup> See Competitive constraint from alternatives section in Chapter 8 and Appendix G.

investment advisers), the type of end-investor being targeted, or the type of institution operating the platform.

- 6.44 Internal documents also show that the Parties recognise that requirements of Investment Platforms vary, and that different suppliers are focused on different platform types.<sup>61 62 63</sup>

#### *Convergence of Investment Platform requirements*

- 6.45 FNZ submitted that there is convergence in the market between types of Investment Platform. We examined the extent to which differences between Investment Platforms and their Platform Solution requirements remain.

- 6.46 Almost all of the twenty-five third parties that gave a view on convergence believed that there had been some convergence, but their views were mixed as to its extent. Even respondents who said that there has been a significant movement towards convergence considered that, overall, material differences still remain between Retail and Non-Retail Platforms and their requirements.

- 6.47 For example:<sup>64</sup>

- (a) An FNZ customer said that some convergence has taken place over the last three to five years whereby suppliers of Retail Platform Solutions have developed some functionalities that are typical of Non-Retail Platforms, such as the capabilities of Discretionary Fund Managers. It also said that convergence is more limited in the other direction, as there is little evidence that suppliers of Non-Retail Platform Solutions have built pension functionalities. For this reason, it believes there is a clear demarcation between Retail and Non-Retail Platforms;<sup>65</sup>
- (b) a 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<sup>66</sup>; and
- (c) 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

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<sup>61</sup> [REDACTED] See Appendix D, paragraph 1 for screenshot and Appendix C, paragraph 1 for more details. .

<sup>62</sup> [REDACTED] See Appendix C, paragraph 2 for more details.

<sup>63</sup> [REDACTED], See Appendix D, paragraph 3 for screenshots and Appendix C, paragraph 3 for more details.

<sup>64</sup> In addition to the examples below, see also [REDACTED]. Further evidence of this ongoing differentiation is given by [REDACTED]

<sup>65</sup> [REDACTED]

<sup>66</sup> [REDACTED].



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’.

### *Supply-side substitution*

- 6.48 The boundaries of the relevant product market are generally determined by reference to demand-side substitution alone.<sup>67</sup> We found that FNZ is unusual in supplying both Retail and Non-Retail Platforms and very few other suppliers would be able to do the same so we examined whether the market could be widened to include Non-Retail Platform Solution suppliers if they were willing and able to adapt their product to compete for Retail Platforms.<sup>68</sup>
- 6.49 We found that customers typically ask for information on suppliers’ current capabilities and whether they are able to provide a specific functionality in the early stages of tenders for Retail Platforms.
- 6.50 We asked suppliers of Platform Solutions and consultants to explain how easy it would be for suppliers of Non-Retail Platforms to adapt their Platform Solutions to enable them to compete for Retail Platforms. Out of the nine respondents that gave a view, seven considered it would be hard for suppliers to adapt their Platform Solution while two indicated that it may be possible. More specifically:
- (a) Fundscape submitted that Pershing could change the ‘front end’ part of its solution to better meet the requirements of Retail Platforms. We note, however, that Pershing itself considers that it is already able to serve both Retail and Non-Retail Platforms; 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.<sup>69</sup> However, Avaloq and Temenos told us that [redacted].<sup>70</sup> This position 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.

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<sup>67</sup> MAGs, paragraph 5.2.17.

<sup>68</sup> 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 9, Countervailing factors).

<sup>69</sup> [redacted]

<sup>70</sup> [redacted]

- 6.51 These challenges included the limited opportunities to compete and customers being likely to consider proceeding with an unproven software partner to be too risky. One competitor noted that incumbent suppliers are entrenched and it would be difficult for a new entrant to win any business and justify the client's business case for moving platforms.<sup>71 72</sup>
- 6.52 The evidence indicates that the task of adapting Platform Solution capabilities is difficult and unattractive:
- (a) SS&C submitted that the need to handle thousands of advisors 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'.
  - (b) Equiniti said that having pension wrapper solutions fully integrated is a 'massive challenge' for Non-Retail Platform suppliers and that being able to support the scalability and automation required by a Retail Platform would be a major challenge.
  - (c) A competitor noted that there were high costs of entry and that any return on investment could only be achieved in the long term.<sup>73</sup>
  - (d) [REDACTED] told us that the differences in the complexity of the products offered and in the costs of providing Investment Platform Solutions to Retail and Non-Retail Platforms make its expansion into the Retail segment unviable.<sup>74</sup>
  - (e) [REDACTED]<sup>75</sup>
- 6.53 We found no evidence in the Parties' internal documents that Non-Retail suppliers exert a constraint on the Parties or that the Parties are concerned that Non-Retail suppliers would be able to adapt to compete for Retail Platform opportunities. This suggests to us that potential competition from Non-Retail Platform Solutions suppliers is not an important consideration in the Parties' commercial decision-making and consequently is not seen as a threat to their Retail Platform Solutions.

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<sup>71</sup> [REDACTED] response to CMA Phase 2 questionnaire. See also Phase 2 questionnaire responses from [REDACTED] and [REDACTED].

<sup>72</sup> See also Switching costs section in Chapter 7.

<sup>73</sup> [REDACTED].

<sup>74</sup> [REDACTED].

<sup>75</sup> [REDACTED].

6.54 In light of this evidence from third parties and the lack of any evidence that the Parties are concerned about suppliers of Non-Retail Platform Solutions adapting their products, our view is that it is unlikely that the suppliers of Non-Retail Platform Solutions would be willing and able to adapt their products to compete for Retail Platforms in the event that prices of Retail Platform Solutions increased by a small but significant extent.<sup>76</sup>

### ***Delivery model***

#### *FNZ and GBST submissions*

6.55 At phase 1 of our inquiry, FNZ submitted that:

- (a) The product market definition should include all delivery models including Software-only Platform Solutions and Combined Platform Solutions (which FNZ refers to as PaaS) and their variations;
- (b) 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;
- (c) suppliers with different delivery models compete against each other, including in tenders. It said that 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;
- (d) it is not unusual that suppliers of Combined Platform Solutions lose bids to suppliers of Software-only Solutions and vice versa; and
- (e) customers frequently combine suppliers (including their own self-supply models) to achieve a complete Platform Solution.

6.56 At phase 2, FNZ said that both Software-only Solutions and Combined Platform Solutions offer a constraint to FNZ, but added that:

- (a) Different delivery models have different characteristics and, as a result, cater to customers with distinct preferences. While suppliers with different models (Software-only Solutions or Combined Platform Solutions) bid against each other, [§]. FNZ submitted that this

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<sup>76</sup> Also see Chapter 9 for our assessment of entry and expansion.

demonstrates that suppliers of Software-only Solutions and Combined Platform Solutions do not compete closely.

- (b) the 'software alternative is [a] clearly a credible alternative but we are [X]. It said that it lost '£[X] of assets to software alternatives...but [it] lost £[X] to PaaS';
- (c) it typically only competes against Software-only Solutions at the early stage of tenders where substantive competition does not take place and is not successful beyond this stage in tenders where customers have decided they require a Software-only Solution;
- (d) partnerships between suppliers of Software-only Solutions and servicing suppliers are not a credible alternative to an integrated PaaS supplier; and
- (e) 'the [X].

6.57 GBST submitted that suppliers with different delivery models compete against each other:

- (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 for the 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.

### *Our assessment*

6.58 We found that all Investment Platforms need to combine 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 (either the same third party or two different suppliers).

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

- (a) A Software-only Solution by a third party such as GBST with servicing provided in-house; and

(b) a Combined Platform Solution which includes both software and servicing, either provided by a single supplier or two suppliers.

- 6.60 We examined the extent to which Software-only Solution suppliers (such as GBST) compete with Combined Platform Solutions offered by a single firm (such as FNZ) in order to determine whether they should be included within the same product market.
- 6.61 To take account of the different ways through which Software-only suppliers can constrain single suppliers of Combined Platform Solutions, we looked at the extent to which Software-only Solutions competed with Combined Platform Solutions either by offering a standalone Software-only Solution or by offering a Combined Platform Solution in conjunction with a servicing supplier, such as the partnership between GBST and Equiniti. We considered the extent to which partnerships are considered a credible alternative to a Combined Platform Solution from a single supplier. Not considering the possibility that Software-only suppliers can also offer a Combined Platform Solution through partnerships would only give a partial view of competition between a Software-only supplier such as GBST and a Combined Platform Solution supplier such as FNZ.

#### *Third party evidence*

- 6.62 Third parties told us that a supplier's delivery model was important, and many explained that customers will choose between a Software-only Solution or a Combined Platform Solution based on strategic need.<sup>77</sup>
- 6.63 We asked competitors and consultants at which stage in the tendering process customers made their choice between a Software-only Solution and a Combined Platform Solution.
- (a) Just under half (three of the eight) competitors that provided a view said that customers usually form a view on the preferred delivery model early so that the tendering process would only consider suppliers who offered the preferred model but not both.<sup>78</sup> However, just over half (five of the eight) said that some customers remain undecided for some time in the tender process and consider both.

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<sup>77</sup> [REDACTED] and [REDACTED];[REDACTED].

<sup>78</sup> [REDACTED]

(b) All four consultants that gave a view told us that customers will make a decision as to whether to outsource the servicing aspect depending on the cultural fit and strategy of the Investment Platform:

(i) Two consultants said that customers typically consider both delivery models very early on in the procurement process, but recognised that this may vary;

(ii) one consultant said, [✂] most customers will make a decision towards the middle to the end of the process, but before the commercial negotiations stage; and

(iii) one consultant told us that some customers will start the tender process having decided which delivery model they are seeking, while others will keep the choice as to whether to outsource the servicing aspect to the later stages of the tender process.

6.64 We found that most third parties consider that partnerships which bring together Software-only and servicing suppliers compete with Combined Platform Solutions provided by a single supplier.<sup>79</sup>

(a) Most customers (11 out of 18 that gave a view) indicated that partnerships are a credible alternative to a Combined Platform Solution from a single firm. The remaining seven indicated that they prefer a Combined Platform Solution from a single supplier.

(b) Three out of five consultants told us that there are challenges in dealing with two different suppliers, but partnerships can be successful and are able to compete against Combined Platform Solutions from a single supplier. One consultant told us that partnerships could provide effective competition, while another told us there is little evidence of partnerships in the UK Retail Platform market.

### *Tender analysis*

6.65 We found that Software-only suppliers, either alone or in partnership with servicing suppliers, and Combined Platform Solution suppliers were present

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<sup>79</sup> Chapter 8, section *Closeness of competition between the GBST/Equiniti partnership and FNZ* for more details on third party evidence on the extent to which the GBST/Equiniti and FNZ are considered credible alternatives.

in the early and final stages of a significant number of Retail Platform tenders.<sup>80 81</sup>

- (a) In at least [X] of the [X] tenders for Retail Investment Platforms where we knew the identity of at least two bidders,<sup>82</sup> there was a mix of Software-only Solutions and Combined Platform Solutions suppliers bidding at the early stage; and
- (b) In at least [X] out of the [X] tenders for Retail Investment Platforms where we knew the identity of at least two bidders at the final stage, both Software-only Solution and Combined Platform Solution suppliers were present at the final stage.

6.66 Our analysis of Non Retail tenders in Appendix G shows that there is a much lower number of Non-Retail tenders where Software-only Solution and Combined Platform Solution suppliers overlapped when compared to the numbers for Retail tenders presented above. We consider that this finding is consistent with the competitive conditions in the supply of Platform Solutions to Retail Platforms being different to the competitive conditions in the supply of Platform Solutions to Non-Retail Platforms.

6.67 Customers can also indicate which elements they intend to outsource and which will be kept in-house.<sup>83</sup> We 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.<sup>84</sup>

### *Internal documents*

6.68 Our analysis of the Parties' internal documents found that FNZ and GBST identify each other 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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<sup>80</sup> 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.

<sup>81</sup> 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, Aquila, Delta and Sapiens. Avaloq and Dunstan Thomas, who can offer both Software-only and Combined Platform Solutions, were classified as Software-only suppliers in certain tenders where they offered a Software-only solution.

<sup>82</sup> We considered tenders with at least two known bidders at each stage to make an informed comparison over the whether the customer had a preference over the type of supplier. As we may not have complete information on the set of bidders for all tenders, there may be more than nine tenders that could have involved a mix of Software-only and Combined Platform Solution suppliers.

<sup>83</sup> Appendix D illustrates this by showing an example when [X] identified which elements they wished to retain in-house and which elements could be assessed for full or partial outsourcing in their RFP.

<sup>84</sup> See Competitive Assessment, Chapter 8.

suppliers that provide both Software-only Solutions (Bravura), and Combined Platform Solutions (SS&C).<sup>85</sup>

### ***In-house provision of software and/or servicing***

#### *FNZ submissions*

- 6.69 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. FNZ submitted that:
- (a) Many Platforms 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.
- 6.70 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 [X] and [X].

#### *Our assessment*

##### *Third party evidence*

- 6.71 Evidence from competitors, customers and consultants indicates that Retail Platforms increasingly outsource the provision of software, for reasons related to quality, economies of scale and cost.
- 6.72 The vast majority of customers (20 out of 23 that gave a view) indicated that the supply of software in-house was not an option for them because of the lack of expertise and budget required to develop and maintain in-house

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<sup>85</sup> See Competitive Assessment, Chapter 8, sections Closeness of competition between the Parties and Competitive constraints from alternatives, Internal Documents subsections.



software.<sup>86</sup> This indicates that in-house provision of software is unlikely to be a significant constraint on the Parties.

- 6.73 In contrast, we found that many third parties considered the supply of servicing in-house to be possible. Most customers (14 out of 19 that gave a view) said that in-house servicing was a viable option, and a small number had a strong preference for in-house servicing as it is an important part of their customer proposition.<sup>87</sup>

#### *Tender analysis*

- 6.74 Our tender analysis indicated that in-house supply of software and/or servicing is a viable alternative where either the Platform Solution is already supplied in-house, or the Investment Platform is new and not replacing an existing Solution.
- 6.75 Although in-house supply was identified as an option in [REDACTED] of [REDACTED] recent tenders in Retail Platform Solutions, [REDACTED] were won by an in-house solution.<sup>88</sup> We found that where the incumbent Platform Solution was fully outsourced there were [REDACTED] instances where in-house supply was identified as an option.

#### *Internal documents*

- 6.76 We found that in-house Platform Solutions were often mentioned in the Parties' documents [REDACTED]. However, they were [REDACTED] in these documents by either Party, [REDACTED]. The Parties' internal documents indicated that Investment Platforms are more willing to shift from in-house to outsourced Platform Solutions than vice versa.<sup>89, 90,91</sup>
- 6.77 The Parties' internal documents also indicated that:
- (a) [REDACTED];<sup>92</sup>
  - (b) [REDACTED];<sup>93</sup> and

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<sup>86</sup> Also see Appendix J.

<sup>87</sup> We set out further evidence on this in Appendix J.

<sup>88</sup> We mostly rely 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.

<sup>89</sup> [REDACTED]

<sup>90</sup> [REDACTED]

<sup>91</sup> [REDACTED].

<sup>92</sup> [REDACTED]

<sup>93</sup> [REDACTED]

(c) [REDACTED].<sup>94</sup>

## **Conclusion on product market**

### *Retail and other types of Platform Solutions*

- 6.78 We found that Retail Platform Solution suppliers do not usually compete closely with Non-Retail Platform Solution suppliers.
- 6.79 We found that Retail and Non-Retail Platforms have different propositions and serve different groups of investors. Retail Platforms offer more commoditised products, with the provision of tax wrappers such as pensions being a more important element of their offer. Retail Platforms have a larger number of investors than Non-Retail Platforms. Consequently, it is more important for Retail Platforms to be highly automated and have efficient systems for managing customer accounts.
- 6.80 Conversely, we found that Non-Retail Platforms offer more bespoke products and have more manual processes to serve the needs of a smaller number of wealthier investors with more sophisticated requirements. Non-Retail Platforms either do not need pensions functionality, as is the case for some Stockbroker Platforms, or it is less important as is the case for some PCIMs and Private Banks.
- 6.81 The different requirements of Retail and Non-Retail Platforms have led to the suppliers of Platforms Solutions tending to specialise in serving one or the other type of platform. We found that:
- (a) While there is some (relatively recent) convergence between the two types of Investment Platforms, significant differences remain between Retail and Non-Retail Platforms and between the suppliers of Platform Solutions that they regard as close alternatives;
  - (b) there is limited competition in tenders for Retail Platforms from suppliers that focus on serving Non-Retail Platforms;
  - (c) it would be lengthy and costly for Non-Retail Platform Solution suppliers to adapt their offering and difficult to lower their costs to compete strongly in the supply of Retail Platforms; and
  - (d) even if Non-Retail Platform Solution suppliers could adapt to provide Investment Platform Solutions to both Retail and Non-Retail Platforms,

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<sup>94</sup> [REDACTED].

Retail Platforms do not see Non-Retail Platform Solution suppliers as credible alternatives as they lack experience in serving Retail Platforms.

- 6.82 Overall, therefore, we found that suppliers of Non-Retail Platform Solutions are generally not close alternatives to Retail Platform Solution suppliers, and we have not included them within the relevant market. While there may be some customers that consider Retail and Non-Retail Platform Solution suppliers as closer alternatives, they would not protect other customers from price rises given that suppliers can tailor their terms for each customer. These other customers include Retail Platforms where the Parties compete more closely.<sup>95</sup>
- 6.83 However, we found that not all Investment Platforms fit neatly into a Retail or Non-Retail classification. We found this is a differentiated market and no Investment Platform is identical to another. While many Investment Platforms have a clear Retail or Non-Retail proposition, some have both elements and there may be some competition between Retail and Non-Retail Platform Solution suppliers around the boundary between Retail and Non-Retail Investment Platforms. We took this into account as part of our competitive assessment.

*Delivery model and in-house provision of software and/or servicing*

- 6.84 We found that Software-only and Combined Platform Solutions Suppliers are part of the same product market. This is due to some customers considering Software-only Solutions (either alone or in partnership with servicing suppliers) and Combined Platform Solutions by a single supplier as credible alternatives. This is further supported by Software-only suppliers and Combined Platform Solution suppliers competing in a significant number of tenders for Retail Platform customers, even up to the final stage of the tender. These tenders reflect how the Parties' different delivery models overlap and compete more closely for some customers.
- 6.85 The evidence we gathered does not support FNZ's view that differences in the delivery model of each Party are a more significant differentiating factor than the differences between Retail and Non-Retail Platforms Solution suppliers. In Retail Platform tenders where the Parties overlapped, suppliers that focus on Non-Retail Platforms did not compete significantly.
- 6.86 We found that some customers prefer one delivery model over another, for example some customers see partnerships between Software-only and

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<sup>95</sup> See Chapter 8.

servicing suppliers as a poor alternative to Combined Platform Solutions offered by a single supplier. These customers may not be affected by the Merger to the same extent as other customers (given FNZ and GBST's different delivery models), but this would not protect customers that would suffer more from any reduction of competition between FNZ and GBST given that suppliers can tailor their terms by customer. The preference of some customers for a specific delivery model is not enough to draw a distinction between these delivery models as part of our definition of the relevant market.

- 6.87 We found that Retail Platforms consider developing software in-house to be difficult and unattractive but are more open to the servicing component being supplied in-house. We therefore concluded that the relevant product market should include the supply of servicing in-house but exclude the in-house supply of software.

#### *Overall conclusion on the product market*

- 6.88 Based on the evidence set out above, we concluded that the relevant product market for examining the effects of this Merger is the supply of Retail Platform Solutions, excluding the in-house supply of software.
- 6.89 However, we do not consider that market definition is a determinative part of our competitive assessment and we took into account differences in delivery models and out-of-market constraints including from Non-Retail Platform Solution suppliers and in-house software in this competitive assessment.

## **Geographic market**

### ***FNZ and GBST submissions***

- 6.90 FNZ submitted that the appropriate geographic market is global in scope and certainly no narrower than UK-wide. 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;
  - (b) suppliers can offer similar propositions in multiple jurisdictions and the steps required to adapt to regulatory conditions in a new country are not significant;
  - (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; and

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

6.91 FNZ submitted that GBST, [REDACTED].

6.92 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.

6.93 FNZ submitted that while its [REDACTED], they do not support a UK-wide market when considered in their proper context, in particular because:

(a) [REDACTED]

(b) [REDACTED].

6.94 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;

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

### ***Our assessment***

6.95 Our assessment shows that Retail Platform Solutions need to meet specific UK tax and regulatory requirements, for example in order to be able to supply particular investment products such as ISAs. We found that:

(a) The UK tax and regulatory regime is different to that in other jurisdictions; and

(b) suppliers which provide certain Platform Solution servicing such as asset custody services must be authorised by the Financial Conduct Authority (FCA).

- 6.96 Because of these differences, the fact that a supplier is present in more than one country does not indicate that the geographic market is worldwide.

#### *Internal documents*

- 6.97 The Parties' internal documents seldom discuss the deployment of Platform Solutions to new countries, but those that do show that the process involves adapting to complex country-specific regulatory 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. Evidence from its internal documents shows that FNZ was required to adapt to local requirements in nine out of ten countries in which it operates.
- 6.98 We found that the Parties' documents focus 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 found the UK is considered separately in the majority of the Parties' internal documents.

#### *FNZ's recent and planned acquisitions*

- 6.99 FNZ's recent acquisitions suggest that it sees the acquisition of, or partnership with, established players already active in other countries as a means to overcome regulatory hurdles that prevent the deployment of its products in new countries, and as a way of obtaining the scale and credibility required to timely enter in those markets.<sup>96</sup> 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, [REDACTED]'.
  - (b) In 2019, FNZ acquired the German investment platform company 'ebase' from Comdirect Bank. FNZ said that this: [REDACTED]. With regard to the rationale for that transaction, an FNZ internal document notes that [REDACTED].
  - (c) FNZ told us that it has been discussing with [REDACTED].
  - (d) Furthermore, FNZ has been in discussion with [REDACTED].
- 6.100 We consider that this evidence indicates that the deployment of Retail Platform Solutions across more than one country requires significant

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<sup>96</sup> 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.

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*

- 6.101 The views of third parties also indicate that the market is UK-wide due to UK-specific regulatory requirements, the need for investments to make the Platform Solution compliant with these regulatory requirements, and the need of a significant track record in operating in accordance with the UK regulatory regime.
- (a) Some third parties told us that the complexity of local geographical functional and regulatory requirements, such as pension rules, makes it challenging for suppliers to expand to different countries;
  - (b) the majority of third parties indicated that there are significant barriers for suppliers of Retail Platform Solutions to win business in the UK if they do not have a significant track record within the UK, as it signals proven experience in dealing with the UK regulation; and
  - (c) some third parties also noted that, while it is technically feasible to enter from other geographic markets, this would require a significant investment.

### *Tender data*

- 6.102 Our analysis of customers' tender evaluations 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.<sup>97</sup> For example:
- (a) Qualitative evidence from [REDACTED] tender evaluation shows that it considered the 'general UK functionality' of the shortlisted suppliers and it undertook a careful assessment of the potential supplier's position in the UK market, including their UK client base, experience, as well as 'commitment' to the UK market;<sup>98</sup>
  - (b) when assessing potential suppliers in its 2019 tender, [REDACTED] decided to 'park' [REDACTED] as a 'potential Ancillary supplier for later consideration given it was not able to: 1) meet UK credentials, specifically in relation to scale

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<sup>97</sup> Tender evaluations carried out by [REDACTED]

<sup>98</sup> [REDACTED]

and SIPP functionality, 2) lacked overall capabilities'.<sup>99</sup> [X] looked specifically at how [X] could support 'UK equities, ETFs, investment trusts and fixed income bonds/gilts'. The 'gap analysis' concerning [X] solution flagged that its [X]';<sup>100</sup>

- (c) in its 2016 tender, [X] compared the propositions offered by FNZ and GBST.<sup>101</sup> In its comparison, [X] valued [X] experience with [X] and the fact that its technology was [X]. On the other hand, the fact that [X] had no [X] experience was considered a high risk due to possible gaps and the need for new development;
- (d) qualitative evidence from the [X] 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 evaluating alternative suppliers;<sup>102</sup> and
- (e) qualitative evidence from [X] indicates that both [X] and [X] were excluded from the final phase due to their lack of UK functionality and experience.<sup>103</sup>

### **Conclusion on geographic market**

- 6.103 We found that suppliers of Retail Platform Solutions must meet specific and complex UK tax and regulatory requirements.
- 6.104 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.
- 6.105 We consider competition from outside of the UK, to the extent relevant, as an out of market constraint in our competitive assessment.
- 6.106 Accordingly, we concluded that the relevant geographic market for the supply of Retail Platform Solutions excluding in-house software is the UK (Retail Platform Solutions in the UK).

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<sup>99</sup> [X]

<sup>100</sup> [X]

<sup>101</sup> [X]

<sup>102</sup> [X].

<sup>103</sup> [X]. 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.



## 7. Nature of competition

- 7.1 In this chapter we assess how competition operates in the supply of Retail Platform Solutions in the UK.
- (a) We first assess the degree of switching and the barriers involved.
  - (b) We then briefly cover what customers look for when choosing a Retail Platform Solution (the main parameters of competition).
  - (c) Finally, we outline the procurement processes and contractual mechanisms that customers employ.
- 7.2 Understanding these market features helps us assess the competitive effects arising from the loss of competition between the Parties as a result of the Merger. This is the focus of the next chapter.

### Switching

- 7.3 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.<sup>104</sup> High switching costs can also increase barriers to entry as customers may be less willing to switch to a new supplier.<sup>105</sup> High switching costs may weaken the bargaining position of customers and make them less sensitive to changes in the price, quality or service levels.
- 7.4 We assessed how often customers switch suppliers of Platform Solutions and the barriers involved. These barriers 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).
- 7.5 We took account of the Parties' submissions, the Parties' internal documents, third party views and evidence from tenders and customers' tender evaluations.

### ***FNZ and GBST submissions***

- 7.6 FNZ submitted that:
- (a) Switching does happen, as shown by its tender analysis where it found [redacted] instances of Retail customers switching over the last ten years

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<sup>104</sup> MAGs, paragraph 5.4.9 (c).

<sup>105</sup> MAGs, paragraph 5.8.7. See Chapter 9 for our assessment of Barriers to entry and expansion

(including a small number currently in progress). It said that there is a market trend towards outsourcing which gives Platform Solution suppliers many opportunities;

- (b) the 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 [REDACTED];
- (c) the main risks of switching for customers and Platform Solution suppliers are:
  - (i) [REDACTED];
  - (ii) [REDACTED]
  - (iii) [REDACTED].
- (d) switching costs may range from £[REDACTED] to £[REDACTED]. 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;
- (e) the supplier [REDACTED];
- (f) the time taken to switch Platform Solutions can also vary but estimated that it could be between [REDACTED] and [REDACTED], although it has known of switches that have taken up to six years;
- (g) there are no significant barriers to customers switching back from third-party supply to an in-house Platform Solution. It noted that:
  - (i) Investment Platforms have the necessary IT skills to build a Platform Solution and they can use consultancies;
  - (ii) many customers retain part of their servicing in-house, even when using a third party supplier; and
  - (iii) customers can choose which elements of the Platform Solution to supply in-house.
- (h) the Merger does not impact switching costs or reduce the threat of switching as a competitive constraint; and
- (i) tenders create a competitive constraint even when switching does not result.

7.7 GBST submitted that:

- (a) Customers rarely switch as it is a significant task and switching generally occurs when the supplier cannot serve the customer;
- (b) 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; and
- (c) it believed that switching costs can vary from £[×]to £[×].

### **Third party evidence**

7.8 We asked third parties to rate how easy it is to switch supplier of software and servicing, with one and five corresponding to 'very easy' and 'very difficult' respectively. Their responses indicated that switching was very difficult.

- (a) For the 23 customers and two potential customers that provided a response, the median rating was five ('very difficult') for both software and servicing; and
- (b) for the ten competitors that provided a response, the median rating was 4.75 ('very difficult') for both software and servicing.

7.9 No third party told us that switching software was easy. Customers listed several reasons why they consider switching suppliers to be difficult. These included:

- (a) It is risky, complicated, technical, expensive and it can go wrong;
- (b) a 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 £185 million;
- (c) another 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; and
- (d) another customer said that switching is likely to require a minimum of two years, while another said it would take between 18-30 months.

7.10 Submissions from consultants who are often heavily involved in customers' tendering and switching projects suggest that switching costs are high and that switching is not common. These consultants told us:

- (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.

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

- 7.11 A letter from the FCA to Investment Platforms also indicates that the it considers that switching can be risky and expensive for Investment Platforms. In a 'Dear CEO' letter to the Investment Platform portfolio,<sup>106</sup> it stated that 'poorly planned and executed technology migrations' are exacerbating risks to 'business continuity'.<sup>107</sup> 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 in recent years'.<sup>108</sup>
- 7.12 Despite the costs and challenges involved, the evidence shows that some switching does take place.
- 7.13 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 and they considered that they had no option but to switch onto more modern technology.
- 7.14 However, 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 Investment Platforms are less likely to switch from their current suppliers now than they might have been in the recent history of the market.

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<sup>106</sup> This letter sets out the FCA's view on key harms relevant to the platform sector and its expectations of platform providers. One of the identified harms relates to operational resilience and how the FCA expects firms to have adequately planned change programmes that are thoroughly tested, with clear responsibilities defined up front between firms and any third parties.

<sup>107</sup> [FCA letter](#), 6 February 2020.

<sup>108</sup> [Money Marketing news story](#)

## ***Evidence from tenders***

- 7.15 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 particular 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.<sup>109</sup>
- 7.16 There have been some high-profile examples of switches that 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 two significant customers with 'high-profile delays, cost overruns and functional defects'.<sup>110</sup>
- 7.17 We examined the outcome of [redacted] tenders for Retail Platform Solutions since 2016 (the period for which we have accurate data) where there was an incumbent solution.<sup>111</sup> We found that:
- (a) The customer switched suppliers in [redacted] of these tenders.
  - (b) In [redacted] tenders where the incumbent Platform Solution was outsourced to a third party, there was [redacted] where the customer changed supplier<sup>112</sup>, while for the [redacted], the incumbent Platform Solution was kept.<sup>113</sup>
  - (c) In [redacted] tenders where the incumbent Platform Solutions was provided in-house by the customer, [redacted] switched to an outsourced Platform Solution<sup>114</sup> and [redacted] kept it in-house.<sup>115</sup>
- 7.18 This analysis indicates that, even when tendering, customers may not switch suppliers. It also shows that most switching occurs from in-house to outsourced Platform Solutions. This indicates that customers are more willing to switch when they are seeking to outsource their Platform technology provision, but are more cautious of switching when the Platform Solution is already outsourced.

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<sup>109</sup> See Appendix E.

<sup>110</sup> [redacted]

<sup>111</sup> [redacted] out of the [redacted] Retail tenders are not included in the switching analysis. [redacted] tenders are for new Platforms and, therefore, do not have an incumbent solution to switch from. [redacted] on-going.

<sup>112</sup> [redacted].

<sup>113</sup> [redacted]

<sup>114</sup> [redacted].

<sup>115</sup> [redacted].

7.19 Overall, the evidence from tenders indicates that Retail Platforms tend not to switch from one external supplier to another, which is consistent with high barriers to switching.

### ***Internal documents***

7.20 We found consistent evidence in both Parties' internal documents, including those produced by or for senior management, that they believe switching is [REDACTED].

### ***Conclusion on barriers to switching and the degree of switching***

7.21 Switching costs vary across customers, and some customers have switched in the past. However, taking account of the evidence in the round, we found that switching costs are generally high because it is complex, risky, lengthy, and expensive for customers.

7.22 The difficulty involved in switching means that customers' choice of Platform Solutions supplier is a long-term purchasing decision. Switching is typically only undertaken when a substantial change is needed, such as moving from an in-house or legacy system, or if the customer is facing significant changes (such as a merger or significant growth).

## **The main parameters of competition**

7.23 We assessed the factors important to customers when choosing a supplier, taking into account the long-term nature of purchasing decisions, which arises in part from the difficulty of switching suppliers in this market.

### ***Evidence from the Parties***

7.24 FNZ submitted that the key factors considered by customers when evaluating bids for Platform Solutions were:

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED]; and

(d) [REDACTED].<sup>116</sup>

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<sup>116</sup> [REDACTED]

- 7.25 GBST submitted that the most important parameters considered by customers when selecting a supplier were:
- (a) [REDACTED];
  - (b) [REDACTED];
  - (c) [REDACTED];
  - (d) [REDACTED];
  - (e) [REDACTED];
  - (f) [REDACTED].
- 7.26 GBST submitted that there were other considerations of moderate importance to customers when selecting a supplier, including [REDACTED].
- 7.27 GBST submitted that the [REDACTED], were of lower importance for customers evaluating bids for Platform Solutions.
- 7.28 GBST said that the order of significance of the parameters of competition [REDACTED].

### ***Third party evidence***

- 7.29 Third party responses indicated that the importance of specific parameters of competition depends somewhat on the customer or tender. However, some recurring themes emerged. These were:
- (a) Product development (including R&D);
  - (b) reputation, including scale and track record;
  - (c) product fit; and
  - (d) price.
- 7.30 Customers, consultants and competitors all highlighted the important role of R&D. For example:
- (a) Aegon stated that '[i]t 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.
  - (b) [REDACTED] 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.<sup>117</sup>

(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.'<sup>118</sup>

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

7.31 Customer responses regarding reputation within the market, including a supplier's scale and track record indicated that a supplier's 'breadth and depth of expertise',<sup>119</sup> history of having 'signed many large clients' to give a 'platform long-term scale',<sup>120</sup> and 'financial stability'<sup>121</sup> are key factors of differentiation between suppliers.

7.32 Product fit, meaning how well aligned a potential supplier's product or proposition is to a customer's specific needs, was repeatedly mentioned as a key factor in differentiating between suppliers. Responses indicated that the range of investment tools,<sup>122</sup> level of automation,<sup>123</sup> ability to integrate into third-party systems,<sup>124,125</sup> and accessibility to end users<sup>126</sup> were important considerations when differentiating between potential suppliers' products.

7.33 Price,<sup>127</sup> including ongoing operational costs<sup>128</sup> and the pricing model,<sup>129</sup> was also repeatedly mentioned as a key factor in differentiating between suppliers.

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117 [REDACTED]

118 [REDACTED].

119 [REDACTED]

120 [REDACTED].

121 [REDACTED]

122 [REDACTED]

123 [REDACTED]

124 In terms of effectiveness and speed to market.

125 [REDACTED].

126 [REDACTED].

127 [REDACTED]

128 [REDACTED]

129 [REDACTED]



## **Conclusion**

- 7.34 Consistent with the long-term nature of their purchasing decisions, we found that customers require a high degree of confidence that a potential supplier is committed to developing their Retail Platform Solution and can operate at the necessary scale. Customers therefore seek suppliers with good track records. We found that customers must be satisfied that a potential supplier's product can meet their requirements, as each has unique needs, and will seek suppliers who are well aligned with those. Price is another important parameter of competition.
- 7.35 The effect of the Merger on all parameters of competition is examined in the competitive assessment in Chapter 8 of this report.

## **Procurement processes and contractual mechanisms**

- 7.36 We found that customers use lengthy procurement processes involving multiple tender stages and commercial negotiations with a final list of suppliers. Even though they switch supplier infrequently, we found that they use these processes to maintain competitive tension and extract the best possible terms from incumbent or potential suppliers.<sup>130</sup>
- 7.37 Evidence from third parties indicates that there is some competition at the early stage of tenders in relation to capabilities and indicative commercial terms, but that the competition on each of these parameters intensifies at subsequent stages of the tender process.<sup>131</sup>
- 7.38 FNZ's contractual arrangements with its customers include [§]. FNZ submitted that these contractual arrangements often protect customers to ensure they are always on the most advantageous pricing available.
- 7.39 Contractual arrangements are, in general, unlikely to protect customers from the loss of rivalry that might be brought about by a merger. These 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. Moreover, to the extent that contractual arrangements provide any protection, this protection would be limited to those customers with such arrangements.

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<sup>130</sup> FNZ told us that tenders create a competitive constraint even when switching does not result.

<sup>131</sup> Further details of these procurement process are provided in Appendix E.

7.40 Accordingly, we consider that, both in principle and in practice, contractual arrangements would not serve to protect customers following a reduction in rivalry caused by a merger.<sup>132</sup>

## **Summary of our findings on the nature of competition**

- 7.41 We found that switching costs are high for Retail Investment Platforms. Switching to a new supplier of Platform Solutions is complex, risky, lengthy and expensive. Recent failures of such migrations, and the warning by the FCA, 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.
- 7.42 As a result, customers require a high degree of confidence in the capability of their chosen supplier. Established suppliers with good track-records therefore have a significant competitive advantage over others.
- 7.43 Even if customers only switch supplier infrequently, they use lengthy procurement processes, each stage of which is designed to maintain competitive tension and extract the best possible terms from incumbent or potential suppliers.
- 7.44 The long-term nature of customers' purchasing decisions has resulted in a limited number of tenders to inform our competitive assessment. We considered this further as part of our tender analysis. We also used a wide range of evidence to inform our assessment and ensure that it is not limited to customers that have undertaken a recent tender. This includes evidence from third parties and the Parties' internal documents.
- 7.45 FNZ's contractual arrangements with its customers include benchmarking provisions and an asset-based pricing model, however, we consider that these arrangements would not serve to protect customers following any reduction in rivalry caused by the Merger, both in principle and in practice in this market.

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<sup>132</sup> We considered the potential impact of the specific benchmarking provisions and asset-based pricing model cited by FNZ in Appendix F.

## 8. Competitive assessment

### Introduction

- 8.1 We assessed whether the Merger removed a competitor from the market for Retail Platform Solutions in the UK which previously provided a significant competitive constraint, and, in doing so, whether the Merged Entity has 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.
- 8.2 Horizontal unilateral effects are more likely when the merging parties are close competitors. Generally, the closer two firms are, the stronger their competitive constraint is on each other, which would be lost as a result of a merger.
- 8.3 We 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 considered the current competitive constraints on the Parties from other suppliers, including from other Retail Platform Solution suppliers, in-house solutions and Non-Retail Platform Solution suppliers.
- 8.4 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 other suppliers (including in-house supply and out-of-market competitors).
  - (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 with other suppliers.
- 8.5 This evidence, assessed in the round, informed our assessment of the closeness of competition between the Parties and the competitive constraints imposed by other suppliers at present and in the foreseeable future.<sup>133</sup>

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<sup>133</sup> Appendix B presents the details of the evidence we gathered and how we used it in our assessment.

8.6 The structure of this chapter is as follows:

- (a) We present our estimates of shares of supply in the market;
- (b) we assess closeness of competition between the Parties; and
- (c) we assess the competitive constraint from alternatives, including in-house and out-of-market constraints.

## **Shares of supply**

8.7 In differentiated bidding markets, where the market boundaries are less distinct, such as the market for Retail Platform Solutions in the UK, 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.

8.8 This evidence provides an 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 in Chapter 7, customers consider track-record and scale (that is, whether a potential supplier can operate at the necessary scale) as part of their choice of supplier.

## ***Evidence from the Parties***

### *FNZ submissions*

8.9 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.

8.10 FNZ submitted that the share of supply data reveal that numerous significant competitors will remain post-merger. 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.

8.11 FNZ also addressed our 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.

- 8.12 FNZ noted that investment accounting software forms ‘the core software component supplied and 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 Platform Solution).<sup>134</sup> Its calculation included all Investment Platforms apart from private banks and in-house software provision.
- 8.13 On this basis, FNZ submitted that:
- (a) The Parties have a combined share of less than [x]%;
  - (b) the Parties have numerous competitors, including SS&C, Bravura, Avaloq, Temenos, SEI and IRESS, with shares larger than, or similar to, GBST’s share of [x]%;
  - (c) ‘The Parties also face strong competition from global players such as TCS BaNCS and Pershing’.
- 8.14 It said that significant constraints will remain, and that the Merger should not be characterised as a ‘4-to-3’ reduction in suppliers, as Bravura, SS&C and SEI are all major competitors.
- 8.15 FNZ also provided separate share of supply estimates for Software-only Platform Solutions and Combined Platform Solutions, which it said showed the lack of substantial overlap between the Parties, as well as highlighting the competitors that are most relevant to FNZ, JHC and GBST (which are not, in each case, the other Party).

#### *GBST submissions*

- 8.16 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 because these other suppliers do not have certain functionalities such as pension tax wrappers or because they do not provide Retail Platform Solutions but instead provide other technologies.

#### ***Our assessment***

- 8.17 We calculated shares of supply of the market for Retail Platform Solutions in the UK, reflecting our definition of the relevant market. We consider that

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<sup>134</sup> FNZ share of supply estimates are provided in Appendix I.

shares of supply that separate Software-only Solutions from Combined Platform Solutions are not meaningful given the scope for competition between suppliers of each of these delivery models, as set out in our assessment of Market Definition.<sup>135</sup>

- 8.18 We took FNZ's submissions on our approach into account and made some changes to our calculations. We adopted AUA as the basis for our share of supply estimates rather than a revenue-based approach because AUA figures are readily available from public sources. We would be unlikely to get sufficient data on revenues to estimate shares of supply reliably given the large number of third parties that we would need to source this data from. This reflects the large number of customers in this market and the range of smaller suppliers that they use to support different elements of their Retail Platforms.
- 8.19 An alternative approach is to estimate suppliers' revenues (as FNZ did) based on the AUA of the Retail Investment Platform that they serve, but this would involve making assumptions on whether or how their fees are linked to AUA. Given the assumptions required, we concluded that this approach would not be reliable as the basis for share of supply estimates. The use of AUA to estimate suppliers' revenues also suggests that it is a reasonable proxy for estimating market shares.
- 8.20 While the AUA approach may overstate the shares of suppliers if they provided mostly a small service to large customers, so could an approach based on estimated revenues because these estimates would be derived from AUA.
- 8.21 We based our share of supply estimates on information from customers on their main provider of Platform Solutions. Where this information was not available, we typically used the investment accounting software supplier specified by FNZ in its share estimates.
- 8.22 Our share of supply estimates for the supply of Retail Platform Solutions in the UK are shown in Table 8.1 below. This sets out the share of each supplier separately for its supply of Platform Solutions, either alone or in any partnership, to ensure there is no double-counting of revenue from each customer.

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<sup>135</sup> See Chapter 6.

**Table 8.1. Shares in the supply of Retail Platform Solutions in the UK (based on AUA) (2018)**

<i>Software + servicing supplier(s)</i>	<i>Shares of supply (%)</i>	<i>Shares of supply (% ranges)</i>
FNZ	[>]	[20-30%]
FNZ (JHC) + in-house	[>]	[0-5%]
<b>FNZ total</b>	<b>[&gt;]</b>	<b>[30-40%]</b>
GBST + in-house	[>]	[10-20%]
GBST + unknown	[>]	[0-5%]
GBST + Equiniti	[>]	[0-5%]
<b>GBST total</b>	<b>[&gt;]</b>	<b>[10-20%]</b>
<b>FNZ and GBST total</b>	<b>[&gt;]</b>	<b>[40-50%]</b>
Bravura + in-house	[>]	[20-30%]
Bravura + Genpact	[>]	[0-5%]
Bravura + unknown	[>]	[0-5%]
<b>Bravura total</b>	<b>[&gt;]</b>	<b>[20-30%]</b>
<b>SS&amp;C</b>	<b>[&gt;]</b>	<b>[10-20%]</b>
<b>TCS BaNCs</b>	<b>[&gt;]</b>	<b>[0-5%]</b>
<b>SEI</b>	<b>[&gt;]</b>	<b>[0-5%]</b>
<b>Fusion Wealth Limited</b>	<b>[&gt;]</b>	<b>[0-5%]</b>
<b>Iress + in-house</b>	<b>[&gt;]</b>	<b>[0-5%]</b>
<b>State Street + unknown</b>	<b>[&gt;]</b>	<b>[0-5%]</b>
<b>Hubwise</b>	<b>[&gt;]</b>	<b>[0-5%]</b>

Source: CMA estimates based on the Parties' data: Annex 14.1 to the MN. 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.

8.23 These shares of supply indicate that:

- (a) FNZ is the largest supplier and GBST is the joint third largest supplier of Retail Platform Solutions in the UK;
- (b) the Merged Entity is, by far, the largest supplier in the market, accounting for [40-50%] or nearly half of the supply of Retail Platform Solutions in the UK. The share of the Merged Entity is almost twice as large as that of the next largest supplier, Bravura.
- (c) Bravura is the second largest supplier and SS&C, which has the same share as GBST, is joint third largest;
- (d) 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 comes from one large customer, St James's Place.
- (e) FNZ, Bravura, GBST and SS&C together account for more than 90% of the market. No other supplier has a share of supply of more than [0-5%].

8.24 In Appendix I, we provide share of supply estimates that include supply to Investment Platforms that are at the boundary between Retail and Non-Retail. This sensitivity analysis presents the same broad outcome: the Merged Entity's share is [40-50%] so is much larger than Bravura and

SS&C (which have shares of [10-20%] and [10-20%] respectively), with the remaining suppliers being much smaller (with shares of supply no more than [5-10%]).

### ***Conclusion on shares of supply***

- 8.25 Based on the evidence above, we found that FNZ and GBST are among the largest suppliers of Retail Platform Solutions in the UK and, as a result of the Merger, the Merged Entity is by far the largest supplier in the market. It is almost twice the size of Bravura, the next largest supplier.
- 8.26 These share estimates provide an 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 with their competitors.

### **Closeness of competition between the Parties**

- 8.27 We assessed how closely the Parties compete with each other, relative to other competitors. Our assessment includes FNZ, JHC (a Software-only Supplier bought by FNZ in 2019), and GBST.
- 8.28 Generally, the closer two firms compete, the stronger the competitive constraint they impose 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.
- 8.29 Our findings are based on an overall consideration of submissions from the Parties and from third parties, our analysis of tender data, and our review of internal documents from the Parties. We also consider specific evidence on closeness of competition between the Parties in terms of product development.

### ***FNZ and GBST submissions***

- 8.30 FNZ submitted that:
- (a) the Parties are not close competitors, primarily because they have different delivery and pricing models. FNZ competes more closely with other suppliers of Combined Platform Solutions and different delivery models cannot be close substitutes;
  - (b) it cannot be the case that GBST (and Bravura) exert the strongest constraint on FNZ and that suppliers of Combined Platform Solutions (such as SS&C and Pershing) are less important, because most



customers have a preference for a particular delivery model and choose a delivery model before the tender process and certainly before the commercial negotiations stage;

- (c) The absence of [redacted].
- (d) FNZ tender data shows that 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;
- (e) competition between JHC and GBST is limited, as GBST provides a largely complementary offering to JHC, with GBST Composer not offering a number of key features provided by JHC;
- (f) GBST offers [redacted] [redacted] and it only [redacted]. FNZ submitted that GBST is getting [redacted]. FNZ submits that GBST's [redacted] is demonstrated by the [redacted]; and
- (g) FNZ might well exert a stronger constraint on GBST than GBST does on FNZ but, due to different delivery models, this constraint is not significant in absolute terms nor is it greater than the relative constraint from other software-only suppliers.

8.31 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;
- (b) in response to FNZ's submission on [redacted], GBST submitted that it has also been providing a Software as a Service (SaaS) proposition since 2009 and that, post-Evolve (its R&D programme), Composer will be a market-leading product';
- (c) it has a strong competitive offering, as shown by its recent customer wins and [redacted]. It submitted that its pipeline of new customers [redacted];
- (d) in response to FNZ's submission that GBST has been [redacted], GBST submitted that it had [redacted]. GBST submitted that [redacted]; and
- (e) there was a bidding war to acquire GBST, and FNZ paid a significant price for it.

8.32 Both Parties submitted views on the extent to which GBST's partnership with Equiniti has allowed them to compete more closely:

- (a) FNZ submitted that GBST's partnership with Equiniti is [redacted] to FNZ's Combined Platform Solution, referring to the weakness of partnerships, the lack of success of this model in the market, tender data supporting the view that partnerships provide a weak constraint, noting that the GBST Equiniti partnership [redacted];<sup>136</sup> and
- (b) GBST submitted that the partnership was set up in order to enable it to [redacted] 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 [redacted] and that Bravura's first bid to acquire GBST was only nine months after the announcement of the GBST/Equiniti partnership.<sup>137</sup>

### **Third party evidence**

- 8.33 We 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*

- 8.34 Most third parties considered FNZ and GBST to be close competitors as they are both established suppliers of Retail Platform Solutions in the UK.
- 8.35 Third parties told us that FNZ is a very strong competitor with capabilities in both software and servicing, proven at scale. For example:
- (a) A competitor told us that FNZ is currently the only credible supplier offering a Combined Platform Solution; and
  - (b) a customer noted that FNZ has a simpler, more efficient operational model than other suppliers.
- 8.36 Customers submitted that GBST has scale, proven experience and a strong reputation in pensions software and is a leading supplier of Retail Platform Solutions in the UK.<sup>138</sup> 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.

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<sup>136</sup> FNZ Response to Provisional Findings paragraph 4.4. See also: [redacted]; and FNZ Initial Phase 2 Submission, paragraph 7.19.

<sup>137</sup> GBST's [redacted].

<sup>138</sup> For example, [redacted]

- 8.37 Third parties noted that FNZ targets a broader range of customers than GBST,<sup>139</sup> as it tenders for both Retail and Non-Retail Platforms while GBST focuses on Retail.<sup>140</sup>
- 8.38 We asked third parties to provide scores on how close alternatives FNZ and GBST were to each other. Using this evidence, we calculated average ‘closeness scores’ to measure how close an alternative FNZ is to GBST and how close an alternative GBST is to FNZ.
- 8.39 We also calculated average scores on how close six other suppliers are to FNZ and GBST: Bravura, SS&C, SEI, Pershing, Avaloq and Temenos. These competitors included two suppliers of Non-Retail Platform Solutions (Avaloq and Temenos) to help us assess the degree of constraint from both within and outside of the relevant market.
- 8.40 We also asked respondents to suggest any other suppliers and to provide closeness scores for those. We did not receive a sufficient number of responses from third parties to enable us to calculate average closeness scores reliably for these other suppliers.
- 8.41 Figure 8.1 below shows the average ‘closeness scores’<sup>141</sup> given by third parties for Bravura, SS&C, SEI, Pershing, Avaloq and Temenos, as well as FNZ and GBST.<sup>142</sup>

**Figure 8.1. Average closeness of competition scores for alternative suppliers to FNZ and GBST (1 = not at all a close alternative to 5 = a very close alternative), based on responses from competitors, consultants and customers that have undertaken a tender since 2016**

[X]

Source: CMA analysis of competitor, consultant and customer (who tendered recently) Phase 2 questionnaire responses.

- 8.42 The scores show that third parties considered, on average, that:
- (a) GBST and Bravura are the closest alternatives to FNZ, with GBST slightly closer, with scores between 3.5 and 4 each;
  - (b) they are followed by SS&C and SEI, with scores between 3 and 3.5; and

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<sup>139</sup> [X].

<sup>140</sup> [X]

<sup>141</sup> Options given for scores ranged were 1 = not at all a close alternative, 2 = a somewhat close alternative, 3 = a moderately close alternative, 4 = a close alternative 5 = a very close alternative. Each supplier had a response from at least 15 third parties, from which the average score was calculated.

<sup>142</sup> Competitors, consultants, and customers that have undertaken a tender since 2016. We have not used the scores from other customers as we gave lower weight to views of customers that have not tendered recently. See Appendix K for analysis that includes all customer responses.

- (c) Pershing, Avaloq and Temenos are seen as less close alternatives to FNZ with scores between 2 and 3.
- 8.43 GBST is seen to have fewer close competitors:
- (a) Bravura and FNZ are seen as the closest alternatives to GBST with scores between 4 and 4.5;
- (b) they are followed by SS&C, SEI and Avaloq with scores between 2.5 and 3; and
- (c) Pershing and Temenos are less close still (with scores between 1.5 and 2.5).
- 8.44 Some third parties may consider FNZ as a stronger constraint on GBST than GBST is on FNZ. However, GBST is the closest alternative to FNZ and FNZ the second closest to GBST after Bravura. FNZ's strong competitive position is consistent with our share of supply estimates, which show FNZ as the largest supplier of Retail Platform Solutions in the UK pre-Merger.
- 8.45 FNZ submitted that this indicated that GBST and FNZ are not closer to each other than each of the six other suppliers on the basis of how often third parties provided closeness scores for these other suppliers, compared to how often third parties provided scores on the closeness between the Parties.<sup>143</sup> We do not, however, consider that FNZ's analysis is relevant to our assessment of competition, as the number of scores is less important, given that they were prompted, than the average closeness score of a specific competitor, which is the main outcome of our analysis.
- 8.46 The scores for each supplier are averages which do not show how closeness of competition can vary depending on the requirements and preferences of a customer.
- 8.47 Some customers, such as those that do not consider their different delivery models to be a significant differentiating factor, may consider the Parties to be closer competitors. Some customers consider the Parties to be closer competitors than others. For example:
- (a) Seven customers considered FNZ and GBST to be close alternatives, with Bravura being the only other supplier noted by some as competing as closely as the Parties do to each other.<sup>144</sup> This includes GBST's [REDACTED],

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<sup>143</sup> FNZ Response to the Provisional Findings, paragraph 4.13(ii).

<sup>144</sup> [REDACTED]

Aegon, which told us that it is open to a Combined Platform Solution such as that provided by FNZ.

- (b) [REDACTED], another large customer of GBST, told us that it uses both JHC and GBST. The overlapping functionality of the two systems has created a helpful competitive tension between the two suppliers as they have sought to get [REDACTED] to more widely adopt their respective systems.<sup>145</sup>

#### *Closeness of competition between the GBST/Equiniti partnership and FNZ*

8.48 Third parties gave different views on the strength of partnership models compared to Combined Platform Solutions from a single firm.<sup>146</sup>

- (a) Eleven of the 18 customers that gave a view said that they were open to partnership models or even preferred them. Reasons given included that: a partnership could bring together specialists to create a strong solution,<sup>147</sup> they would not be dependent on a single supplier,<sup>148</sup> and they could replace one partner, giving them greater control over supply.<sup>149</sup>
- (b) The other seven customers indicated that they prefer a Combined Platform Solution from 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.<sup>150</sup>
- (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.

8.49 We asked third parties 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:

- (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;

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<sup>145</sup> [REDACTED].

<sup>146</sup> Similar views on partnership models were expressed by [REDACTED]

<sup>147</sup> [REDACTED]

<sup>148</sup> [REDACTED].

<sup>149</sup> [REDACTED]

<sup>150</sup> [REDACTED]

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

8.50 The majority of competitors who responded considered that the partnership was untested at scale and may need significant investment to develop and win clients, and therefore were less positive about its ability to compete with FNZ. Six out of eight provided a view and four of these considered that GBST/Equiniti would have struggled to compete against FNZ in supplying Combined Platform Solutions absent the merger.

8.51 One customer told us that [REDACTED].<sup>151</sup> The GBST/Equiniti partnership will therefore be tested soon with a customer that is undertaking substantial investment in its Retail Platform.

### ***Tender analysis***

8.52 We analysed recent tenders in which the Parties participated, and the nature of their participation in order to assess the degree to which they compete against each other.

### ***FNZ tender analysis and submissions***

8.53 FNZ submitted an analysis of [REDACTED] tenders since 2016 where it is aware of the identity of the winning supplier. FNZ submitted that this showed that:

(a) Of [REDACTED] tenders, there were [REDACTED] where the customer indicated a willingness to consider both Software-only and Combined Platform Solutions;<sup>152</sup>

(b) FNZ and GBST met each other in just [REDACTED]% of their tenders and that [REDACTED]. FNZ submitted that it is not aware of having competed with GBST [REDACTED] of a tender.

(c) JHC has only lost [REDACTED] to GBST;<sup>153</sup> and

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<sup>151</sup> [REDACTED]

<sup>152</sup> FNZ Initial Phase 2 Submission, paragraph 1.2.1. See also [REDACTED].

<sup>153</sup> FNZ Initial Phase 2 Submission, paragraph 2.11. See also Annex 2.

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

8.54 Based on our tender analysis, FNZ subsequently submitted that:

(a) Although meaningful competition does not take place at the early stage, when adding up all the overlaps at this stage in tenders between suppliers since 2016, GBST accounted for [redacted]% of FNZ and JHC's overlaps with all suppliers, whilst FNZ accounted for [redacted]% of GBST's overlaps with all suppliers.

(b) Substantive competition over pricing and service terms only takes place at the final commercial negotiation stage of a tender, and that the very small number of Retail tenders where FNZ or JHC overlapped with GBST at this stage cannot alone lead to the conclusion that the Parties are close competitors, particularly when the individual circumstances of these tenders are considered.<sup>154</sup> In particular:

(i) [redacted];

(ii) some of the projects ([redacted]) were discontinued;

(iii) other suppliers were present at the final commercial negotiations stage; and

(iv) the functionalities offered by the Parties were different. Specifically, GBST [redacted], and JHC [redacted].<sup>155</sup>

(c) The absence of competition [redacted] between the Parties at the final stage of a tender fundamentally undermines the CMA's implicit view that there are just three credible suppliers to Retail Platforms, of which two are the Parties.

### *CMA tender analysis*

8.55 Below we explain our approach to the tender analysis, and we present the results. We then set out our overall assessment of the tender evidence.

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<sup>154</sup> FNZ Response to the Provisional Findings, paragraph 4.12(iii);

<sup>155</sup> FNZ Response to the Provisional Findings, Annex 1, section 4.1.2

## *Methodology*

- 8.56 We carried out an analysis of tender data from a wide range of sources in order to assess the closeness of competition between the Parties.<sup>156</sup>
- 8.57 We considered:
- (a) How often the Parties overlap in tenders in the various stages of the process (early or final stage);<sup>157</sup>
  - (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.
- 8.58 The evidence covers tenders over the last four years; that is, since 2016. We found that there have been no material changes to competitive conditions over this period that would lead to weaker competition between the Parties in the supply of Retail Platform Solutions. On the contrary, evidence from third parties and the Parties' internal documents indicates that GBST's product development and its partnership with Equiniti may have strengthened competition between GBST and FNZ over this period. We therefore consider that the tender evidence throughout this period to be reliable.
- 8.59 In our view, we should not rely only on competition at the final stage of a tender in our analysis. Participation at the early stage of a tender is informative for assessing competition and involved a greater number of tenders: this gave us [X] instead of [Y] Retail tenders at the final stage where at least one of the Parties participated since 2016. As we explain below, evidence on the Parties' overlaps with each other, compared to their overlaps with other competitors, at each of these tender stages is important for assessing closeness of competition between them.
- 8.60 The early stage involves assessing the capability of suppliers, for example through requests for information. More frequent participation at this early stage against the Parties provides an indication of how close an alternative a supplier is to the Parties. At this early stage, customers will invite suppliers

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<sup>156</sup> See Appendix B for a description of our evidence base for this analysis.

<sup>157</sup> Appendix E sets out how a tender process works, including the typical stages of a tender process.



that have a prospect of meeting their requirements. This can involve the use of consultants to identify potential suppliers to participate at this early stage rather than spend unnecessary time assessing unsuitable suppliers.<sup>158</sup>

- 8.61 We classified tenders into Retail, Non-Retail, or borderline cases. Borderline cases included tenders that may have both Retail and Non-Retail components.<sup>159</sup> While the core of our assessment is based on Retail Platform tenders, we considered tenders at the boundary between Retail and Non-Retail as part of a sensitivity test to our analysis.<sup>160</sup>
- 8.62 Our classification is primarily based on the customers' own view of their Investment Platform. In the absence of this information from customers, we considered as Retail any tenders in which a supplier focusing on Retail Platform Solutions reached the final stage of a tender.<sup>161</sup> For the remaining unclassified cases, we took into account submissions from FNZ and GBST, which resulted in treating some Investment Platforms as borderline cases where the Parties provided conflicting platform classifications.<sup>162</sup>
- 8.63 FNZ made a number of submissions on our tender analysis including submissions on our approach to sensitivity testing and on our approach to classifying platforms. We considered these submissions in Appendix G where we explain in more detail our approach to sensitivity testing and why our platform classifications are reliable.

### *Results*

- 8.64 Our analysis shows that FNZ, JHC and GBST have participated in [REDACTED] tenders since 2016. Of these:
- (a) [REDACTED] were for Retail Platforms ('Retail tenders');
  - (b) [REDACTED] were for Non-Retail Platforms ('Non-Retail tenders');
  - (c) [REDACTED] were for tenders which may carry both Retail and Non-Retail characteristics (borderline tenders); and

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<sup>158</sup> See Appendix E for further details.

<sup>159</sup> We took this approach following submissions from the Parties in response to our Provisional Findings.

<sup>160</sup> See Appendix G.

<sup>161</sup> A supplier is classified as a supplier of Retail Platform Solutions when it told us it targets Retail Platforms. These suppliers are [REDACTED] and [REDACTED].

<sup>162</sup> Our methodology for platform classifications is explained in Appendix G, and Appendix H provides a list of the Investment Platforms and the classification used for each.

(d) FNZ, JHC and GBST each participated in borderline tenders but only FNZ and JHC participated in the Non-Retail tenders.<sup>163</sup>

8.65 Our assessment below is of the [X] Retail tenders.<sup>164</sup> Of these:

(a) FNZ participated in [X] tenders and won [X] (a [X]% win rate);<sup>165</sup>

(b) JHC participated in and [X] (a [X]% win rate); and

(c) GBST participated in [X] tenders and won [X] (a [X]% win rate).<sup>166</sup>

8.66 The Parties overlapped in [X] Retail procurement processes, as set out in Table 8.2 below. We included [X] of these procurement processes as tenders in our quantitative analysis.<sup>167</sup>

8.67 The overlap in these [X] tenders is higher at [X]% in our analysis than in FNZ's analysis which showed a [X]% overlap because FNZ included Non-Retail tenders in its analysis and GBST did not compete in any of these.

(a) These [X] tenders account for a significant proportion of each Party's total participation in Retail tenders: they account for [X]% of the [X] tenders where FNZ or JHC bid; and they account for [X]% of the [X] tenders where GBST bid.

(b) FNZ overlapped with GBST at the early stage [X] times, and JHC and GBST overlapped [X].<sup>168</sup>

(c) GBST overlapped with FNZ [X] and with JHC [X] at the final stage. In these [X] tenders, FNZ or JHC and GBST were the only two bidders at the final stage.<sup>169</sup> Of these:

(i) FNZ won [X] against [X];

(ii) GBST won [X] against [X] and [X] against [X].<sup>170 171</sup>

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<sup>163</sup> See Appendix G.

<sup>164</sup> The results of the analysis of Non-Retail Platforms are set out in Appendix G.

<sup>165</sup> [X].

<sup>166</sup> [X].

<sup>167</sup> See note in Table 8.2 for why we excluded one of these procurement processes from this analysis.

<sup>168</sup> Retail tenders where FNZ (excluding JHC) and GBST met are [X].

<sup>169</sup> FNZ and GBST reached the final stage in tenders for [X]. JHC and GBST reached the final stage in [X].

<sup>170</sup> [X].

<sup>171</sup> [X] According to the tender data submitted by FNZ ("Annex 1 - Updated [X]", submitted alongside the FNZ Response to the Issues Statement), [X], which had an AUA of £[X] at the time.

**Table 8.2. Retail procurement processes where the Parties overlapped since 2016.**

Customer	Year	Bidders at early stage	Bidders at final stage	Winner
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis based on information from the Parties, competitors and customers.

Note: \*The procurement exercise for [REDACTED] only involved a presentation from each supplier and was not a tender with multiple stages or that led to a change of supplier. We therefore excluded this from the quantitative analysis in this section. We do, however, consider this procurement process as part of our qualitative evidence.

### *Our assessment*

8.68 Compared to their overlaps with other competitors, the extent of the overlap between the Parties is significant, although in absolute terms, they have overlapped in a small number of tenders, particularly at the final stage. This reflects the infrequent number of tenders for Retail Platforms that take place each year and the variation in customers' requirements and preferences for suppliers. On its own, the number of tenders in which the Parties overlap is therefore not particularly informative of the closeness of competition between the Parties.

8.69 In relative terms, the extent to which the Parties compete in tenders compared to other competitors indicates that FNZ and GBST are closer alternatives to each other than other competitors [REDACTED]. We considered overlaps at the early and final stages of tenders to assess the closeness of competition between the Parties:

- (a) The frequency with which the Parties overlap at the early stage of tenders relative to other competitors indicates whether the Parties' Platform Solutions are close alternatives to each other relative to other competitors. We expect closer alternatives to be invited to bid against each other more often than other competitors.
- (b) Similarly, the more the Parties overlap at the final stage of tenders relative to other competitors, the more likely they are to be closer alternatives to each other than either of them is to other competitors. Final stage overlaps also show examples of when the Parties competed closely on price in the past because the final stage of a tender is typically more focused on negotiating prices and terms.

8.70 We found that, [REDACTED].<sup>172</sup>

<sup>172</sup> See Competitive constraint from alternatives section for this assessment.

- 8.71 This quantitative evidence and the qualitative evidence from tenders (assessed below) showed that FNZ and GBST, together with Bravura, are the closest competitors to each other in the supply of Retail Platform Solutions.
- 8.72 This evidence shows that the Parties are close competitors for some customers. Table 8.2 shows that these customers use competition between FNZ's Combined Platform Solution and GBST, either as a Software-only solution or in partnership with a servicing supplier, as part of their procurement processes. This is the case both at the early stage and the final stage of tenders.
- 8.73 The tender analysis for these comparisons is set out in full in the section on competitive constraints from alternatives, below.
- 8.74 Qualitative evidence from customers which ran these tenders showed that they considered the Parties as close alternatives, including the GBST Equiniti partnership as an alternative to FNZ, and JHC as an alternative to GBST:
- (a) One customer identified GBST in partnership with Equiniti as the closest alternative to FNZ as part of their procurement evaluations for a new Retail Investment Platform proposition, with Bravura being ranked third in the process;<sup>173</sup>
  - (b) another customer identified FNZ's technology to be as good as GBST, although GBST was ranked second, very close to FNZ in first place. CTC and Bravura were ranked third and fourth in the final rank, but they were distant in terms of scores from both FNZ and GBST. [REDACTED];<sup>174</sup>
  - (c) another customer, which awarded the tender to FNZ, identified GSBT as a credible alternative for the Software-only Solution. At the time, it considered Bravura/Genpact to be a closer alternative to FNZ's Combined Platform Solution. It also considered that SEI's servicing was not proven at the scale and scope required;<sup>175</sup>
  - (d) a customer of FNZ, [REDACTED], ranked GBST/Equiniti as the closest alternative to FNZ;
  - (e) one customer identified JHC as its closest alternative to GBST as part of its procurement evaluation. Bravura, FNZ and SS&C were also identified

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<sup>173</sup> [REDACTED]

<sup>174</sup> [REDACTED]

<sup>175</sup> [REDACTED]

as possible alternatives but were dismissed earlier in the process for different reasons. While the customer recognised that JHC traditionally served Private Client Investment Management and Stockbroking Platforms, it had concluded during the tender that JHC was expanding to build functionalities often required by Retail Platforms (for example, by developing pensions functionality) and would be able to deliver the Platform Solution with some development and integration work. GBST was selected based on its capacity to deliver the functionalities needed within the required timeframe.<sup>176</sup>

- 8.75 Table 8.2 also shows that the [redacted] tenders that FNZ won when competing with GBST at the final stage ([redacted] and [redacted]) [redacted]. This does not change the fact that GBST was treated as the next best alternative for the customer. We consider that tenders, even if abandoned at the end of the process, are informative of closeness of competition between the Parties. This is because the evidence shows how customers evaluated their supply options and the probative value of this information does not depend on whether the customer proceeded with the project. For completeness, we found no indication that the abandonment of the tender was related to the outcome of the tender process.
- 8.76 This evidence indicates that there may also be some customers that do not consider the Parties to be close competitors, which may reflect their different delivery models (or other aspects of differentiation between the Parties relevant to that customer's specific requirements and preferences). As a result, these customers would only invite one of the Parties to participate in their tenders or eliminate one of them at an early stage of the tender process. However, the position of these customers would not protect those customers for which the Parties are close competitors from higher prices given that terms are agreed with each customer.
- 8.77 We recognise that the presence of other bidders in tenders, including at the final stages of the process, is important in assessing the effects of the Merger. We assess the presence of other competitors on tenders that the Parties bid for in the Competitive constraint from alternatives section.

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<sup>176</sup> [redacted].

## ***Internal documents***

8.78 We examined the Parties' internal documents to ascertain how closely they consider that they compete with each other and how they position themselves in the market relative to other competitors.

## ***FNZ submissions***

8.79 FNZ submitted that:

- (a) Its internal documents do not provide a reliable basis from which to draw conclusions because only a small set of documents has been used in our assessment;<sup>177</sup> many of these documents were either in draft form and/or not produced directly for senior FNZ management, and some documents were produced by third parties and their findings are 'unreliable' and 'inaccurate';
- (b) we have misinterpreted statements within the documents, have taken them out of context,<sup>178</sup> and have not taken into account those documents which show that GBST is not a strong competitor;
- (c) [§<] 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; and
- (d) its internal documents contain many references to the fact that a Combined Platform Solution fundamentally differs from a Software-only solution.<sup>179 180</sup>

8.80 We took FNZ's comments 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 it, but the context in which that document was produced.

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<sup>177</sup> 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 drafts prepared for potential investors or customers, customer pitch documents, unreliable third-party documents and responses to RFIs and email discussions between senior management.' (FNZ response to Competitive Assessment – Internal Documents: Working Paper, page 12). See also FNZ Response to Provisional Findings, para 4.15.

<sup>178</sup> For example, FNZ [§<]

<sup>179</sup> FNZ Response to Provisional Findings, para 4.18.

<sup>180</sup> Appendix M provides summaries of the internal documents described in this chapter as well as further examples of internal documents relevant to our assessment. The document extracts themselves are in Appendix L and our approach to the review of internal documents is in Appendix B.

- 8.81 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 in relation to 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 of relevance (although the production of high volumes of documents on a given point would, of course, also typically form part of the CMA's assessment of the context of those documents).
- 8.82 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.
- 8.83 With regard to specific points submitted by FNZ on our use of internal documents:
- (a) FNZ submitted that [redacted]. We agree that this is consistent with the relatively low number of its internal documents that were focussed on the 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 the competitive landscape. 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 submitted that we had misinterpreted statements within the documents, taken them out of context or had downplayed documents which show that GBST is not a strong competitor. We took into account FNZ's descriptions and explanations of the content and context of these documents, where FNZ has made submissions on specific documents, and incorporated them into our assessment below. We focussed on a subset of internal documents that were identified as being most relevant to the Parties' contemporaneous view of competitive conditions following an initial review. We took into account specific documents in which GBST is not identified as a competitor which we considered, in the round, with all other relevant documents. In response to our Provisional Findings, FNZ has not brought to our attention other internal documents that it considers might downplay the competitive significance of GBST to FNZ, and that were not included in our review.

- (c) Our assessment of the Parties' internal documents is taken together with other sources of evidence, rather than on a stand-alone basis, in reaching our conclusions. In this regard, 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 one was subsequently incorporated into a management presentation. We took into account that FNZ has, during the course of our investigation, expressed to us its dissatisfaction with our use of these documents. However, in the absence of any contemporaneous evidence indicating that questions or concerns were raised by FNZ about the content of these documents at the time they were produced or at any point subsequently (outside of our investigation), we consider that these documents should be regarded as evidence that is relevant to our investigation. The fact that one of these documents was subsequently incorporated into an FNZ management presentation also indicates that FNZ attached some value to that document. Nevertheless, we sought (in keeping with the general principle set out above) to carefully consider the context of each third-party document. On this basis, we typically give documents produced by third parties, even with FNZ management input, less weight than documents of a similar nature produced directly by FNZ senior management.

### *Our assessment*

8.84 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) Noting that it '[<] and that '[<];<sup>181</sup> and
- (b) referring to [<].<sup>182</sup>

8.85 A third-party report produced for FNZ [<].<sup>183</sup>

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<sup>181</sup> [<].

<sup>182</sup> [<].

<sup>183</sup> [<].



- 8.86 In internal documents that consider the competitive landscape, FNZ [REDACTED]. The documents, which include a senior management presentation, indicate that:
- (a) [REDACTED];<sup>184</sup>
  - (b) [REDACTED];<sup>185</sup>
  - (c) [REDACTED];<sup>186,187</sup>
  - (d) [REDACTED].<sup>188</sup>
- 8.87 Additionally, [REDACTED] [REDACTED].<sup>189</sup>
- 8.88 The picture of the competitive landscape in these documents appears to vary according to the purpose of the document: for example, whether the document is internal or customer-facing.
- 8.89 FNZ documents [REDACTED].<sup>190,191</sup>
- 8.90 Only two FNZ documents that [REDACTED].<sup>192 193</sup>
- 8.91 GBST documents that analyse competitive conditions include board reports, documents relating to the bids made for GBST in 2019 and those prepared for GBST by consultants.
- 8.92 These [REDACTED].<sup>194,195,196,197,198, 199</sup>
- 8.93 We found relatively few internal documents from GBST that [REDACTED]. One document considered why some [REDACTED].<sup>200</sup>

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184 [REDACTED].  
 185 [REDACTED].  
 186 [REDACTED].  
 187 [REDACTED].  
 188 [REDACTED].  
 189 [REDACTED].  
 190 [REDACTED].  
 191 [REDACTED].  
 192 [REDACTED].  
 193 [REDACTED].  
 194 [REDACTED].  
 195 [REDACTED].  
 196 [REDACTED].  
 197 [REDACTED].  
 198 [REDACTED].  
 199 [REDACTED].  
 200 [REDACTED].

8.94 However, an FNZ presentation [REDACTED] [REDACTED].<sup>201</sup>

### ***Competition in relation to product development***

8.95 Product development is important as a parameter of competition in this market.<sup>202</sup> In this section, we assess the evidence on closeness of competition between the Parties in relation to this. As part of this assessment, we consider to what extent competition between the Parties is a driver of their product development.

8.96 We focus on evidence relating to Evolve, a GBST R&D project to update its main product, Composer. This project [REDACTED].

### ***FNZ submissions***

8.97 FNZ submitted that GBST does not drive innovation by FNZ and that [REDACTED]. FNZ told us that its incentive to innovate is driven by competition with other suppliers of Combined Platform Solutions and customer demands.<sup>203</sup>

### ***FNZ's product development incentives***

8.98 From our review of FNZ's documents, we found no evidence to suggest that FNZ responded to GBST's Project Evolve or that competition from GBST is a significant driver of FNZ's product development.

8.99 FNZ submitted that its innovation responds to competition and innovation from other providers including [REDACTED].

8.100 FNZ told us that [REDACTED]. This, in turn, means that most of FNZ's R&D and related spending can be [REDACTED]. We consider that its characterisation of the product development process is consistent with a finding that competition for customers plays a role in product development.<sup>204</sup>

8.101 A third party report for FNZ [REDACTED]<sup>205</sup> but FNZ submitted that [REDACTED].

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<sup>201</sup> [REDACTED] More details are in Appendix M.

<sup>202</sup> See Chapter 7.

<sup>203</sup> FNZ Response to Provisional Findings, paragraph 5.1(v).

<sup>204</sup> Appendix N sets out views on Project Evolve from the Parties and third parties.

<sup>205</sup> [REDACTED].

## *GBST's product development incentives*

8.102 Competition from FNZ appears to be a more significant driver of GBST's product development than any impact that GBST has on FNZ's product development incentives:

(a) GBST internal documents, including [REDACTED], show that it was clearly [REDACTED].<sup>206 207</sup>

(b) FNZ's board minutes also show that [REDACTED].<sup>208</sup>

8.103 FNZ's internal documents showed that it believed that Evolve [REDACTED]. They also indicate that FNZ [REDACTED].<sup>209</sup> For example:

(a) FNZ board minutes from [REDACTED].<sup>210</sup>

(b) An email from [REDACTED].<sup>211</sup>,

8.104 FNZ submitted that, as part of the acquisition process, its intention is to replace GBST's programme '[REDACTED].'

8.105 FNZ submitted that [REDACTED].

8.106 In particular, FNZ stated that '[REDACTED]. In support of this position, FNZ referred to a document [REDACTED] [REDACTED].

8.107 Our review of FNZ's documents confirms that [REDACTED], 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*

8.108 GBST internal documents show that competition from FNZ is a key driver of its product development. FNZ's and GBST's internal documents demonstrate that GBST invested in Project Evolve to improve its competitiveness against FNZ.

8.109 While FNZ's [REDACTED] for the purposes of our assessment, we found that the [REDACTED] would be consistent with a reduced incentive to innovate, reflected initially in

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<sup>206</sup> [REDACTED]

<sup>207</sup> [REDACTED].

<sup>208</sup> [REDACTED]. Further details on this document are provided in Annex K.

<sup>209</sup> See Appendix N for these documents.

<sup>210</sup> [REDACTED].

<sup>211</sup> [REDACTED].

a reduction in the innovation that would otherwise be carried out by GBST as a result of the Merger.

- 8.110 We found no conclusive evidence [§].
- 8.111 We found no clear evidence that competition from GBST is a significant driver of FNZ's product development, but we found that product development is driven by customer requirements. Competition between suppliers in meeting these customer requirements would therefore also be expected to drive product development at FNZ. However, FNZ (including JHC) has a wider range of target customers than GBST. Its incentives to develop its technology may therefore not be driven by competition from GBST to the same extent as competition from FNZ incentivises GBST's product development.

### ***Conclusion on closeness of competition between the Parties***

- 8.112 We found that FNZ is a particularly strong competitor in Retail Platform Solutions in the UK. FNZ's capabilities in both software and servicing, which are proven at scale, give it a distinct market offering. While GBST does not have its own servicing capabilities, evidence from third parties, tenders and internal documents consistently indicated that FNZ and GBST compete closely with each other.
- 8.113 We found that FNZ and GBST compete closely for customers that do not consider the different delivery models as a significant differentiating factor.
- (a) This is clearly shown in recent tenders where customers have considered either GBST's software-only solution or its partnership with Equiniti to be a close alternative to FNZ's Combined Platform Solution, and in some cases the next best alternative;
  - (b) [§]. This tender evidence indicates that FNZ and GBST are close alternatives;
  - (c) third parties generally consider FNZ and GBST to be close competitors, even with their different delivery models. Moreover, there are a group of customers that consider FNZ and GBST to be close alternatives, with Bravura being the only other supplier noted by some of these customers as competing as closely as the Parties do to each other; and
  - (d) GBST's internal documents characterise FNZ and GBST as the main competitors to each other alongside Bravura. FNZ's documents, to the limited extent that they provide insight into competitive conditions, also identifies GBST as a competitor to FNZ.

- 8.114 We found that the Parties compete for the following Retail Platform customers:
- (a) GBST customers that are open to a Combined Platform Solution involving the outsourcing of servicing as well as software;
  - (b) FNZ customers that are open to Combined Platform Solutions offered through a partnership of two suppliers including the GBST Equiniti partnership; and
  - (c) customers of neither Party that are open to Software-only Solutions or Combined Platform Solutions, either through a partnership or from one provider.
- 8.115 Other customers may be less likely to consider FNZ's and GBST's different delivery models as alternatives, because they prefer a software-only or a Combined Platform solution. These customers may not be directly affected by the Merger to a material extent. However, the position of these customers would not protect those customers for which the Parties are close competitors from higher prices given that terms are agreed with each customer. These customers may also be worse off from any adverse effect on product development as a result of the Merger.
- 8.116 We found that there are some differences in the constraint that each Party imposes on the other. However, on the weight of the evidence there is not a material degree of asymmetry in the overall constraint each Party imposes on the other.
- 8.117 As the larger competitor, FNZ is seen (by itself and some others) to impose a stronger constraint on GBST than GBST does on FNZ. But there is also evidence that GBST is a significant constraint on FNZ. In particular, some FNZ customers consider the GBST Equiniti partnership to be a credible alternative to FNZ. Furthermore, there have been recent tenders won by FNZ where GBST competed with FNZ, including two at the final stage. This also included tenders where GBST was the next best alternative to FNZ. This shows that GBST provided a constraint on FNZ in these tenders that FNZ won. GBST therefore did not need to win these tenders, or any others against FNZ, in order to provide a strong constraint on FNZ. Where two competitors compete closely with each other but where one is stronger than the other, it may be the case that only one of them wins where they overlap, particularly if there are only a limited number of tenders.
- 8.118 We found that there may be greater asymmetry in relation to competition in product development than for competition on price and commercial terms. Both FNZ and GBST's internal documents indicate that competition with

FNZ was a key driver of GBST's product development but we found no equivalent evidence in FNZ's internal documents of FNZ's product development incentives being impacted by GBST. However, the close constraint imposed on FNZ by GBST will incentivise FNZ to improve its product development in order to win customers. Given that FNZ targets a wider range of Investment Platforms than GBST, FNZ's incentives to develop its technology may not be driven by competition from GBST to the same extent as competition from FNZ incentivises GBST's product development.

- 8.119 We also found that there is competition between GBST and JHC: both offer software-only solutions. Although JHC may focus more on Non-Retail Platforms, and GBST more on Retail Platforms, they [redacted]. In addition, one customer, [redacted], uses both JHC and GBST and told us that generates competitive tension between them
- 8.120 On the basis of the evidence set out above, we conclude that the Parties compete closely with each other in the supply of Retail Platform Solutions in the UK.

### **Competitive constraint from alternatives**

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

#### ***FNZ and GBST submissions***

- 8.122 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;
  - (b) suppliers of Combined Platform Solutions and suppliers of Software-only Solutions are both credible alternatives for customers;
  - (c) 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;
  - (d) the following 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;

- (e) there are [redacted];
- (f) the many software-only alternatives to GBST would ensure that GBST customers could not be harmed by the Merger; and
- (g) all customers are able to self-supply some or all of their Platform Solution, and some switch back to in-house provision. This is demonstrated by the example of [redacted].

8.123 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;
- (b) it competes closely with FNZ in the supply of Retail Platform Solutions in the UK and it has also monitored the following alternative suppliers who are active in this segment: Bravura, SS&C, SECCL, Ohpen, Sapiens, Hubwise and InvestCloud; and
- (c) among these competitors, the ones that it monitors more closely are [redacted] and [redacted] while others are a weaker constraint.

8.124 GBST submitted that each of the other suppliers we asked it about was a weaker competitive constraint on it than [redacted] or [redacted]:

- (a) Avaloq, SEI and Temenos do not focus on Retail Platform Solutions in the UK and do not have the functionality to administer pension tax wrappers, annuities, UK onshore and offshore bonds.. Avaloq and Temenos are private banking solutions;
- (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'.
- (c) It competes [redacted] with SEI and Pershing. Pershing is 'between a Retail and a private client solution'. It [redacted].
- (d) TCS [redacted].
- (e) Hubwise is a small competitor and GBST does not see it as able to take and serve GBST's customers.
- (f) Objectway is not a strong competitor due to weakness in its technology.

- (g) Investcloud focusses on Platform Solutions to private client investment managers and on the US market, rather than the UK.
- (h) Ohpen [X] the cost of entering was too high.
- (i) Sapiens [X].
- (j) IRESS, Evaluate and Wealth Wizards do not have back office solutions that Retail Platforms need.
- (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.
- (l) Fusion Box and Embark offer technology which is not comparable to FNZ or GBST's Platform Solutions.

### **Third party evidence**

- 8.125 As described above, we asked third parties to provide scores for alternative suppliers of Retail Platform Solutions in the UK to indicate how close an alternative they are to FNZ and GBST.
- 8.126 We set out the closeness scores given by these third parties for the Parties and six other suppliers in Figure 8.1 above. The scores show that on average:
- (a) For FNZ: GBST and Bravura were considered to be the closest alternative suppliers, with S&C and SEI further behind, and Pershing, Avaloq and Temenos seen as less close alternatives.
  - (b) For GBST: FNZ and Bravura were considered to be the closest alternative suppliers, with SEI, SS&C, Pershing, Avaloq and Temenos seen as less close alternatives.
- 8.127 The closeness scores are broadly consistent with the wider qualitative evidence from customers, competitors and consultants, which indicates that:<sup>212</sup>
- (a) Bravura is the closest alternative to the Parties:

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<sup>212</sup> See Appendix J for further details including references for this evidence.



- (i) third parties told us that Bravura's technology is comparable to FNZ and GBST and it has similar experience and a good reputation in the UK market;
  - (ii) while Bravura only provides software, nine third parties considered Bravura in partnership with a servicing provider like Genpact a credible supplier of Combined Platform Solutions;
  - (iii) Bravura was also the most frequently mentioned alternative supplier of Retail Platform Solutions in the UK by the Parties' customers at Phase 1 of our inquiry.<sup>213</sup>
- (b) SS&C, SEI and Pershing provide a weak constraint on the Parties:
- (i) Third parties said that although SS&C supplies Retail Platform Solutions in the UK, it is weaker than GBST, FNZ and Bravura because its only material customer relationship is with St. James's Place, for which it provides a specific (closed architecture) solution. It has gaps in its product capability, and also 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 [REDACTED]. In particular, SS&C explained that in order [REDACTED] with FNZ and GBST's offerings, [REDACTED].
  - (iii) SEI told us that it can supply both Retail and Non-Retail Platform Solutions, but some third parties indicated that the breadth of SEI's offering is restricted, that it uses older technology than the Parties and has limited scale in the UK.
- (c) Pershing submitted that although it can supply both Retail and Non-Retail Platforms, its typical customers are Non-Retail Platforms. Other third parties shared this view and noted that Pershing is focused on Non-Retail Platforms. Third parties submitted that Pershing has a dated technology with limited functionality and is expensive.<sup>214</sup>
- (d) Avaloq and Temenos both told us that they do not compete with the Parties in the supply of Retail Platform Solutions in the UK:

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<sup>213</sup> Those who responded to phase 1 questionnaires

<sup>214</sup> [REDACTED].

- (i) Avaloq told us that the only exception to this is Investment Platforms that do not require it to offer pensions functionality or support Independent Financial Advisers such as some retail banks;
- (ii) Temenos said that it is not active in the retail banking market on the wealth side; and
- (iii) other third parties agreed with Avaloq and Temenos' comments that they do not represent a constraint on the Parties in the supply of Retail Platform Solutions.

8.128 FNZ submitted that we understated the presence of smaller suppliers because we did not prompt respondents to think of them.

8.129 While we initially prompted third parties with a list of six named suppliers (those in Figure 8.1 above), we sought to increase the number of suppliers for which we could reliably report average closeness scores by subsequently prompting other third parties (customers whose contracts were no more than two years old) with 19 named suppliers.<sup>215</sup> We also asked all third parties for suggestions of suppliers and to provide closeness scores for them.

8.130 These additional steps did not allow us to calculate reliable average closeness scores for any more suppliers because the number of respondents who referred to these other suppliers remained very low, with only five respondents at most referring to them. If these suppliers were significant constraints on the Parties, we would have expected third parties to have referred to them more often. This indicates that those suppliers are not widely seen by third parties to be close alternatives to FNZ or GBST.<sup>216</sup>

8.131 We gathered third-party views on whether in-house supply was a viable option.

- (a) Evidence from third parties generally suggests that in-house supply of software 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 vast majority of the Parties' customers (20 out of 23 who gave a view on

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<sup>215</sup> These suppliers had reached a final stage of a tender against at least one of the Parties since 2016. These suppliers were [redacted].

<sup>216</sup> Appendix J sets out further third party evidence on a number of these other suppliers which indicates that they appear to offer only a limited competitive constraint on the Parties. Also see our assessment of Entry and Expansion in Chapter 9.

this) but only an option where the customer already has an in-house solution.

(b) In contrast, most customers (14 out of 19 who gave a view on this) said that in-house servicing was a viable option.<sup>217</sup>

8.132 Overall, this indicates that in-house supply of software is not a significant constraint on the Parties due to the vast majority of customers' being dependent on external suppliers for this.

### ***Tender analysis***

8.133 Participation and success in recent tenders for Platform Solutions provided insight into the constraint from alternatives on the Parties.

### ***FNZ tender analysis and submissions***

8.134 Using its own tender analysis, FNZ, stated that, since 2016, the following suppliers had won tenders in which it had competed:<sup>218</sup>

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED];

(d) [REDACTED]

(e) [REDACTED].

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

8.136 Using our tender analysis, FNZ subsequently identified [REDACTED] suppliers that had bid for contracts with Retail Platforms at the early stage of a tender.

8.137 FNZ used our analysis to identify [REDACTED] suppliers that had reached the final stage of a tender, either by directly identifying them from the tender evidence or by inferring that a supplier had reached this stage.

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<sup>217</sup> Phase 2 customer questionnaire responses. Further details on in-house supply are provided in Chapter 6 and Appendix J.

<sup>218</sup> [REDACTED].

8.138 We note that suppliers in the Retail Platform share of supply estimates may have reached the final stage of a tender at some point in the past but not necessarily a recent tender against one of the Parties. Some of these suppliers' shares may instead be based on their historic supply of a legacy Platform Solution. Therefore in our view, FNZ's identification of [X] suppliers which have reached the final stage of a tender does not give a reliable indication of constraints on the Parties.

#### *CMA tender analysis*

8.139 Our tender analysis includes Retail, Non-Retail and borderline tenders, in order to assess the alternatives and constraints from within and outside the relevant market.<sup>219</sup> The analysis includes:

- (a) The frequency of the Parties' and competitors' overlaps in tenders, both at an early and final stage;
- (b) the frequency of competitors winning tenders; and
- (c) qualitative evidence from customers' tender evaluations.

8.140 We first present the results of this analysis and then we set out our overall assessment of the tender evidence.

#### *Frequency of overlap with the Parties at the early stage*

8.141 Since 2016, the Parties participated in a total of [X] Retail tenders: FNZ participated in [X],<sup>220</sup> JHC in [X] and GBST participated in [X].

8.142 The Parties overlapped in [X] tenders. In terms of their overlap with other suppliers in Retail tenders:

- (a) Bravura had by far the greatest overlap with GBST and FNZ/JHC at [X] times each;
- (b) [X] overlapped with FNZ/JHC [X] times and with GBST [X];
- (c) [X] and [X] each overlapped with GBST [X] times;
- (d) other suppliers overlapped with the Parties less than [X] times; and

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<sup>219</sup> Appendix G presents an assessment of borderline and Non-Retail tenders, including a sensitivity analysis to our main results.

<sup>220</sup> Including [X].

(e) in-house solutions overlapped with GBST [redacted] times and with FNZ/JHC [redacted].

8.143 Figure 8.2 below summarises this position by showing the frequency of other suppliers overlaps with GBST or FNZ/JHC in Retail tenders (those that overlapped at least twice).

**Figure 8.2. Number of times each supplier overlapped with GBST and FNZ/JHC at the early stage of Retail tenders**

[redacted]

Source: CMA analysis using data from the Parties, customers and competitors.

Note: [redacted]. The graph includes only competitors that overlapped with the Parties at least twice.

Suppliers which overlapped with GBST once include [redacted] Suppliers which overlapped with FNZ/JHC once include [redacted].

#### *Alternatives to the Parties at the final stage*

8.144 We examined the suppliers that overlapped with the Parties at the final stage of Retail tenders which usually involves commercial negotiations.<sup>221</sup>

8.145 In terms of FNZ and JHC's participation in these, FNZ reached the final stage in [redacted] tenders.<sup>222</sup> Of these:

(a) FNZ competed with [redacted] in [redacted];

(b) FNZ competed [redacted] in [redacted]. [redacted];

(c) JHC reached the final stage in [redacted], [redacted]; and

(d) in [redacted].

8.146 Table 8.3 below shows that FNZ and JHC met [redacted] at the final stage in these [redacted] Retail tenders.

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<sup>221</sup> See Appendix E.

<sup>222</sup> Tenders in which they reached a final stage and when there was a competitor at that stage

**Table 8.3. Frequency at which other suppliers overlapped with FNZ or JHC at the final stage in Retail tenders.**

Competitor	FNZ + JHC	FNZ	JHC
[redacted]	[redacted]	[redacted]	[redacted]

Source: CMA analysis using data from the Parties, customers and competitors.

Note: The Parties may have overlapped with more than one supplier at the final stage of a tender.

8.147 GBST reached the final stage in [redacted] tenders, all of which were Retail tenders.<sup>223</sup> In [redacted] of these tenders, [redacted].

8.148 Table 8.4 below shows the frequency with which GBST overlapped with other suppliers in the remaining [redacted] tenders.

**Table 8.4. Frequency at which other suppliers overlapped with GBST at final stage in Retail tenders.**

Competitor	Frequency
[redacted]	[redacted]

Source: CMA analysis using data from the Parties, customers and competitors.

Note: The Parties may have overlapped with more than one supplier at the final stage of a tender.

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

(a) [redacted] times;

(b) [redacted]; and

(c) [redacted] each.<sup>224</sup>

*Winners of tenders where the Parties bid*

8.150 We also analysed the winners of Retail tenders where the Parties bid. This shows:

(a) FNZ or JHC lost [redacted] to each of [redacted] and [redacted] tenders to [redacted] (alongside losing [redacted] tenders to [redacted]). Of these tenders, FNZ or JHC were at the final stage in the [redacted] tenders [redacted] won and in [redacted] tender that [redacted] won, but not the tenders won by [redacted]; and

(b) GBST lost [redacted] to each of [redacted] (alongside losing [redacted] tenders to FNZ or JHC). Of these, GBST was at the final stage in the tenders that [redacted] and

<sup>223</sup> We considered all tenders in which GBST reached the final stage.

<sup>224</sup> [redacted] and [redacted] reached the final stage in the same tender, while [redacted] and [redacted] reached the final stage of [redacted].

[X] won (and in [X] out of the [X] tenders [X] won) but not the tender won by [X].

8.151 Figure 8.3 below shows these findings.

**Figure 8.3. Number of times each supplier won a Retail tender in which GBST or FNZ/JHC participated**

[X]

Source: CMA analysis using data from the Parties, customers and competitors.

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, therefore, on-going tenders and abandoned tenders that concluded without a winner.

8.152 Given that, in general, each competitor has only won a tender against the Parties a small number of times, we primarily used other evidence from tenders to assess the degree of constraint on the Parties, in particular overlaps with the Parties at the early stage and final stage of tenders.

*Our overall assessment of the tender data*

8.153 We found that Bravura is, overall, the closest competitor to both FNZ and GBST in the tender data:

(a) [X];

(b) [X]

(c) [X].

8.154 We found that each Party is the second closest competitor to the other in the tender data:

(a) [X];

(b) [X]

(c) [X]

8.155 The tender evidence indicates that SEI is only a weak constraint on the Parties:

(a) SEI overlapped with FNZ or JHC in [X] tenders and with GBST in [X];

(b) SEI overlapped with the Parties at the final stage in [X] Retail tenders;

(c) SEI

(d) supplies a Retail Platform (Fusion Wealth) that was appointed to supply Lloyds Schrodgers in 2018 FNZ submitted that it competed for this business. Evidence from other parties involved is unclear as to whether there actually was a tender in which SEI participated and whether there was material competition between FNZ and SEI. SEI was already a supplier to Fusion Wealth, which was operated by Benchmark Capital, a subsidiary of Schrodgers. Benchmark Capital told us that no tender has been undertaken in relation to Fusion Wealth since 2016. [REDACTED].<sup>225</sup> On a cautious basis we treated this as a tender that SEI won in Figure 8.3.

8.156 We found all other competitors present a weak constraint on the Parties. No other competitor overlapped with the Parties in more than [REDACTED] Retail tenders. This is significantly lower than the [REDACTED] Retail tenders where the Parties overlapped. Of those that competed with the Parties in [REDACTED] or [REDACTED] tenders, the evidence shows they were a limited constraint on the Parties, particularly in tenders where the Parties competed with each other.

(a) [REDACTED] participated in [REDACTED] Retail tenders against one of the Parties ([REDACTED]). [REDACTED] won [REDACTED] of these tenders ([REDACTED]) and [REDACTED] of these involved competition against one of the Parties at the final stage of the tender (against [REDACTED]). These tenders were for a particular type of Retail Platform (an advised, vertically integrated platform), which is consistent with [REDACTED] Platform Solution being considered by third parties to be most suitable for these platforms.<sup>226 227 228 229</sup>

(b) [REDACTED],<sup>230</sup> overlapped with GBST in [REDACTED] tenders. FNZ [REDACTED] of these tenders ([REDACTED]) and [REDACTED]. [REDACTED].

(c) [REDACTED] overlapped in Retail tenders with GBST [REDACTED] times and [REDACTED] with FNZ. In only [REDACTED] of these tenders did [REDACTED] compete at the final stage ([REDACTED] against GBST). Sapiens' participation in [REDACTED] tenders was limited to [REDACTED] customers [REDACTED] is not indicative of significant and widespread competition. [REDACTED] told us that it targets insurers as customers, that it competes with FNZ and GBST only occasionally,<sup>231</sup> but plans to compete more closely with GBST on mid-lower tier opportunities.<sup>232</sup>

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<sup>225</sup> [REDACTED]

<sup>226</sup> [REDACTED]

<sup>227</sup> [REDACTED]

<sup>228</sup> Advised vertical platforms only provide their own advice to customers. Advised horizontal platforms allow third party advice to customers.

<sup>229</sup> See Appendix J.

<sup>230</sup> [REDACTED]

<sup>231</sup> [REDACTED]

<sup>232</sup> [REDACTED]



(d) [X] overlapped [X] with GBST in Retail tenders [X]with FNZ. [X] reached the final stage and won [X] tender when competing against GBST. As explained by [X], its proposition is much narrower than GBST's proposition as it provides mainly front-office tools and its software tends to be used alongside GBST rather than replacing it.

(e) [X] overlapped [X] with GBST in Retail tenders. FNZ [X] In this tender, [X].<sup>233</sup>

8.157 An in-house Platform Solution was identified as an option in [X] of the [X] Retail tenders, and in all cases, in-house was the incumbent solution. An in-house solution was [X] considered where the incumbent Platform Solution was already outsourced. This indicates that in-house supply is a constraint [X] when a Retail Platform is considering switching from in-house to outsourced Platform Solutions.

8.158 We tested the sensitivity of our tender analysis by considering borderline tenders alongside Retail tenders.<sup>234</sup> The results did not indicate that our tender analysis above had understated the constraints on the Parties in the supply of Retail Platform Solutions, in particular for tenders where the Parties competed more closely. [X].

8.159 We found that:

(a) [X] overlapped [X] times with FNZ or JHC and [X] with GBST at the early stage in those tenders. The Parties did not face competition from [X] at the final stage for any Retail element of these tenders. This is consistent with [X] focus on Non-Retail Platforms. This indicates that [X] may be able to compete for some customers that are on the borderline between Retail and Non-Retail, but that [X] is not a constraint on the Parties where they compete more closely, for example in tenders with a stronger Retail focus. Qualitative evidence from a tender for [X].

(i)[X].

(ii) [X].

(b) [X] overlapped with JHC [X] times, FNZ [X] and GBST [X] across [X] tenders overall. It reached the final stage in [X] of these tenders against JHC.

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<sup>233</sup> [X].

<sup>234</sup> See Appendix G for further details.

(c) No other suppliers overlapped with the Parties in more than [X] tenders when we include borderline tenders (including suppliers that focus on Non-Retail Platforms).

8.160 In addition to our sensitivity analysis, Appendix G presents the alternatives to the Parties in Non-Retail tenders, at both early and final stages, and the winners on those tenders. This assessment shows a predominantly different set of suppliers competing in tenders for Non-Retail Platforms to those competing for Retail Platforms.

8.161 We therefore conclude on the basis of our tender analysis that only Bravura offers a similar constraint on the Parties to the one the Parties exert on each other in the supply of Retail Platform Solutions.

### **Internal documents**

8.162 We found evidence in the Parties' internal documents on the competitive constraints from alternative suppliers and from in-house supply.

8.163 FNZ submitted that its internal documents mention many other suppliers, as well as GBST and Bravura, and that internal documents demonstrate the level of competition between FNZ and other suppliers.

8.164 Overall, FNZ's internal documents show that FNZ [X].<sup>235</sup>

8.165 Some FNZ documents, including [X], refer [X].<sup>236,237</sup> A third party report prepared for FNZ also states that [X].<sup>238</sup>

8.166 Other competitors, such as [X]. Further, the context of such mentions generally [X].<sup>239</sup>

8.167 [X].<sup>240,241</sup> Third party documents for FNZ also indicate this.<sup>242,243</sup>

8.168 We found that many FNZ internal documents consider the wider Platform Solutions sector in which FNZ operates, not just the Retail Platform Solutions in the UK market which we are considering.

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<sup>235</sup> [X].

<sup>236</sup> [X].

<sup>237</sup> [X].

<sup>238</sup> [X].

<sup>239</sup> [X].

<sup>240</sup> [X].

<sup>241</sup> [X].

<sup>242</sup> [X].

<sup>243</sup> [X] [X].

- 8.169 We found GBST’s documents are more focussed on the Retail market as this is where it is most active.
- 8.170 GBST’s internal documents (as described in paragraph 8.91) primarily [REDACTED].<sup>244,245,246,247</sup>
- 8.171 These documents refer to [REDACTED]. A few GBST documents mention [REDACTED].<sup>248,249</sup> The documents typically [REDACTED].
- 8.172 A consultant’s reports for GBST treat [REDACTED].<sup>250</sup> One document identifies [REDACTED].<sup>251</sup>
- 8.173 Like FNZ, GBST’s internal documents show that [REDACTED].<sup>252</sup>
- 8.174 GBST’s internal documents also shows that [REDACTED].<sup>253 254</sup>

***Conclusion on competitive constraint from alternatives***

- 8.175 We found that Bravura, GBST and FNZ are by far the closest competitors in the supply of Retail Platform Solutions in the UK. Bravura is the only competitor that offers a similar constraint on the Parties to the one that the Parties exert on each other. Other competitors such as SS&C and SEI, in general, exert only a weak constraint on the Parties.
- 8.176 Taken together, evidence from third parties, tenders, and the Parties’ internal documents shows that Bravura provides a strong constraint on the Parties. This includes providing a strong constraint on FNZ’s Combined Platform Solution, even though Bravura does not have its own servicing capabilities.
- (a) Third parties told us that Bravura is a close competitor to FNZ and, in particular, GBST. They noted that Bravura’s technology, experience and reputation is comparable to FNZ and GBST in the supply of Retail Platform Solutions in the UK.

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244 [REDACTED]  
 245 [REDACTED].  
 246 [REDACTED],  
 247 [REDACTED].  
 248 [REDACTED]  
 249 [REDACTED].  
 250 [REDACTED].  
 251 [REDACTED].  
 252 [REDACTED].  
 253 [REDACTED].  
 254 [REDACTED].

- (b) Our tender analysis also shows that Bravura is a close competitor to each of the Parties. [REDACTED], the tender evidence, overall, indicates that Bravura is a strong alternative to GBST.
- (c) GBST's internal documents typically identify Bravura, together with FNZ, as GBST's main competitors. To the extent that they provide insight into competitive conditions, FNZ's internal documents also identifies Bravura as a competitor to FNZ.

8.177 We found that SS&C and SEI, in general, exert only a weak constraint on the Parties.

- (a) Third parties on average gave SS&C a lower rating on how close an alternative it was to the Parties compared to how close an alternative the Parties are to each other. Third parties, including SS&C, also provided evidence that SS&C is a weaker competitor than GBST, FNZ and Bravura, in particular due to limitations with SS&C's software. Consistent with this evidence, [REDACTED].
- (b) Third parties considered that SEI was a less close alternative to the Parties compared to how close an alternative the Parties are to each other. Some indicated that the breadth of its offering is restricted, that its technology is not as modern as the Parties, and that it has limited scale in the UK. Consistent with this evidence, [REDACTED].

8.178 We found that evidence on other competitors (including those who appear to operate primarily outside the market for Retail Platform Solutions) indicated that, in general, they provide only a weak constraint on each of the Parties in the supply of Retail Platform Solutions.

- (a) Third parties indicated that they were not close alternatives to either Party in the supply of Retail Platform Solutions, although some may exert a stronger constraint on FNZ at the Non-Retail end of FNZ's broader target customer base.
- (b) Third parties indicated that the constraint from Pershing, Avaloq, and Temenos is generally limited, especially on GBST, due to their strengths in Non-Retail, rather than Retail Platforms. They also indicated that Hubwise and SECCL were possible suppliers of Retail Platform Solutions in the UK but not at the same scale as either of the Parties. TCS also appears to offer only a limited competitive constraint on each of the Parties based on third party evidence.
- (c) Our tender analysis indicates that these other competitors are generally not close alternatives to either of the Parties. They overlap infrequently

with either Party in Retail tenders and even less at the final stage of these tenders ([§]).

- 8.179 With the exception of Bravura, neither Party's internal documents suggest that other competitors would exert a material constraint on the Merged Entity.
- (a) GBST's internal documents identify SS&C and SEI as competitors, but as less of a constraint than Bravura. Other suppliers have far less prominence in GBST's documents.
  - (b) To the extent that they provide insight into competitive conditions, FNZ's internal documents also identify SS&C, SEI and other suppliers as competitors. However, these documents do not indicate that any of these competitors exert a material constraint on FNZ.
- 8.180 We found that in-house supply of software 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 Retail Platform customers who already self-supply and who are considering outsourcing against continuing this model; and
  - (c) each Party's documents view in-house Platform Solutions as an opportunity to sell more business rather than a competitive constraint.

## **Conclusion on the competitive effects of the merger**

- 8.181 We found that FNZ is a particularly strong competitor in Retail Platform Solutions in the UK. FNZ's capabilities in both software and servicing, which are proven at scale, give it a distinct offering. Some competitors, such as GBST and Bravura, do not have the same servicing model as FNZ, whereas others have weaknesses in their software.
- 8.182 FNZ's strong presence is underscored by its large market share in the supply of Retail Platform Solutions in the UK. GBST is a competitor of significant scale in this market and, as a result of the Merger, the Merged Entity is by far the largest supplier in the market, being almost twice the size of the next largest supplier.

- 8.183 Evidence from third parties, tenders and internal documents was consistent in showing that the Parties compete closely against each other and that, with the exception of Bravura, other suppliers (including those who appear to operate primarily outside the market for Retail Platform Solutions) generally offer only a weak constraint.
- (a) First, third parties indicated that FNZ and GBST are close alternatives to each other. We found that there are a group of customers that consider FNZ and GBST to be close alternatives, with Bravura being the only other supplier noted by some of these customers to compete as closely as the Parties do with each other. Evidence from third parties indicated that, in general, other suppliers are weak competitors to the Parties.
- (b) Second, the Parties, together with Bravura, [REDACTED]. This evidence indicated that in general other suppliers are only a weak constraint on the Parties. The next supplier to compete most often in Retail tenders with one of the Parties was [REDACTED]. Other suppliers competed significantly less often at the early stage of Retail tenders than the Parties did with each other. These other suppliers did not [REDACTED].
- (c) Third, GBST's internal documents typically identify FNZ and Bravura as its main competitors. To the extent that they provide insight into competitive conditions, FNZ's internal documents also identify GBST and Bravura as competitors to FNZ. With the exception of Bravura, neither Party's internal documents suggest that other competitors would exert a material constraint on the Merged Entity.
- 8.184 This evidence shows that, even though GBST and Bravura do not have their own servicing capabilities, they compete closely with FNZ's Combined Platform Solution. In particular, GBST and Bravura were the only suppliers that have competed with FNZ at the final stage of a Retail tender since 2016.
- 8.185 Third party evidence and our tender analysis indicate that in-house supply of software is viable for very few Retail Platform customers and is typically limited to when customers already self-supply software. The Parties' internal documents also demonstrate that they view in-house Platform Solutions as an opportunity to sell more business rather than a competitive constraint.
- 8.186 Overall, this evidence demonstrates that FNZ and GBST compete closely with each other, alongside close competition from one other competitor, Bravura. It shows that other suppliers and in-house supply, in general, exert only a weak constraint. We found that the aggregate constraints from these

suppliers and in-house supply will be insufficient to prevent the Merged Entity from being able to worsen its offering.

- 8.187 We found that switching supply of Retail Platform Solutions is complex, risky, lengthy, and expensive for customers. This puts customers in a weaker bargaining position, which exacerbates our concerns over the loss of competition between the Parties resulting from the Merger.
- 8.188 As the Merger will remove the rivalry between GBST and FNZ, it is likely to result in negative outcomes for some customers in terms of price and quality.
- 8.189 We found that some customers may be affected by the Merger more than others, reflecting the fact that commercial terms agreed with each customer can vary. Customers that may be less likely to be affected by the Merger are those with a strong preference for a Combined Platform Solution from a single supplier and those with preferences that are closer to Non-Retail Platforms. Customers more likely to be affected include Retail Platforms that consider the Parties to be close alternatives even with their different delivery models.
- 8.190 Even GBST customers with a strong preference for GBST's software-only model are likely to be affected by the Merger because the loss of competition between FNZ and GBST in relation to product development is likely to affect all customers of GBST. In particular, FNZ and GBST's internal documents indicate that competition with FNZ was a key driver of GBST's product development.
- 8.191 We therefore found that, subject to our findings on any Countervailing Factors, the Merger has resulted or may be expected to result in an SLC in the market for the supply of Retail Platform Solutions in the UK.

## **9. Countervailing factors**

- 9.1 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:
- (a) The responses of other suppliers (such as rivals and 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.<sup>255</sup>

## Entry and expansion

- 9.2 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.
- 9.3 We considered whether entry or expansion would be likely to outweigh the SLC we found in relation to the supply of Retail Platform Solutions in the UK and we considered whether entry and/or expansion would be timely, likely, and sufficient.<sup>256</sup>
- 9.4 We considered the extent to which there are barriers to entry or expansion in the supply of Retail Platform Solutions in the UK and the possible sources of entry or expansion.

### Views of FNZ

- 9.5 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’.
- 9.6 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.
- 9.7 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 specific examples of expansion:
- (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);

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<sup>255</sup> MAGs, sections 5.7 – 5.9.

<sup>256</sup> MAGs, paragraph 5.8.3.



- (c) entry by start-up companies such as Hubwise and SECCL; and
  - (d) BlackRock: expanding Aladdin into a WMP Solution to directly compete with FNZ.'
- 9.8 FNZ also mentioned two further 'challenger Solution providers': Focus Solutions and Third Financial.
- 9.9 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.<sup>257</sup> FNZ noted the following examples:<sup>258</sup>
- (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.'
- 9.10 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.<sup>259</sup> FNZ told us that acquiring pensions administration capabilities is not necessary and is, in any case, comparatively straightforward.<sup>260</sup> It gave the example 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.
- 9.11 Further, FNZ submitted that a number of providers were well placed to enter and/or expand into the Retail segment if prices were to rise, stating that:<sup>261</sup>
- (a) '[n] [§<];

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<sup>257</sup> FNZ Initial Phase 2 submission, paragraph 4.41, page 27

<sup>258</sup> FNZ Initial Phase 2 submission, paragraph 4.41 (i)-(iv), page 27. These comments were in relation to entry into the platform solutions space more broadly and not just the retail segment.

<sup>259</sup> FNZ Initial Phase 2 submission, paragraph 4.33, page 25

<sup>260</sup> FNZ Initial Phase 2 submission, paragraphs 4.35 – 4.38, pages 26-27

<sup>261</sup> FNZ response to the Provisional Findings, paragraph 3.17, page 12

- (b) providers such as Avaloq, Pershing and Temenos operate at scale and already have a proven track record of supplying competitive Platform Solutions in the UK and internationally; and
  - (c) the third-party evidence indicates that a wide range of suppliers are considered alternatives to FNZ and GBST.'
- 9.12 FNZ told us that the barriers to entry and expansion are low, particularly for large global providers that are already present in the UK, such as Pershing, Avaloq, TCS BaNCS and Temenos.
- 9.13 FNZ submitted that our 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.
  - (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. FNZ submitted that Retail Platforms represented a sufficient incentive for these suppliers in terms of their annual recurring revenue.
  - (c) 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.
- 9.14 FNZ said that entry and expansion are enabled by platforms switching and that its tender data showed [redacted] instances of Retail customers switching over the last ten years.
- 9.15 It said that the market trend towards outsourcing provided further opportunities: it identified [redacted] instances of major Retail customers outsourcing Platform Solutions over the past ten years.
- 9.16 It also noted that 'platforms using proprietary solutions still account for more than [redacted] of AUA held on Investment Platforms and that, if only a modest

proportion of these platforms would switch to an outsourcing model, that would imply substantial new opportunities.

9.17 GBST made no submissions on entry and expansion.

9.18 GBST's internal documents contained [REDACTED].<sup>262</sup> Its [REDACTED].<sup>263</sup>

### ***Views of third parties***

9.19 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.

9.20 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.<sup>264</sup> No competitor told us that entry into this market was easy.

9.21 Some third parties mentioned scale as a barrier:

(a) SECCL told us that customers select on the basis of capital strength;

(b) Hubwise mentioned that the supplier's balance sheet would be taken into account; and

(c) Avaloq mentioned scale as a factor.

9.22 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.

9.23 Competitors mentioned that international companies entering the UK can face challenges:

(a) Bravura told us that [REDACTED]supplier, had won a large, initial client in the UK but that implementation was not successful and [REDACTED] had subsequently closed its UK business.

(b) Hubwise said that some international companies fail in the UK market because it is unique.

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<sup>262</sup> See Chapter 6, Market Definition.

<sup>263</sup> [REDACTED]

<sup>264</sup> [REDACTED]

## ***Our assessment***

- 9.24 Our tender analysis shows that there were [X] occasions where Retail customers switched supplier since 2016 (out of [X] tenders where there was an incumbent solution).<sup>265</sup> FNZ's examples of switching were over a longer time period which may indicate that, before 2016, there were more opportunities for new entrants.
- 9.25 However, in most cases we find that switching was from an in-house solution (in [X] out of the [X] occasions where a Retail customer switched supplier since 2016) and that there has [X] case where the customer switched away from an external supplier. This means there are low prospects for new entrants to win new customers in the future, particularly given that many Retail Platforms have already outsourced their Platform Solutions.
- 9.26 The tender evidence indicates that, in general, new entrants have little prospect of winning Retail tenders or exerting a significant constraint on the Parties.
- 9.27 Compared to established suppliers of Retail Platform Solutions such as FNZ, GBST and Bravura, we found that other suppliers, including new entrants, have participated significantly less frequently in Retail tenders, both at the early and final stages.<sup>266</sup> Ohpen, a new entrant in Retail Platform Solutions in the UK won a tender in 2016, but the project ceased in 2018. No other new entrant has won a Retail tender against one or more of the Parties since 2016.
- 9.28 We investigated the most credible sources of entry and or expansion into the UK market for Retail Platform Solutions.
- 9.29 We found that 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 saw no evidence that this will change in the medium term.
- 9.30 Some of the other companies mentioned by FNZ are already active in the UK, such as SS&C, Focus Solutions, Third Financial and GPP Wealth Solutions, but these are not recent new entrants and their presence has already been taken into account within our competitive assessment. We saw no evidence of expansion plans by any of these suppliers.

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<sup>265</sup> See Chapter 8.

<sup>266</sup> See Chapter 8.

- 9.31 As concluded in Chapter 6, it is lengthy and costly for Non-Retail Platform Solution suppliers to adapt their offering and difficult to lower their costs to compete strongly in the supply of Retail Platforms.
- 9.32 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. However, it also submitted that the work needed to ‘accommodate the needs of the retail investment platform market which as a sector remain stubbornly unprofitable, does not appear to hold great appeal’.
- 9.33 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. We assessed whether these firms are likely to impose a sufficient competitive constraint against the Merged Entity in a timely manner; and
  - (b) expansion by recent new entrants such as the three most consistently cited firms, Hubwise, SECCL and Multrees. We focussed on the extent to which these three recent entrants could expand to provide a stronger constraint than they currently do.
- 9.34 We set out the evidence in relation to these two sources of potential entry and expansion below.

#### *Large international competitors*

- 9.35 Our competitive assessment found that Pershing, Avaloq, TCS BaNCS and Temenos are not currently close competitors of FNZ or GBST.
- 9.36 Avaloq told us that:
- (a) [REDACTED].
  - (b) When asked what would make it consider entering the market, Avaloq said that this [REDACTED]
  - (c) it is currently focusing on wealth managers and private banks, but it is exploring other areas. It intends to ‘compete more closely for these Retail Platform customers, those without an IFA or pensions focus, such as Investment Platforms with Retail components offered by Banks.
- 9.37 Temenos told us that:

(a) it is not active in the retail wealth market, but that the market is growing and [REDACTED].

(b) It does not get invited to Retail tenders. [REDACTED]. [REDACTED].

9.38 We found that only Pershing and TCS BaNCS had any ambition or intention to expand or grow in the Retail Platform Solution market:

(a) Pershing considers that it is able to serve Retail Platforms although its typical customers are Non-Retail. In our competitive assessment, we classified the Investment Platforms that Pershing supplies as borderline cases that may have both Retail and Non-Retail characteristics.

(b) TCS BaNCS said that it wants to expand its UK business and replicate the success it has had with [REDACTED] in the next three to five years. It said that its lack of presence today is because it is new to the UK market, 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.

9.39 The evidence above shows that at least two firms had an intention to expand into the UK Retail Platform Solutions market; however, neither had specific plans to do so in a timely way. We found that it takes a significant period of time to expand in this market and the evidence above indicates that there will not be entry or expansion which is timely or likely to affect material change in the market in the near term.

#### *Smaller competitors*

9.40 The three most consistently cited recent new entrants were Hubwise, SECCL and Multrees.

9.41 Hubwise told us that is already active in the market and aims to compete head to head with FNZ 'soon'. It considers that it is some way ahead of SECCL in terms of capability and market recognition'.

9.42 Hubwise has been focused on platforms business for the last three years and said that it is already supplying Platform Solutions and has strong demand from medium-sized customers with £[REDACTED]bn of assets. It said that it intends the total assets held on its platforms to reach £[REDACTED] this year, £[REDACTED]

next year and £[REDACTED]. It told us that it will [REDACTED] Hubwise internal documents include [REDACTED] AUA by [REDACTED].<sup>267</sup>

- 9.43 SECCL provides Combined Platform Solutions to Retail Platforms and it said that it also aims to supply software only. It won its first customer in 2018 and said that it offers the same services as FNZ but at a far smaller scale. It currently supplies platforms with around £[REDACTED] of assets and said that it will have over £[REDACTED] of assets managed on its platform. It said that when its system is complete ([REDACTED]), it will be able to attract large customers with assets of around £[REDACTED]. It said that it would not currently target FNZ and GBST's customers directly because they would be looking to transfer at least £[REDACTED] 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.
- 9.44 SECCL told us that it plans to compete strongly and expand as rapidly as possible. However, it said that it takes time and investment until new providers start making a profit.
- 9.45 Multrees was established in 2010. It said that 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 targets 'big-ticket deals which leaves the middle of the market open to other suppliers'. 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. [REDACTED].
- 9.46 We found that each of these firms is much smaller than FNZ, GBST, Bravura and SS&C in terms of AUA of customers served:
- (a) FNZ has over £[REDACTED] AUA and its largest customer is [REDACTED] with over £[REDACTED] AUA
  - (b) GBST's largest customer is [REDACTED] with \$[REDACTED] AUA.
  - (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\$[REDACTED] AUA.
- 9.47 None of the smaller firms supplying Retail Platform Solutions in the UK are currently able to serve the size of customers that FNZ and GBST do. From

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<sup>267</sup>[REDACTED]

reviewing their expansion plans we do not consider this will change in any reasonable time horizon.

*Additional evidence on entry and expansion*

- 9.48 Our tender analysis (in Chapter 8) shows that:
- (a) FNZ/JHC have not bid against [redacted];
  - (b) FNZ/JHC have bid against [redacted] once and once against [redacted] in Retail tenders. But there is no evidence of expansion by these competitors based on recent tender analysis; and
  - (c) GBST has not bid against [redacted].
- 9.49 Regarding the ability of another firm to achieve scale in a timely manner, an FNZ presentation '[redacted]'.<sup>268</sup> We consider that this demonstrates the significant time it took FNZ to achieve scale in the market.
- 9.50 FNZ told us that switching can and does happen. We found that switching occurs (albeit infrequently) and we agree with FNZ that the length of time it takes to switch does not automatically rule out entry or expansion being timely. However, we found that switching costs are high for Retail Platforms<sup>269</sup> and therefore that they increase barriers to entry.

*Conclusion on whether entry or expansion would be timely, likely and sufficient to prevent an SLC*

- 9.51 The evidence we saw does not support entry and expansion as being timely, likely and sufficient to outweigh the SLC:
- (a) We investigated potential entry from Non-Retail Platform suppliers. We have seen no evidence from Non-Retail Platform providers that this is likely;
  - (b) we found evidence of expansion by smaller firms over recent years but their expansion has been limited to date and the evidence suggests that their future expansion would not be of sufficient scale to constrain the Merged Entity in a timely manner; and

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<sup>268</sup> [redacted]

<sup>269</sup> See Chapter 7.



(c) we found no evidence of planned entry by larger Non-Retail Platform providers that would be timely to constrain the Merged Entity.

- 9.52 We found that there are material barriers to timely entry and expansion in the Retail Investment Platforms market. In particular, internal documents from FNZ suggested that significant time is required to achieve scale in this industry and we found that switching costs are high.
- 9.53 We conclude that entry by new rivals or expansion by existing providers would not be timely, likely and sufficient to outweigh the SLC.

## **Buyer power**

- 9.54 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 less likely.<sup>270</sup>
- 9.55 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.<sup>271</sup>

## ***FNZ submissions***

- 9.56 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.'
- 9.57 FNZ gave the following reasons for customers having substantial power to constrain the Parties:

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<sup>270</sup> [Merger Assessment Guidelines](#), paragraph 5.9.1.

<sup>271</sup> [Merger Assessment Guidelines](#), paragraph 5.9.3

- (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; 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.

### ***Our assessment***

- 9.58 To assess buyer power, we used evidence from our tender analysis and from internal documents and third parties.
- 9.59 When tendering for a new supplier, we found that customers are generally in control of the process. Our tender analysis shows that customers decide whether and when to start a tender process and how it should run.
- 9.60 We also found that, when tendering, customers are able to drive competition amongst suppliers to obtain good terms on their contract. For example, a customer told us that: '[redacted]'.<sup>272</sup>
- 9.61 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 [redacted] in its tender process recommended progressing discussions with multiple suppliers to maintain competitive tension even though one supplier was better suited.<sup>273</sup>
- 9.62 We found that customers whose contracts are due to expire may initiate a tender in order to get a better offer from their incumbent supplier.<sup>274</sup> FNZ internal documents show that customers may consider the option of

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<sup>272</sup> [redacted]

<sup>273</sup> [redacted]

<sup>274</sup> [redacted].

remaining with their current supplier or switching to an in-house solution.<sup>275</sup>

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9.63 Customers may refer to other suppliers' terms in order to negotiate and improve contract terms. For example:

(a) An FNZ customer [redacted].<sup>277</sup>

(b) A GBST customer [redacted].<sup>278</sup>

9.64 We found that the frequency of tenders (especially for larger customers) is low. For these, there may be greater pressure on suppliers to try to win the contract by offering competitive terms, as it would account for a significant, and potentially long term, gain in revenue.

9.65 We found 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.

9.66 While customers use tenders to drive competition between suppliers, there are significant limitations on the extent that they can exploit this process to limit the ability of the Merged Entity to raise prices or otherwise worsen its offering.

9.67 First, we found that switching costs are high (see Chapter 7) and the costs and difficulties involved in switching reduce the negotiating strength of a Retail Platform customer seeking to renew a contract with an existing supplier.

9.68 Second, customers' negotiating strength is significantly limited by there being only a few alternative suppliers to which they can credibly switch. As found in our competitive assessment, FNZ and GBST compete closely against each other and, with the exception of Bravura, other suppliers generally offer only a weak constraint.

9.69 The Merger would reduce an already limited number of credible alternatives for the customers to choose from, significantly reducing the power that customers can exert. The removal of an important alternative for Retail

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<sup>275</sup> [redacted]

<sup>276</sup> [redacted].

<sup>277</sup> [redacted].

<sup>278</sup> [redacted].

Platforms in the UK reduces the buyers' ability to switch, or to threaten to switch, to a credible alternative supplier.

9.70 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'.<sup>279</sup>

(b) A customer, [REDACTED], uses two software suppliers (GBST and JHC) because it is unable to get all of the functionality it needs from a single supplier. It considers that it is easier to move data between its two incumbent systems than it would be to switch to a new supplier. It told us that using two software suppliers has the advantage of creating commercial tension between the suppliers and to provide it with some operational optionality.<sup>280</sup>

9.71 Even if some customers have greater leverage over the Parties due to their size, the limited options available to them significantly reduces their negotiating strength.

9.72 Also, any leverage that some customers may have, due to their size or because there are a wider range of alternatives that meet their requirements, would not protect other customers from price rises given that commercial terms vary with each customer.

9.73 Finally, as set out above, we found that the threat of entry or expansion does not appear to be a credible opportunity for customers seeking alternatives.

### ***Conclusion on buyer power***

9.74 We found that customers can generate competitive tension through their tender processes, and that this may include using tenders to get better terms from their supplier.

9.75 However, we found that this does not equate to countervailing buyer power:

(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

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<sup>279</sup> [REDACTED]

<sup>280</sup> [REDACTED]

difficulty of switching puts customers in a weaker bargaining position with their suppliers; and

(b) customers have a limited choice of suppliers when they do wish to switch and this reduces their negotiating power.

9.76 We found that larger customers may have more bargaining power and may be able to negotiate better terms with suppliers, while smaller ones have a weaker negotiating position.

9.77 The Merger will result in customers losing 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.

9.78 We concluded on the basis of the evidence set out above that the Parties, after the Merger, are unlikely to be prevented from worsening their offer by their customers' buyer power.

### **Rivalry-enhancing efficiencies**

9.79 We considered whether there were any efficiencies arising from the merger that could be considered as a countervailing factor to the SLC we found.

9.80 In order for any efficiency claimed to be considered a countervailing factor the evidence must demonstrate the following criteria is met: timely, likely, sufficient and merger-specific, and it should result in increased rivalry in the relevant market, that is, it should incentivise the merger parties to improve their offering.<sup>281</sup>

### ***FNZ submissions***

9.81 FNZ has not made any specific representations about rivalry-enhancing efficiencies.<sup>282</sup> It told us that the Merger will generate significant benefits and that there may be two key benefits to GBST's customers from the Merger:

(a) [redacted] 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.

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<sup>281</sup> [Merger Assessment Guidelines](#), para 5.7.4(a)

<sup>282</sup> FNZ has submitted that there are Relevant Customer Benefits. These are assessed in Chapter 11.

## ***Our assessment***

- 9.82 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.
- 9.83 Although FNZ has claimed that the Merger will give rise to benefits to GBST's customers, based on the evidence we saw, we do not consider that the two benefits set out above amount to rivalry-enhancing efficiencies.<sup>283</sup> We saw no evidence that any cost savings will be passed on to customers nor that improvements in quality, range, or service are offset by degradation in other parameters.
- 9.84 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.
- 9.85 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.

## ***Conclusion on rivalry enhancing efficiencies***

- 9.86 We concluded that FNZ has not demonstrated that the Merger would result in rivalry-enhancing efficiencies which would offset the SLC we found.

## **Conclusion on countervailing factors**

- 9.87 We concluded that there are no countervailing factors to the SLC we found in the provision of Retail Platform Solutions in the UK.

## **10. Findings on SLC**

- 10.1 As a result of our assessment, we found that the acquisition by FNZ of GBST has resulted in the creation of an RMS.
- 10.2 We concluded that the creation of that RMS has resulted, or may be expected to result, in an SLC, as a result of horizontal unilateral effects, in the supply of Retail Platform Solutions in the UK.

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<sup>283</sup> [MAGs](#), paragraph 5.7.2.

# 11. Remedies

## CMA remedies assessment framework

- 11.1 Where the CMA decides that a completed merger may be expected to result in an SLC,<sup>284</sup> it must decide the following:
- (a) whether the CMA should itself take action under [section 41\(2\)](#) of the Act for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from the SLC;
  - (b) whether the CMA should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from the SLC; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- 11.2 The Act requires that the CMA, when considering possible remedial actions, shall ‘in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it’.<sup>285</sup>
- 11.3 To fulfil this requirement, as set out in our guidance,<sup>286</sup> the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which is least costly or least restrictive. The CMA will also seek to ensure that no remedy is disproportionate to the SLC and its adverse effects.<sup>287</sup> In this consideration, the CMA may also have regard, in accordance with the Act,<sup>288</sup> to any relevant customer benefits (RCBs) arising from the merger.
- 11.4 There are four aspects we must consider in assessing the effectiveness of a remedy:<sup>289</sup>

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<sup>284</sup> Pursuant to [section 35\(3\)](#) of the Act,

<sup>285</sup> [Section 35\(4\)](#) of the Act. See also *Ryanair Holdings PLC v CMA* [2015] EWCA Civ 83 at 57 and *Ecolab Inc v CMA* [2020] CAT 12 (Ecolab) at 75.

<sup>286</sup> [Merger remedies guidance CMA87](#).

<sup>287</sup> [Merger remedies guidance CMA87](#), paragraph 3.6.

<sup>288</sup> [Section 35\(5\)](#) of the Act. See also [Merger remedies guidance CMA87](#), paragraph 3.4.

<sup>289</sup> [Merger remedies guidance CMA87](#), paragraph 3.5.

- (a) *Impact on the SLC and its resulting adverse effects*: normally, the CMA will seek to restore competitive rivalry through remedies that re-establish the structure of the market expected in the absence of the merger.
- (b) *Appropriate duration and timing*: the CMA will prefer a remedy that quickly addresses competitive concerns, with the effect of the remedy sustained for the likely duration of the SLC.
- (c) *Practicality*: a practical remedy should be capable of effective implementation, monitoring and enforcement.
- (d) *Acceptable risk profile*: the CMA will seek remedies that have a high degree of certainty of achieving their intended effect. Customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects.

## Types of remedy

11.5 As set out in our guidance,<sup>290</sup> remedies are conventionally classified as either structural or behavioural:

- (a) Structural remedies, such as a divestiture or prohibition, are generally one-off measures that seek to restore or maintain the competitive structure of the market by addressing the market participants and/or their shares of the market.
- (b) Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of merger parties with the aim of restoring or maintaining the level of competition that would have been present absent the merger.

11.6 In merger inquiries, the CMA generally prefers structural remedies over behavioural remedies, because:

- (a) Structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively, at source, by restoring rivalry;

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<sup>290</sup> [Merger remedies guidance CMA87](#), paragraph 3.34. Some remedies, such as those relating to access to IP rights may have features of structural or behavioural remedies depending on their particular formulation.



- (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
- (c) structural remedies rarely require monitoring and enforcement once implemented.<sup>291</sup>

## Overview of CMA remedies process

- 11.7 Our Notice of Possible Remedies (Remedies Notice)<sup>292</sup> set out two remedy options:
- (a) Divestiture of the entirety of GBST (full divestiture); and
  - (b) divestiture of parts of GBST (partial divestiture).
- 11.8 We invited views on both options, including whether a partial divestiture of GBST across geographic or operating segment could be effective at addressing our competition concerns. We also invited views on aspects of remedy design that might be needed to make a divestiture remedy effective and to ensure that no new competition concerns would arise.
- 11.9 Our preliminary view was that a behavioural remedy would be very unlikely to be an effective remedy to the SLC or any resulting adverse effects we had provisionally found. However, we said that we were willing to consider any remedy, including behavioural remedies that were put forward as part of the consultation.
- 11.10 No respondents suggested any purely behavioural remedies to address the SLC. However, in response to the Remedies Notice, FNZ proposed a UK source code licencing remedy which we consider has some behavioural aspects. We examine this below.
- 11.11 Following the publication of the Remedies Notice, we wrote to 59 third parties asking for written responses<sup>293</sup> and we received 23 substantive responses. In addition, we held hearings with FNZ and GBST and calls with nine third parties.<sup>294</sup>

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<sup>291</sup> [Merger remedies guidance CMA87](#), paragraph 3.46.

<sup>292</sup> [CMA Remedies Notice](#) published 5 August 2020.

<sup>293</sup> 19 platform providers, 35 customers and 5 experts.

<sup>294</sup> [🔗]

- 11.12 FNZ and GBST were provided with our Remedies Working Paper (RWP) which set out our provisional decision on remedies.<sup>295</sup> Both Parties provided written responses to this.
- 11.13 In its response to the RWP, FNZ told us that [redacted].
- 11.14 We noted that FNZ and GBST hold very different views on the effectiveness and proportionality of different remedy options. We consider that the views of both Parties and of third parties may be influenced to some extent by commercial or other incentives. We considered all submissions carefully and with due scepticism, and we judged the extent to which evidence available to us supports the views submitted. Where appropriate, we sought further evidence to ensure that our conclusions are properly informed.
- 11.15 In assessing the effectiveness of the partial divestiture options (and their asset and composition risks in particular), we gave particular weight to evidence provided to us by relevant senior executives (including technical experts) at GBST about how its business operates. We consider that GBST is best placed to provide evidence on its operations, while FNZ has less visibility on this, due to the hold-separate measures that have been in place since the Merger, which have limited FNZ's access to information about GBST.
- 11.16 As part of our evaluation of remedy options, we held calls with GBST's main UK customers. Whilst we have given weight to their views on the potential impact of different remedy options on GBST's ability to serve them well and thereby remain competitive, we note their limited understanding of the internal organisation of GBST's business.
- 11.17 In this chapter, we assess each of the remedy options, starting with a full divestiture of GBST before considering partial divestiture options and FNZ's proposed UK source code licencing remedy. We then conclude on the effectiveness of the remedy options.

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<sup>295</sup> The RWP contained an assessment of the different remedies options and our provisional decision on remedies. The paper also set out our views on whether the merger gives rise to relevant customer benefit and, if so, whether the proposed remedy should be modified in order to preserve those benefits.

## Effectiveness of remedy options

### *Full divestiture*

#### *Description of remedy*

- 11.18 We found that GBST overlaps with FNZ in the provision of Retail Platform Solutions in the UK. In accordance with our guidance, the divestiture of the entire GBST business would represent a starting point for identifying a divestiture package, as it restores the pre-Merger situation in the market where we have found an SLC.<sup>296</sup>
- 11.19 A full divestiture would involve FNZ divesting the entirety of the shareholding in GBST that it acquired on 5 November 2019. This would be an unwinding of the Merger, akin to a prohibition if the Merger had not been completed.

#### *Views of main parties and third parties on full divestiture*

- 11.20 FNZ did not dispute the effectiveness of the full divestiture of GBST but told us that it would be ‘entirely unreasonable and disproportionate’ because:
- (a) Less onerous remedies are available;
  - (b) 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, when the SLC relates solely to UK Wealth Management retail platform solutions market; and
  - (c) it would result in the loss of RCBs.
- 11.21 In response to our RWP, FNZ re-iterated its view that a full divestiture would be ‘disproportionate and unreasonable’. It made no further comments on the effectiveness or otherwise of a full divestiture beyond those set out in its response to the Remedies Notice.
- 11.22 GBST told us that: ‘full divestiture of GBST represents the only comprehensive and effective remedy to all aspects of the SLC and the resulting adverse effects, that the CMA has provisionally found’.<sup>297</sup>

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<sup>296</sup> [Merger remedies guidance CMA87](#), paragraph 5.6. ‘In identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business. This is because restoration of the pre-merger situation in the markets subject to an SLC will generally represent a straightforward remedy.’

<sup>297</sup> GBST response to the CMA’s Remedies Notice, page 1.

- 11.23 GBST also told us that ‘a structural remedy is necessary in order to restore the loss of competition between the parties at source and ensure the structure of the market itself continues to drive rivalry between the parties in the medium/long term’.<sup>298</sup>
- 11.24 Of the written responses from third parties to the Remedies Notice:
- (a) Nearly all (19 of 23) said that a full divestiture would remedy the SLC. The remaining four responses did not specifically comment on whether full divestiture would remedy the SLC and, of these, two advocated for a partial divestiture option.
  - (b) Most (13 of the 23) indicated that full divestiture would be relatively straightforward as it would not involve separating parts of a highly integrated business. The remaining ten responses did not provide a view on the ease of full divestiture.
  - (c) No respondents said that full divestiture would not be effective.

#### *Assessment of effectiveness*

- 11.25 As set out above, our view on the effectiveness of a remedy involves our assessment of: its impact on the SLC and resulting adverse effects; appropriate timing and duration; its practicality, and its risk profile.<sup>299</sup>
- 11.26 A divestiture of GBST by FNZ to a suitable purchaser would have the effect of restoring the pre-Merger market structure and associated levels of rivalry (in line with the counterfactual in this case) thereby directly remedying the SLC that we found and prevent the adverse effects from arising. It would remedy the SLC in a timely manner. We did not find that the SLC was time limited and once the divestiture has been implemented, competition would be restored. In addition, a full divestiture would be a practical remedy as it would not require ongoing enforcement or monitoring.
- 11.27 Subject to managing the largely practical risks normally associated with any divestiture remedy, we do not envisage that a full divestiture would encounter material implementation challenges.
- 11.28 The remainder of this section focuses on the design of a full divestiture remedy, which contributes to our assessment of its effectiveness.

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<sup>298</sup> GBST response to the CMA’s Remedies Notice, page 5, paragraph 3.2 and [x<]

<sup>299</sup> [Merger remedies guidance CMA87](#), paragraph 3.5.

*Full divestiture remedy: design considerations*

- 11.29 We assess the risk profile of a divestiture remedy by considering its design. There are three categories of risk that could impair the effectiveness of any divestiture remedy: composition risk, purchaser risk and asset risk:<sup>300</sup>
- (a) Composition risk arises if the scope of the divestiture package is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
  - (b) purchaser risk arises if a suitable purchaser is not available or if a divestiture is made to a weak or otherwise inappropriate purchaser; and
  - (c) asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture.
- 11.30 An effective divestiture remedy must give us sufficient confidence that these risks can be properly addressed in its design. We therefore consider the following design issues:
- (a) The appropriate scope of the divestiture package – and the implications for composition risk;
  - (b) the identification and availability of suitable purchasers – and the management of purchaser risk; and
  - (c) ensuring an effective divestiture process which will ensure a timely remedy and to manage asset risk associated with this Merger.
- *Scope of divestiture package*
- 11.31 In considering the appropriate scope for a divestiture package, the CMA seeks to ensure that it:
- (a) Is sufficiently broad in scope to address all aspects of the provisional SLC and resulting adverse effects;
  - (b) would enable the eventual purchaser to operate the divested business as an effective competitor; and
  - (c) is sufficiently attractive to potential purchasers.

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<sup>300</sup> [Merger remedies guidance CMA87](#), paragraph 5.3.

11.32 Since completion of the Merger there has been no integration between FNZ and GBST as a result of the hold-separate requirements under our interim measures.<sup>301</sup> We therefore considered that it would be a straightforward exercise to specify the scope of the divestiture package under a full divestiture remedy.

11.33 A full divestiture remedy requires FNZ to sell GBST to a suitable purchaser, who would acquire the GBST business with all of its assets and staff. This would effectively reverse the Merger and thereby minimise the composition risk of omitting (or FNZ retaining) any key assets from the divestiture package.

11.34 No third parties raised any concerns with the scope of a full divestiture.

- *Purchaser risk*

11.35 In our Remedies Notice, we invited views on whether there were any specific factors to which we should have regard in assessing purchaser suitability, and whether there were risks that a suitable purchaser would not be available.<sup>302</sup>

*Criteria for assessing purchaser suitability*

11.36 In line with our guidance,<sup>303</sup> we would need to be satisfied that a prospective purchaser:

(a) Is independent of FNZ;

(b) has the necessary capability to compete;

(c) is committed to competing in the relevant market; and

(d) that divestiture to the purchaser will not create a realistic prospect of further competition concerns.

11.37 GBST told us that, provided that these criteria are met, 'GBST considers that no class of potential purchasers (such as private equity funds or financial sponsors) should be excluded from acquiring GBST'.<sup>304</sup>

11.38 The main criteria that third parties identified as important for suitable purchasers were: experience in a related market, although not necessarily

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<sup>301</sup> See [webpage](#) for Initial Enforcement Order, 14 November 2020 and Interim Order, 13 May 2020.

<sup>302</sup> [CMA Remedies Notice](#), paragraph 23(e), page 6.

<sup>303</sup> [Merger remedies guidance CMA87](#), paragraph 5.21(b)–(e).

<sup>304</sup> GBST response to the Remedies Notice, paragraph 1.4.4.

the UK; a commitment to the UK market; a strong balance sheet in order to invest in R&D.

- 11.39 Four third parties indicated that Non-Retail platform solutions providers would potentially be suitable purchasers but did not provide specific reasons as to why this was the case.<sup>305</sup>
- 11.40 [REDACTED], a competitor to FNZ, told us ‘it is unlikely Non-Retail Platforms would be appropriate purchasers as they tend to operate their own propositions and distribution models, on their own technology, rather than powering other parties’ solutions. They would also have limited capital resources available to afford this size of transactions or continue to invest into it from an R&D perspective.’<sup>306</sup>
- 11.41 Six third parties indicated that private equity firms could be suitable purchasers, but they did not provide specific reasons.<sup>307</sup>
- 11.42 Two GBST customers told us that private equity firms might not be suitable purchasers:
- (a) [REDACTED] preferred long-term contracts with a supplier to ensure commitment and investment and private equity generally have shorter contractual periods.<sup>308</sup>
- (b) [REDACTED] told us that some private equity buyers might not be suitable because they often have shorter investment horizons. Market and customer relationships are such that a long-term investor is required.<sup>309</sup>
- 11.43 We envisage that a full divestiture would be to a single purchaser as divestiture to several purchasers would pose an unacceptably high purchaser risk and would reduce the effectiveness of the remedy.
- 11.44 Prior to the Merger, GBST was a standalone business and has all the expertise and know-how to continue to operate. In our view, this reduces the risk that might otherwise be associated with a purchaser who did not have experience of operating in the relevant market prior to acquisition.
- 11.45 No comments were received from the main parties or third parties that would suggest we would need to adapt the purchaser criteria set out above. We do not judge it necessary to rule out the prospect that a private equity

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<sup>305</sup> [REDACTED].  
<sup>306</sup> [REDACTED].  
<sup>307</sup> [REDACTED].  
<sup>308</sup> [REDACTED].  
<sup>309</sup> [REDACTED].

firm, or a provider of Non-Retail Platform Solutions or any other class of buyer could be a suitable purchaser for a full divestiture, provided they meet our criteria.

11.46 Based on the evidence set out above, we consider that we do not need to factor into our assessment of potential purchasers for a full divestiture any other considerations than those criteria set out above.

- *Likely availability of suitable purchasers*

11.47 FNZ told us that it had [REDACTED].

11.48 GBST told us that [REDACTED].

11.49 During the course of the inquiry FNZ submitted that GBST is [REDACTED].<sup>310</sup> If this were true, it may make finding a suitable purchaser difficult. However, GBST's last financial results show both revenues and profits increasing and it has a strong customer base. We note that three companies bid to acquire GBST prior to the Merger and FNZ paid a purchase price which was [REDACTED].<sup>311</sup>

11.50 As part of the CMA's purchaser assessment process, the CMA would ensure that any purchaser had the necessary capability, which would include financial resources to support and develop GBST and its products.

11.51 No third parties expressed concern about the availability of a suitable purchaser for GBST. Six third parties indicated there are likely to be interested purchasers for the whole GBST business.

11.52 Based on the evidence received, and on our knowledge of GBST, we consider that it is likely that there would be a pool of suitable purchasers for the GBST business and we would not rule out any particular types of buyers at this stage. This view is supported by the fact that GBST is an established stand-alone business and would not be dependent on finding a purchaser with strongly complementary assets or operations.

11.53 Based on the information available, we consider the purchaser risk associated with a full divestiture of GBST to be low.

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<sup>310</sup> For example, see FNZ Initial Phase 2 submission, section 7

<sup>311</sup> See Chapter 2.



### *Effective divestiture process*

- 11.54 An effective divestiture process will safeguard the competitive potential of the divestiture package before disposal and will secure a suitable purchaser within an acceptable timescale, as well as allowing prospective purchasers to make an appropriately informed acquisition decision.<sup>312</sup>
- 11.55 The incentives of merger parties may increase the risks of divestiture. Although merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves. Merger parties may therefore seek to divest to firms which they perceive as weaker competitors or may allow the competitiveness of the divestiture package to deteriorate during the divestiture process.<sup>313</sup>
- 11.56 The circumstances of this case raise the following issues for consideration in relation to the divestiture process:
- (a) The appropriate timescale for divestiture to take place;
  - (b) whether, and under what circumstances, there is a need to appoint an external and independent trustee to complete a divestiture (a Divestiture Trustee) to mitigate the risk that the divestiture does not complete within the timescales specified; and
  - (c) the role of interim measures during the divestiture process.
- 11.57 We consider each of these below.
- *Timescale allowed for divestiture*
- 11.58 We considered what would be an appropriate timescale to allow FNZ to implement the divestiture (the “Initial Divestiture Period”). This would normally run from the acceptance of final undertakings or the making of a final order (for which the statute provides a period of up to 12 weeks after publication of this final report) until legal completion of an effective divestiture (that is, a sale to a purchaser approved by the CMA).
- 11.59 In considering an appropriate Initial Divestiture Period, our guidance states that we ‘will seek to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that

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<sup>312</sup> [Merger remedies guidance CMA87](#), paragraph 3.51.

<sup>313</sup> [Merger remedies guidance CMA87](#), paragraph 5.4.

favour a longer duration, such as canvassing a sufficient selection of potential suitable purchasers and facilitating adequate due diligence'.<sup>314</sup> Our guidance also states that the Initial Divestiture Period will normally be a maximum period of six months.

- 11.60 FNZ told us that full divestiture of GBST could be implemented within [REDACTED].
- 11.61 GBST told us that the Initial Divestiture Period should be 'minimised to the extent possible'. It said:
- (a) [REDACTED].
  - (b) [REDACTED], and that [REDACTED].
  - (c) [REDACTED].<sup>315</sup>
- 11.62 GBST told us that a maximum of [REDACTED] will be sufficient for a full divestiture. GBST noted that [REDACTED]; that the previous sales materials could be quickly refreshed and that no integration between FNZ and GBST has taken place.
- 11.63 Some GBST customers submitted that the transaction and Merger inquiry has affected GBST's service:
- (a) [REDACTED] said that it considers the transaction and review process has distracted GBST management and that a swift resolution would be best for all.<sup>316</sup>
  - (b) [REDACTED].<sup>317</sup>
- 11.64 [REDACTED] and [REDACTED] all told us that the longer the divestiture period, the more disruption for the divestiture business, therefore a short Initial Divestiture Period is preferable.<sup>318</sup>
- 11.65 In light of the long-term nature of customer relationships and the investment commitment that customers require from suppliers, as well as the prolonged period of uncertainty that GBST and its customers have already experienced, it is clear to us that the longer the divestiture process, the greater the risk of harm to GBST's business (which we classify as an asset risk).

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<sup>314</sup> [Merger remedies guidance CMA87](#), paragraph 5.41.

<sup>315</sup> GBST response to the Remedies Notice, page 3, paragraph 1.6.

<sup>316</sup> [REDACTED]

<sup>317</sup> [REDACTED]

<sup>318</sup> Responses to the Remedies Notice.

11.66 Moreover, in light of the lack of integration between FNZ and GBST and, as noted above, the relatively low purchaser risk, we consider a full divestiture of GBST would be relatively simple to implement.

11.67 In light of these circumstances, [REDACTED].

*Provision for appointment of a Divestiture Trustee*

11.68 The CMA's standard practice is to provide for the appointment of a Divestiture Trustee to dispose of the divestiture package, if the divesting party (in this case, FNZ) fails to achieve an effective disposal within the Initial Divestiture Period, or if the CMA has reason to be concerned that FNZ will not achieve an effective disposal within the Initial Divestiture Period. This helps ensure that FNZ has a sufficient incentive to implement the divestiture promptly and effectively.

11.69 The task of a Divestiture Trustee, if appointed, would be to complete the divestiture of GBST to a potential purchaser approved by the CMA in a timely manner, with no minimum price specified.<sup>319</sup>

11.70 In our Remedies Notice, we invited views on whether the circumstances of this Merger necessitated the appointment of a Divestiture Trustee at the outset of the divestiture process.<sup>320</sup>

11.71 GBST told us that a Divestiture Trustee was needed from the outset of the Initial Divestiture Period in order to ensure the divestiture process is completed as soon as possible without further degradation of the GBST business.<sup>321</sup> It said that

(a) [REDACTED].

(b) the closeness of competition between the two parties [REDACTED].<sup>322</sup>

(c) it [REDACTED].<sup>323</sup>

(d) the purpose of Interim Measures is to protect the viability of the business rather than to ensure that FNZ does not undermine the Divestiture process.

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<sup>319</sup> [Merger remedies guidance CMA87](#), paragraph 5.43.

<sup>320</sup> [CMA Remedies Notice](#), page 7, paragraph 30.

<sup>321</sup> GBST response to the Remedies Notice, Executive Summary.

<sup>322</sup> GBST response to the Remedies Notice, page 16, paragraph 6.6.

<sup>323</sup> GBST response to the Remedies Notice, page 17-18, paragraph 6.6.1-5.

- 11.72 We consider that the potential risks that GBST identified can be mitigated through the continued use of interim measures during the sales process (as described below), along with the continued involvement of a monitoring trustee.
- 11.73 On balance, we consider that [X] Initial Divestiture Period with a monitoring trustee, combined with the ability to appoint a Divestiture Trustee if there is insufficient progress towards divestiture, should be sufficient to address the potential risk.
- 11.74 To ensure a timely completion of this remedy, we conclude that we reserve the right to appoint a Divestiture Trustee including if:
- (a) The CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period; or
  - (b) the CMA reasonably believes FNZ is not engaging constructively with the divestiture process; or
  - (c) FNZ fails to complete the divestiture process within the Initial Divestiture Period.

### ***Conclusion on the effectiveness of a full divestiture remedy***

- 11.75 We conclude that the full divestiture of GBST would be a comprehensive and effective remedy to the SLC and its resulting adverse effects. It would have appropriate duration and could be implemented in a timely way with a low risk profile.

## **Partial divestiture options**

### ***Overview of the options***

- 11.76 A partial divestiture would involve FNZ divesting a part of GBST, but not the entire business.
- 11.77 In defining the scope of a divestiture package that will satisfactorily address the SLC, the CMA will normally seek to identify the smallest viable, standalone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of

competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired.<sup>324</sup>

- 11.78 We found that the Parties overlap in the supply of Retail Platform Solutions in the UK. The smallest divestiture that could potentially address the SLC would be the sale of a UK Wealth Management business.
- 11.79 However, there is currently no standalone UK Wealth Management business: GBST operates a single global business with most staff, intellectual property (IP), assets, infrastructure and R&D shared across geographies and between its Wealth Management and Capital Markets divisions. Many business functions and staff required by a UK Wealth Management business, are based outside of the UK.
- 11.80 This means that a divested business would need to be 'carved out' of GBST to create a new commercial entity. This introduces additional risks, relative to the divestiture of a standalone business unit.<sup>325,326</sup>
- 11.81 In the Remedies Notice we identified three potential partial divestiture options:
- (a) Aa UK Wealth Management divestiture;
  - (b) a global Wealth Management divestiture; and
  - (c) a divestiture of all of GBST's UK operations.
- 11.82 Based on responses from the Parties and third parties and after review of further evidence, we decided that only the first two partial divestiture options merited detailed consideration. The third option was likely to add significant additional complexities to, and risks of, achieving an effective divestiture, over and above the risks and complexities associated with the other two options, for very little commercial benefit for any party. This option received no positive response from the Parties and third parties.

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<sup>324</sup> [Merger remedies guidance CMA87](#), paragraph 5.7.

<sup>325</sup> DG COMP's Merger Remedies Study found that carve out problems were a common cause of serious design and implementation issues in a significant proportion of divestiture remedies within its purview. [Merger remedies guidance CMA87](#), footnote 109.

<sup>326</sup> It is usually preferable to divest entire businesses rather than partial divestitures, due to the complexities of ring-fencing the transferring operations. Where partial divestments are progressed, it is vital that the CMA has the full co-operation of all the parties involved to ensure the transfer can progress smoothly and the customer base is not disadvantaged by the move to the new entity: [Merger remedy Evaluations](#), paragraph 23(c).

## **General views of main parties and third parties on effectiveness of a partial divestiture**

- 11.83 FNZ submitted that a partial divestiture remedy would be fully effective in addressing the SLC, but would be disproportionate compared to its proposed Source Code Licensing Remedy.<sup>327</sup> We examine this remedy option later in this chapter.
- 11.84 FNZ told us that, of the options presented in the Remedies Notice, the divestiture of GBST's UK wealth management business is the best targeted to the SLC identified by the CMA.<sup>328</sup>
- 11.85 GBST told us that 'any form of partial divestiture would be insufficient' to 'achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it' and would 'present material asset and purchaser risk'.<sup>329</sup>
- 11.86 Ten third parties indicated that a partial divestiture could in theory address the SLC,<sup>330</sup> but of those, seven said partial divestiture would not work in practice.<sup>331</sup> These views are set out in more detail under each remedy proposal below.
- 11.87 We consider that the views of GBST's UK customers on a partial divestiture are of particular importance, as they would need to retain confidence in the capability of any divested business in order for it to remain competitive.
- 11.88 None of GBST's UK customers supported any partial divestiture. The most common concerns articulated to us were the risks of separating an integrated business, the disruption this would cause, and the resultant impact on them. For example, [redacted] told us that 'we can only see a full sale to a new and independent owner, and do not see how a partial sale would be possible'.<sup>332</sup>
- 11.89 One third party who is not a GBST customer, [redacted], indicated that a partial divestiture could be 'sufficient', if the divestiture package included 'the entirety of the selling, delivery and support of platform technologies and services'.<sup>333</sup>

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<sup>327</sup> FNZ response to the Remedies Notice, paragraph 1.6.

<sup>328</sup> FNZ response to the Remedies Notice, paragraph 1.6.

<sup>329</sup> GBST response to Remedies Notice, page 5, paragraph 4.1.

<sup>330</sup> [redacted]

<sup>331</sup> [redacted]

<sup>332</sup> [redacted]

<sup>333</sup> [redacted].

## ***Assessment of the effectiveness of partial divestiture options***

- 11.90 We assessed the risk profile of partial divestiture remedy options as part of our consideration of their effectiveness and its potential design. We use the same framework as for full divestiture:
- (a) There are three categories of risk that could impair the effectiveness of any divestiture remedy: composition risk, asset risk and purchaser risk.<sup>334</sup>
  - (b) To be effective, a divestiture remedy must give us sufficient confidence that these risks can be properly addressed in its design, by reference to the scope of the divestiture package, the identification and availability of suitable purchasers and – should an appropriate divestiture package be found - the process to be followed to achieve an effective disposal.
- 11.91 We found that both partial divestiture options had common risks and design issues. We therefore considered these together and delineated between the two remedies where a risk manifests itself differently for each, before concluding with an assessment of the effectiveness of each option.

### *Description of partial divestiture options*

#### *UK Wealth Management divestiture*

- 11.92 FNZ proposed to divest a UK Wealth Management business from GBST, which included the following:
- (a) Existing UK legal entities;
  - (b) all staff engaged directly in the UK Wealth Management business and, [REDACTED];
  - (c) UK Wealth Management customer contracts, [REDACTED];
  - (d) full independent ownership of GBST's UK source code and related UK software and peripheral products including Composer [REDACTED];
  - (e) all software, IP, and infrastructure that is owned or licensed by GBST that is used exclusively by the UK business [REDACTED]; and
  - (f) worldwide, exclusive use of the GBST brand.

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<sup>334</sup> [Merger remedies guidance CMA87](#), paragraph 5.3.

11.93 We assessed the UK Wealth Management divestiture based on the scope of this proposal and took account of the following additional elements that FNZ proposed it could divest if required or requested by the purchaser:

- (a) Any head office assets, such as premises in Australia;
- (b) any shared staff who have responsibilities spanning more than UK Wealth Management, including Capital Markets and corporate functions;
- (c) licences to any shared IT/IP that is used by both the UK Divestment business and the Capital Markets business; and
- (d) any further services, assets (including software and infrastructure) or resource used in both the Australian and UK wealth management businesses which are not owned by or contracted with the UK legal entities, unless such assets were specifically carved out as not transferring.

11.94 FNZ proposed that it would retain the GBST Capital Markets business and the Australian Wealth Management business, including the Australian legal entity, Australian customer contracts, a mirror copy of the Australian localised version of GBST's Wealth Management source code, with no obligation on the owner of the original source code to provide any updates. FNZ would retain Wealth Management employees who have roles and responsibilities exclusively limited to GBST's Australian Wealth Management business.

11.95 In addition, FNZ made a procedural proposal [REDACTED]:

- (a) [REDACTED];
- (b) [REDACTED].

11.96 We address this procedural proposal later in this chapter.

#### *Global Wealth Management divestiture*

11.97 This option would involve FNZ divesting GBST's global Wealth Management business. FNZ did not describe a specific proposal for this option in detail. We consider, following the approach taken by FNZ to a UK Wealth Management divestiture, that this option would be likely to include all of the customers, assets, legal entities and staff associated with the global Wealth Management business. It would exclude resources and operations directly involved in the Capital Markets business and these would be retained by FNZ.



11.98 FNZ told us that the implementation period '[f]or a divestment of the global wealth management the stages of the divestment process [X] as those illustrated in the timelines for the UK Divestment Business' (although see also paragraph 11.104).

#### *Views of FNZ on partial divestiture options*

- 11.99 FNZ told us that the divestiture of GBST's UK Wealth Management business is the best targeted to the SLC identified by the CMA.
- 11.100 FNZ told us that 'a UK Wealth Management Business could be readily and quickly carved out to form a standalone 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'.<sup>335</sup>
- 11.101 FNZ considered that a UK Wealth Management business could 'be run independently by the purchaser upon completion of the divestment, competing with FNZ and other players in the market'<sup>336</sup> and therefore would be effective.
- 11.102 FNZ described it as a 'reverse-carve out' of the Australian business, which FNZ would retain, 'given the extent of the assets which would form part of the divestment'. FNZ told us that it would not be 'particularly difficult, expensive, or time-consuming, nor that it would result in any material disruption to GBST customers'.
- 11.103 FNZ also submitted that this option would result in the loss of 'benefits of between £[X]and £[X]per annum, including lost Relevant Customer Benefits (RCBs) conservatively estimated to be between £[X]and £[X]'.<sup>337</sup> We consider RCBs separately below.
- 11.104 FNZ considered that a partial divestiture of GBST's global Wealth Management business would be 'disproportionate and unreasonable'<sup>338</sup> but that no asset, composition, purchaser or implementation risk would arise with it.
- 11.105 FNZ said that it considered that a global Wealth Management divestiture may take longer than a UK-only option as [X].

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<sup>335</sup> FNZ response to Remedies Notice, page 20, paragraph 5.11.

<sup>336</sup> FNZ response to Remedies Notice, page 22, paragraph 5.15.

<sup>337</sup> FNZ response to Remedies Notice, page 2, paragraph 1.

<sup>338</sup> FNZ response to Remedies Notice, page 25, paragraph 5.25

### *Views of GBST on partial divestiture options*

- 11.106 GBST told us that a partial divestiture would give rise to ‘significant asset and composition risks because of how GBST operates. It told us that its underlying core products in each business are developed, maintained and sold to clients on a global basis. Moreover, the level of integration between different parts of GBST and the level of interdependence between different jurisdictions and businesses would present significant challenges in carving-out the UK or Wealth Management operating segment of GBST’.<sup>339</sup>
- 11.107 GBST told us that a UK Wealth Management divestiture would not be an ‘appropriate or effective remedy’ to the SLC and that it would not be feasible and would give rise to ‘significant levels of risk which harm the divestment business’s competitive position and not address the SLC provisionally identified.’<sup>340</sup>
- 11.108 GBST told us that separation for either partial divestiture option would mean ‘unravelling all connections and inter-dependencies between the businesses’. It said that this ‘would be extremely challenging and detrimental to client service requirements and regulatory compliance across the business, thus damaging the viability of the carved-out business’.
- 11.109 GBST told us that, for a global Wealth Management divestiture, it would be theoretically possible to split shared services, but that there were risks. GBST told us that [X] will probably take [X] [12-24 months].

### *Views of third parties on partial divestiture options*

- 11.110 GBST’s main UK customers told us that they considered that a partial divestiture may create risks to the quality of service they receive from GBST because of the time and disruption that would be needed to separate an integrated business.
- 11.111 We received views from 23 third parties including customers, competitors and industry consultants.
- 11.112 Four out of 23 third parties indicated that the divestiture of GBST’s UK Wealth Management business would not remedy the SLC,<sup>341</sup> while no third party specifically indicated that it would.

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<sup>339</sup> GBST response to the Remedies Notice, executive summary, page 1.

<sup>340</sup> GBST response to Remedies Notice, page 13, paragraph 4.11.

<sup>341</sup> [X]

- (a) a competitor, [REDACTED] indicated that this option would suffer from the same issues as the other partial divestiture options, because it would be very difficult to carve out this business from the broader GBST business. It told us ‘this partial divestiture combines the complications of both the Wealth Management and geographic split and would not be viable.’<sup>342</sup>
- (b) another competitor, [REDACTED] told us ‘it would be difficult to implement the separation required to implement this remedy and it would likely result in ongoing disruption to GBST and deterioration in its competitive capabilities.’<sup>343</sup>

11.113 Five competitors said that the divestiture of the global Wealth Management business may remedy the SLC, at least in theory.<sup>344</sup> However, three of these five indicated that it may not be possible in practice as it is integrated with the broader GBST business. They also said that a partial divestiture could undermine the competitive capability of the divestiture business.<sup>345</sup>

- (a) Two competitors, [REDACTED] and [REDACTED], told us that they considered that the global Wealth Management business could be carved out of the broader GBST business and that they understood that it did not have any material dependency on GBST’s Capital Markets business.<sup>346</sup>
- (b) A consultant, [REDACTED], gave specific examples of the difficulty in separating the businesses. It said that GBST’s Digital Experience unit appears to be shared between Wealth Management and Capital Markets customers and that, as a result, separating it is likely to be difficult. Similarly, it said that R&D budgets are likely to be shared between Capital Markets and Wealth Management and, therefore, a partial divestiture would need to determine how to appropriately split these, which would be challenging.<sup>347</sup>
- (c) A platform provider, [REDACTED] told us that having a Capital Markets division closely aligned with a Wealth Management business may be more efficient and cost-effective, so splitting them may increase costs for customers.<sup>348</sup>

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342 [REDACTED]  
343 [REDACTED]  
344 [REDACTED].  
345 [REDACTED]  
346 [REDACTED]  
347 [REDACTED].  
348 [REDACTED]

### *Risks of partial divestiture options*

11.114 We considered the risk profile of the two partial divestiture options under consideration to determine whether we could have a sufficient degree of confidence that either option would be effective. Our analysis is set out below as follows:

(a) Composition risks

(i) Risks associated with breaking up shared personnel and infrastructure

(ii) Risks to financial resilience and incentives to invest

(iii) Other composition risks

(b) Asset risks

(i) Risks of customer disruption

(ii) Risks associated with intellectual property

(c) Purchaser risks

(d) Consequential risks

(i) Ongoing relationships between FNZ and GBST

### *Composition risks*

11.115 To be an effective remedy, the scope of a divestiture package must be sufficient to attract a suitable purchaser and to allow the divested business to operate as an effective competitor in the market. If it does not, this would give rise to a composition risk.<sup>349</sup>

11.116 FNZ told us that neither partial divestment options carry composition (or other) risks.

11.117 We consider that GBST is best placed to describe how its Wealth Management business is currently run and therefore how separation of it may be effected, and we found their evidence on this issue to be largely credible. Our assessment below is therefore primarily based on evidence

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<sup>349</sup> [Merger remedies guidance CMA87](#), paragraph 5.3.

from GBST on these matters which we have explored and critically evaluated in particular areas in order to allow us to reach a view.

- *Risks of separating shared resources*

11.118 GBST told us that there is a level of integration between its Wealth Management and Capital Markets businesses and it has increased the level of integration since the businesses were brought together 13 years ago. The integration covers resourcing, including its most specialist technology staff, the subject matter experts (SMEs), systems and programmes and it covers both businesses and geographies.

11.119 GBST explained to us how its SMEs are currently integrated across Wealth Management and Capital Markets:

(a) It operates a matrix structure which allows SMEs to be deployed according to the need across the group. SMEs are not divided by geography or division but by a technology specialism (such as [redacted]) that can be leveraged across division and geography. Certain specialisms may be more relevant to a division or geography but SMEs support both divisions; and

(b) SMEs are specialists in particular areas of the system because the software is so complex that nobody is expert across all of it.

11.120 GBST told us how its technology resources are shared across GBST:

(a) A large proportion of the technology team works across both parts of the business. [redacted];

(b) of approximately [redacted];

(c) the [redacted], which is critical to product development, works across the entire group. Each has different skills so that the team has full coverage of required skills;

(d) [redacted]; and

(e) [redacted].

11.121 GBST's description of its shared technology resources indicates that either partial divestiture option would require the separation of resources and their expertise. This creates a composition risk that a purchaser could lose access to the expertise it would need to compete effectively.

11.122 The risk exists for both partial divestiture options:

- (a) the risk is higher for a UK Wealth Management divestiture because there would need to be a greater loss of expertise in order to create a divested business with a proportionate cost base; and
- (b) a Global Wealth Management divestiture would still be likely to lose some expertise as FNZ would need to retain this to support the Capital Markets business.

11.123 Whilst the risk of loss of expertise might be mitigated if most or all of GBST's technology resources transferred to the divestiture business, this would reduce the financial viability of the divestiture business. We cover this below.

11.124 We therefore consider that the separation of technology resources that are currently shared across GBST would create material composition risks that could not be adequately mitigated in the design of the divestiture package.

- *Risks of separating shared infrastructure*

11.125 GBST told us that its infrastructure has been consolidated over the last 13 years including tools for manufacturing its software and those needed for source code control and its help desk.

11.126 GBST told us that the following areas of infrastructure would need to be separated for either partial divestiture option:

- (a) Premises, data centres and cloud services. These are currently used by both Wealth Management and Capital Markets customers and, while one area may be specific for Wealth Management, it runs on the same physical infrastructure (for example, firewall and network connectivity) as Capital Markets;
- (b) all internal business systems used to support the business;
- (c) all systems needed to support the development of GBST's products for clients, for example, project management systems, source code control, development environments; and
- (d) all systems needed to provide managed services to GBST's clients such as the data centres where client environments are hosted.<sup>350</sup>

11.127 The separation of these areas of infrastructure creates a risk that a divested business may be in a structurally weaker position than GBST today. The

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[X].

level of risk depends on the importance of the infrastructure and the ease with which it can be separated from use across both Wealth Management and Capital Markets businesses.

- 11.128 GBST gave the example of the [redacted] application – to split this would involve moving to a new implementation which would then need to be configured. GBST would then need to migrate ‘all the data that was there, service requests, velocity and progress of projects, etc. GBST said that ‘it is not as simple as building a new system and then doing a one-off migration; it would have two systems in use, both changing data’. [redacted].
- 11.129 GBST gave another example regarding separation of its servers. This would need an image of the work undertaken by each team to be taken in order to start building security protocols and deploy configuration for each business. It said that this separation may not take as long as for the workflow application but that it would not be simple.
- 11.130 GBST told us that activities associated with separation would require the knowledge of its SMEs who would also be required to continue running the business and supporting customers.
- 11.131 FNZ told us that partial divestiture of the UK Wealth Management business could be achieved via a ‘reverse carve-out’ of the Australian business whereby the extent of the assets retained by the purchaser would mitigate the composition risks they might face.
- 11.132 We consider that, while a reverse carve-out might reduce the composition risk of a partial divestiture to some degree, this raises a risk around financial resilience given the need for the divested business to have a proportionate cost base. We assess this below.
- *Financial resilience and incentives to invest*
- 11.133 We investigated the financial risk of the two partial divestiture options. We explored the options separately as the financial risk profiles are significantly different for each.
- *UK Wealth Management divestiture*
- 11.134 FNZ told us that the UK Wealth Management business would be financially resilient because it is profitable at present and it represents [redacted]% of GBST’s Wealth Management revenues globally.
- 11.135 FNZ also submitted that some fixed costs, [redacted].

11.136 As shown in Figure 11.1 below, GBST's UK Wealth Management business represents [REDACTED]% of its revenues at present. GBST told us that its UK Wealth Management business is currently profitable on a stand-alone basis.

**Figure 11.1: GBST 2019 revenue split by operating segment**

[REDACTED]

**Source:** Adapted from FNZ Remedies hearing presentation.

- 11.137 GBST queried the financial position of a standalone UK Wealth Management business if it retained resources that are currently shared across the wider business. GBST told us that [REDACTED].
- 11.138 GBST's fixed costs are currently spread across its UK and global businesses. There is a risk that it would be less able to operate profitably than GBST today, because it would have to recover costs from UK-only revenue without having a proportionate reduction in fixed costs. This makes the financial viability of a UK Wealth Management divestiture uncertain.
- 11.139 Given the current extent of integration within GBST, we have not seen any evidence indicating that its fixed costs can, in practice, be separated in a way that would leave the divested business with a cost base proportionate to its revenue.
- 11.140 A UK Wealth Management business would also lose the efficiencies and synergies that GBST benefits from in its sharing of technical resources and infrastructure across its business. The loss of these would put the divestiture business in a structurally weaker position than GBST was prior to the Merger. We have not seen evidence that enables us to be confident that a suitable purchaser could compensate for the loss of these synergies in a timely manner.
- 11.141 GBST also currently recoups R&D costs from across both businesses. This would not be possible under either partial divestiture option so the divested business would have lower incentives to invest in R&D compared to the pre-Merger situation.
- 11.142 This indicates that the risk to the financial viability of a UK Wealth Management divestiture option is material. It is conceivable that the loss of revenue could be compensated to some degree by a purchaser with highly complementary operations, such as a Retail Platform Solutions provider not currently present in the UK. However, this places considerable, and in our view, excessive weight on finding a purchaser which can compensate for this risk to the divestiture package.



11.143 Taken together, the evidence and analysis above leads us to conclude that a divested UK Wealth Management business is likely to be in a materially weaker financial position than GBST's UK operations currently are as part of an integrated global business.

○ *Global wealth management divestiture*

11.144 As shown in Figure 11.1 above, GBST's global Wealth Management business represents [X]% of its current revenue. It is profitable on a stand-alone basis.<sup>351</sup>

11.145 As a larger business than a UK Wealth Management business, it would be more likely to be profitable on a stand-alone basis once separated from GBST's Capital Markets business. There would also be less risk to R&D investment than for a UK Wealth Management divestiture.

11.146 However, we found that this remedy has some similar financial risks to those identified for a UK Wealth Management divestiture:

(a) The divested business would lose the ability to benefit from any synergies gained from sharing resources, technology and infrastructure with the Capital Markets business; and

(b) GBST invests in R&D that benefits both Wealth Management and Capital Markets businesses and this efficiency and synergy would be lost.

11.147 This would leave the divested business financially weaker than GBST pre-Merger as costs and resources will no longer be shared with a wider business.

11.148 The risks of reduced financial resilience associated with a global Wealth Management divestiture are lower than for a UK Wealth Management divestiture. However, we found that the loss of material synergies and of the ability to recoup investments that benefit both wealth management and capital markets operations will have a financial impact and therefore comprise a material composition risk.

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<sup>351</sup> GBST [ASX Announcement](#).

- *Conclusion on financial resilience and incentives to invest*

11.149 We found that both partial divestiture options carry a material composition risk relating to the financial resilience of and incentives to invest by the divested business.

11.150 The scope for mitigating these risks for either divestiture option is limited. The risks are inherent in the remedy and we are unable to mitigate these in its design. Therefore, we found that either remedy option would result in a structurally weaker divestiture business.

11.151 Any mitigation would therefore depend on finding a suitable purchaser. We consider it unlikely that a suitable purchaser with sufficient resources and capabilities could be identified, even under stringent purchaser criteria. This is because, for the reasons set out above, the divested business would be materially weaker than GBST today and because the extent of the weakening of the divested business under either option would not be fully understood prior to conclusion of any divestment process. As a consequence, the CMA's ability to specify the conditions necessary for suitable purchaser would not be sufficient to compensate for the structural weakening of the divested business, compared to the pre-Merger situation.

- *Other composition risks*

11.152 We found that reputation and track record are important considerations for customers when selecting a Retail Platform Solution.<sup>352</sup> GBST had these attributes pre-Merger, and we found it was an effective competitor in the UK. However, under either divestiture option, it is not certain that these attributes will transfer to the divested business due, in part, to customer concerns about the risks of separating shared resources and the financial resilience of the divested business.

11.153 FNZ told us that (in relation to its proposed divestment of the UK Wealth Management business), the divested business would maintain its reputation, user experience and track record and that customers would face no disruption from its sale as they would continue to use the same software [X].

11.154 FNZ's view was based on its proposed approach of a reverse carve-out discussed above. While we think that the risks are lower from this approach, we note above that it raises other risks around financial resilience.

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<sup>352</sup> See Chapter 7.

11.155 Some GBST customers raised concerns on this point:

- (a) [REDACTED] told us that ‘our preference would be to divest the whole of GBST Holdings Limited from FNZ. We appreciate that this is costly to both parties but should be the cleanest way of separating them and allowing GBST an opportunity to find a new owner and focus on service delivery to its current clients. We did consider a partial divestment as an option but believe the best solution is to divest the whole of GBST to ensure there is a substantial business left that can be attractive to a new owner and have the cash flow to support its business currently and the development of the services that will be required to keep up with the competition’.<sup>353</sup>
- (b) [REDACTED] told us that ‘We do not consider that any form of partial divestiture would be an effective remedy to the provisional SLC. In our view, partial divestiture will inevitably lead to poor customer outcomes. Our experience has been that the components of GBST’s software and service offerings are integrated to such an extent (e.g. their common code base and the way their UK and Australian operations work together) that enhancements to functionality typically involve multiple operational segments. Splitting these up will have a detrimental impact on the quality and speed of GBST’s delivery and open the development cycle up to the risk of intentional or unintentional delays. Moreover, the inevitable cost impact of having different service providers in the supply chain means that partial divestiture should not, in our opinion, be considered as a potential option’.<sup>354</sup>

11.156 We consider that these customer concerns reflect likely risks to the reputation of the divested business and so are material composition risks.

### *Asset risks*

- 11.157 Asset risks are risks that the competitive ability of a divestiture package will deteriorate before completion of the divestiture and so make the remedy ineffective.<sup>355</sup>
- 11.158 GBST’s Wealth Management customers are financial services businesses that are required to meet certain regulatory standards to offer a secure, stable and high standard of service to consumers of their investment and savings products. The software and associated services provided to these

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<sup>353</sup> [REDACTED]

<sup>354</sup> [REDACTED]

<sup>355</sup> [Merger remedies guidance CMA87](#), paragraph 5.3(c).

Platforms are, by their very nature, complex. This complexity increases the potential for asset risk to be a serious impediment to the effectiveness of a partial divestiture of GBST's UK or global Wealth Management businesses.

11.159 FNZ will remain a competitor of the divested business in the UK and so will have conflicting incentives between needing to retain those parts of GBST it needs and the requirement to carve out what is necessary for the divested business with which it will compete. Similarly, while FNZ will wish to secure a good price for the divested business, it has no incentive to create a strong competitor. This conflict represents a risk to either partial divestiture option.

- *Customer disruption*

11.160 FNZ told us that a UK Wealth Management divestiture would not be challenging or difficult 'given the extent of the assets which would form part of the divestment, this would be more akin to a "reverse carve-out" of the Australian business, which would be retained by FNZ whilst the purchaser receives the UK business [REDACTED]. FNZ said that this would not be particularly difficult, expensive, or time-consuming, nor that it would result in any material disruption to GBST customers'.

11.161 However, the evidence from GBST's customers shows that they are concerned that the implementation of a partial divestiture will negatively impact the quality of their service. For example:

(a) [REDACTED] told us 'We do not believe a partial divestiture consisting of GBST's global wealth management business or GBST's UK wealth management business or all of GBST's UK business would be an effective remedy to the provisional SLC and we do not believe it would drive the right outcomes for our business as this would likely create a long period of uncertainty and distraction for GBST taking its attention away from looking after customers like us and developing the Composer platform.'<sup>356</sup>

(b) [REDACTED] told us that its main concern is that there would still be a well-resourced and developed end product so they would not have a fundamental problem with this remedy, but they think the time and cost would be prohibitive in practice. In addition, a partial divestiture would take resources away from the development of GBST's software, which has been delayed both during and before the merger.<sup>357</sup>

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356 [REDACTED]

357 [REDACTED]

- 11.162 GBST is the third largest supplier of Retail Platform Solutions in the UK (with FNZ being the largest). We assessed whether the disruption associated with a partial divestment risked undermining the competitive position of the divested business in the market.
- 11.163 The level of asset risk depends on the scale and ease of separation. We found, as set out above in our assessment of composition risks, that Wealth Management is highly integrated within GBST, both geographically and with Capital Markets, and that the process of separation under either remedy option would be lengthy and complex.
- 11.164 GBST told us that the time needed to separate integrated systems would depend on the system, as some were easier than others. In some cases, it could take up to [12-24] months to complete separation of the [X]. Splitting the UK and Australian Wealth Management businesses that share the same product (Composer) and infrastructure and resources increases the challenge of separation.
- 11.165 A competitor, [X], told us that as GBST is an international and complex business, a partial divestiture would take longer than two years. It said that it may take longer if the buyer did not have a parallel business in the same or a similar sector and could absorb GBST's operations smoothly.<sup>358</sup>
- 11.166 Another competitor [X] said that it had previously acquired a business unit [X] and it took two years after lifting out the unit to unravel all of the IT systems [X].<sup>359</sup>
- 11.167 The evidence we have received indicates that the scale and complexity of the separation process for either partial divestiture option represents a risk of significant disruption to GBST and, by extension, to its UK customers.
- 11.168 The evidence also indicates that both the disruption and the harm that this may cause to its reputation is likely to adversely impact the UK or global Wealth Management business's ability to compete for new business during a divestiture process.
- 11.169 We found that GBST has a small number of large UK customers and, consequently, even a single large customer leaving as a result of a complex or disruptive divestiture process could end up materially damaging the competitiveness of the divested business. [X].<sup>360</sup>

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358 [X]

359 [X]

360 [X]

- 11.170 FNZ proposed that a partial divestiture would be implemented as a reverse carve-out, whereby GBST's UK customers would not be migrated to a new system and would remain on the systems they are on currently. Instead, FNZ would migrate the customers it retains (under either divestiture option) onto new systems. Although this might reduce some risks to GBST's UK customers, it would not, in our view, reduce the burden on GBST staff, who would need to implement the migration of customers onto another platform. GBST told us that the staff needed for the separation of the infrastructure are also required to continue to operate the business whilst implementing the separation. By contrast, staff and customers for FNZ's UK Retail Platforms business would be unaffected by this process.
- 11.171 We consider that the diversion of GBST resources away from ongoing business in order to enact a partial divestiture is a material risk to both partial divestiture options. We consider that GBST is likely to have to commit material resources to the separation process and that this may leave GBST without the resource it requires to serve customers and compete for new business. This would undermine the future competitive capability of the divested business.
- 11.172 We consider that the risk of disruption to UK customers during any separation process is high. We do not think that structuring the transaction as a reverse carve-out would speed up, simplify or mitigate the risks of the separation process to any material extent as GBST resources would still be needed to effect it.
- 11.173 Our guidance states that remedies that address competitive concerns quickly are preferable to remedies that are expected to have an effect only in the long term or where the timing of the effect is uncertain.<sup>361</sup> The evidence we have in this case suggests that either partial divestiture option would be disruptive and time-consuming and would risk reducing the competitive capability of the UK business compared to the pre-Merger situation.
- *Intellectual property*
- 11.174 We assessed the risks of the UK Wealth Management divestment option which would come from sharing the Composer IP between FNZ and the divested business, as proposed by FNZ in its UK Wealth Management remedy proposal.

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<sup>361</sup> [Merger remedies guidance CMA87](#), page 6, paragraph 3.5(b).

11.175 We also assessed IP issues that are common to both remedy options. We considered these as a type of asset risk, as the process of separation would potentially weaken core GBST assets, but they also have characteristics of composition risk.

- *UK Wealth Management divestment: risks from sharing source code*

11.176 FNZ proposed that, under the UK Wealth Management remedy, it would retain an ‘Australian localised’ copy of the source code to the main product, Composer, in order to continue to serve Australian Wealth Management customers. It said that this would not provide any leverage from a commercial perspective in the UK, because:

- (a) It would not have the latest version of Composer as [REDACTED];
- (b) it would not be able to use the Australian version of Composer in the UK [REDACTED];
- (c) it would not have access to Composer’s UK tax wrapper source codes, which are needed to compete in the UK market; and
- (d) [REDACTED].

11.177 FNZ told us that the [REDACTED]. FNZ told us that ‘competitive advantage is driven by platform functionality (which is meaningful to customers) that one party has but a competitor does not. To the extent there are substantive functionality advantages, the source code that implements that functionality is competitively sensitive, because it represents the time and money required by a competitor to close those functionality advantages i.e. the period of time and investment required to remove the competitive advantage’.

11.178 In relation to Composer, FNZ told us that any understanding gained would be very limited and would not change the relative competitive positioning of the two businesses in the UK.

11.179 GBST told us that this proposal would give FNZ insight into its core intellectual property.

11.180 Evidence from third parties supported GBST’s position. Competitors told us:

- (a) [REDACTED] said that software companies fiercely protect their source code because it is the essence of the system. [REDACTED] said that FNZ’s access to an operating version of Composer’s source code (for GBST’s Australian

Business), post divestment, would make it easier for FNZ to switch GBST's UK customers to FNZ.

- (b) [REDACTED] said that the source code is the underlying intellectual property behind how a firm delivers its services to customers. The source code includes written instructions for components of a service and is a critical component to make an application work. It said that FNZ would have an incremental competitive advantage because it would know the purchaser's technology capabilities. [REDACTED] said that a competitor knowing how to move a customer's current system would give it a competitive edge.<sup>362</sup>
- (c) [REDACTED] said that the source code is the underlying intellectual property and key commercial differentiator of a software system. For example, [REDACTED] knows its own capabilities above and beyond what it would have access to if it licensed a competitor's code instead.<sup>363</sup>
- (d) [REDACTED] told us that 'The value of a source code would be dependent on the company's strategy and ongoing operational and implementation model. Many companies derive value from IP which forms part of their source code, similarly they derive value from revenue and cost efficiency in implementing and maintaining their source code for customers from any commercial arrangement.'
- (e) [REDACTED] told us 'In GBST's case, it [the source code], together with the intellectual knowledge of the staff, is all the value of the business'.

11.181 In our view, this evidence shows that the source code is of commercial value to GBST and is a key competitive asset.

11.182 Further, the evidence indicates that having a copy of the source code would give FNZ insight into strengths and weaknesses of a UK competitor that it would not otherwise have. This would reduce competition compared to the pre-Merger situation. It would also reduce the competitive value of the divested business to a purchaser, as any purchaser would know that a major rival would have insights into the strengths and weaknesses of the software that it would not have in the normal course of business.

11.183 FNZ told us that 'any such risk would also increase the incentives for the purchaser to 'innovate away' from the version of the Composer source code [REDACTED]. We received no evidence to support this view and we therefore do not

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<sup>362</sup> Call summary with [REDACTED].

<sup>363</sup> Call summary with [REDACTED]



expect that the two versions of Composer would materially diverge in the short to medium term.

11.184 Based on the evidence we have received we do not believe the risks of shared source code can be adequately mitigated through contractual arrangements such as non-disclosure agreements or ring-fencing within FNZ as it has proposed. These arrangements would be difficult to police and would not enable a purchaser to monitor FNZ's compliance with them because the tendering process is not transparent to the market. It would not therefore be apparent to the UK purchaser whether FNZ was leveraging the competitively sensitive knowledge that it had gained. In our view, reliance on a Purchaser monitoring FNZ compliance with such arrangements is weak mitigation of this risk and therefore represents a very high risk to the effectiveness of this remedy.

○ *Other IP issues*

11.185 GBST told us that it has common proprietary IP underpinning its products in Wealth Management and Capital Markets<sup>364</sup> to which FNZ would gain access under a global Wealth Management divestiture and that this is competitive IP.<sup>365</sup>

11.186 FNZ told us that these were '[redacted]'.

11.187 GBST told us that 'various components within its software: [redacted] can be replicated but they are designed bespoke for the GBST products and there is complexity (and high cost) in replacing them'.

11.188 It said that some IP was internally developed<sup>366</sup> and some was used in a bespoke way, such as its [redacted].

11.189 Given the number of tools and infrastructure coupled with the specialist nature of each, it is difficult to definitively conclude on the commercially sensitive nature of each piece of IP, and the ease with which FNZ could replace them. However, we consider that access to this IP could provide FNZ with insight into commercially sensitive assets of the divested business that pre-merger it did not have which could be utilised against the divested business, undermining its competitive capability.

11.190 Further, we consider that FNZ would be likely to need access to GBST technical resource in order to separate from, or use, this IP. This may

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<sup>364</sup> [redacted]

<sup>365</sup> GBST response to the Remedies Notice, page 8, paragraph 4.8.2.

<sup>366</sup> [redacted]

increase the complexity of a partial divestiture or further increase the access to GBST's IP that FNZ would gain from these remedies.

- 11.191 For these reasons, we consider that FNZ having access to the shared IP creates a material risk for either partial divestiture remedy.
- 11.192 A reverse-carve out could reduce some of this risk from the divested business: if FNZ replaces or duplicates tools and IP, rather than sharing them, this would have less impact on the divestiture business. We do not however consider it credible that all of the tools and infrastructure could be easily replaced or replicated in a reverse-carve out in a low risk, timely manner. We also consider that substantial resources would be needed from within GBST to enable a reverse carve-out.
- 11.193 We also consider that FNZ's proposal to address IP concerns by leaving all of the IP and its supporting resources and systems with the divestment business would increase the cost base of the divestment business and therefore increase the risks around financial resilience as set out above.

o *Conclusion on Intellectual property risks*

- 11.194 With a UK Wealth Management divestiture, FNZ's retention of a copy of the core source code for use outside the UK would, in our view, materially reduce the value of the divested business to its purchaser and so would reduce its ability and incentive to compete as effectively in the UK as GBST did pre-Merger both during and after a divestiture process. We do not believe that these risks can be sufficiently mitigated in the design of the remedy.
- 11.195 For the global Wealth Management divestiture, the evidence we have received on use and integration of GBST's IP with its Capital Markets business raises similar, although lesser, risks. FNZ would either have access to such IP (thereby gaining an insight into the divested business) or all such IP would be retained by the divestment business heightening the risks to its financial resilience.

*Purchaser risk*

- 11.196 We considered whether there were any specific factors which we should have regard to in assessing purchaser suitability, and whether there were risks that a suitable purchaser would not be available.<sup>367</sup>

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<sup>367</sup> Remedies Notice, page 7, paragraph 25.

- *Criteria for assessing purchaser suitability*

11.197 Our guidance states that we need to be satisfied that a prospective purchaser of either partial divestiture business is suitable, in terms of it being:

- (a) Independent (of FNZ in this case);
- (b) committed to competing in the relevant market;
- (c) having the necessary capability to compete; and
- (d) that divestiture to the purchaser will not create further competition concerns.<sup>368</sup>

11.198 We received some third-party comments on purchaser suitability:

- (a) A consultant told us that ‘a UK-only Wealth Management solution is unlikely to be a credible competitor for large clients, and it is therefore unlikely that the divestiture package would be attractive to a potential UK purchaser.’<sup>369</sup>

11.199 We consider that the sale of either partial divestiture businesses to a purchaser with complementary operations and capabilities could potentially mitigate some of the risks associated with the scope of the package.

11.200 For example, a sale to a trade buyer with an international footprint and a strong reputation with GBST’s UK customers might compensate to some degree for a loss of GBST’s strong reputation and might satisfy customer concerns about experience and commitment to the UK market.

11.201 However, even if such a purchaser was identified, the composition and asset risks outlined above would not be eliminated, in particular the composition issues of breaking up a global business and the impacts on the divested business’s financial position and incentives plus the potential for customer disruption.

11.202 The evidence we received shows that GBST’s Wealth Management business is complex and that it is supported by expert technical staff, many of whom also support the Capital Markets business. A potential purchaser, however suitable in terms of our basic criteria, will find it challenging to scope either partial divestiture option because of the time and risk that

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<sup>368</sup> [Merger remedies guidance CMA87](#), paragraph 5.21.

<sup>369</sup> [✂]

would be involved in separating the divestment from GBST and then integrating it into its own operations.

11.203 Further, the impact of the divestiture on reputation, user experience, and track record is unknown. This risk is unlikely to be fully mitigated by our identifying a suitable purchaser. The divested business would need to establish its commitment to the market, and it would take time for customers to develop confidence in the purchaser of the divested business. An established reputation and track record in the UK could help potential purchasers, but we have found that there are few suppliers in the UK market and some of these would give rise to competition concerns if they were to seek to acquire the divested business.

- *Likely availability of a suitable purchaser*

11.204 We consider that the risks around the scope of the divestiture options mean that a suitable purchaser may not complete a deal with FNZ once they have carried out due diligence and understood the challenges associated with separation.

11.205 FNZ told us that [REDACTED]. These include trade and private equity buyers.

11.206 We spoke to three of these, [REDACTED] and [REDACTED] and they confirmed their interest in the UK business. However, they indicated they have not had the opportunity to assess properly the feasibility and practicality of separation:

(a) A competitor, [REDACTED] told us that it was interested in the UK business and specifically mentioned Aegon and AJ Bell as important GBST customers. However, [REDACTED] said that it would need to carry out due diligence to assess the viability of a UK Wealth Management business and, at present, it had no knowledge what such a proposal would entail. [REDACTED] estimated it would take three to six months to complete its due diligence.<sup>370</sup>

(b) Another competitor, [REDACTED] told us that ‘acquiring the UK business alone would be sub-optimal’ and that ‘it would be more interested if it included the appropriate supporting infrastructure’. However [REDACTED] noted that ‘dividing this team between the Wealth and Capital Markets businesses may create challenges and argues in favour of a complete divestment of the GBST business instead’.<sup>371</sup>

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<sup>370</sup> [REDACTED]

<sup>371</sup> [REDACTED]

- (c) [REDACTED] confirmed that it expressed its potential interest to FNZ in acquiring GBST's UK wealth management business, should it become available. [REDACTED] said it was not aware of the details of GBST's UK business set-up. [REDACTED] has no prior experience in acquisitions of other businesses.<sup>372</sup>

- 11.207 We found that GBST has some large UK customers. In any divestiture scenario where these customers could be acquired, we consider that there would be interest from prospective purchasers. However, the indication of potential interest by a purchaser for a business is not, by itself, evidence that a purchase would be completed or, even if it was, that a divestiture would be effective at remedying the SLC we have found.
- 11.208 Neither FNZ nor GBST have made any submissions on the likely availability of a prospective purchaser for a global Wealth Management business. However, we consider that there would be initially interested purchasers for this:
- (a) The global Wealth Management business is the largest business within GBST and is profitable; and
  - (b) there were other bidders for GBST with similar activities prior to the Merger with FNZ.
- 11.209 We received some evidence from [REDACTED] and [REDACTED] that suggest they would be more interested in the global Wealth Management business than the UK business.
- 11.210 We note that purchasers have only shown initial interest. They would need to carry out due diligence to assess the value, practicality and risks of a partial divestiture. At this point, they would find out more about the complexity of separating the UK or global Wealth Management business and, based on our own assessment of these issues, we expect that this would be viewed as a challenge.

#### *Conclusion on purchaser risk*

- 11.211 On the basis of the evidence set out above, we found that there may be initial interest in one or both partial divestiture options.
- 11.212 However, in our view, the initial interest would only be sustained if the composition and asset risks we have identified could be managed without compromising the viability of the divested business. We have not seen

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<sup>372</sup> [REDACTED]

evidence that gives us confidence that these risks could be satisfactorily mitigated.

### *Consequential risks*

- 11.213 A common concern for the CMA in relation to partial divestitures is the reliance of a remedy on an ongoing relationship between a purchaser and the merged entity with which it may compete. The longer such relationships lasts and the greater the degree of reliance and co-operation, the higher the risk. We consider this a consequential risk as it stems from the composition and asset risks associated with carving a divestiture out of an integrated business.
- 11.214 The evidence we have received regarding the highly integrated nature of GBST's Wealth Management and Capital Markets resources, infrastructure and IP leads us to conclude that there will need to be a significant degree of interaction – in the form of negotiation and support for separation - between FNZ and a purchaser for a transitional period while the separation takes place.
- 11.215 We consider that these negotiations may be difficult given that the purchaser's and FNZ's interests will not align as they will compete in the UK market for Retail Platform Solutions.
- 11.216 The outcome of the negotiations will determine the competitive capability of the divested business, compared to the pre-Merger situation, but we will not be able to monitor or direct them. This significantly increase the overall composition and asset risk of the partial divestment remedies.
- 11.217 A third party in this market gave us an example of the issues that can arise in such a scenario: [redacted] told us that it had a 14-month transitional agreement for a recent acquisition. It acquired [redacted] from [redacted]. It estimates that it may have taken the vendor 12 months to align the business in order to separate it. [redacted] considered itself well placed to take on this asset and, at the point of the transaction, it signed a 12-month transitional support agreement. However, this ended with 14 months of transitional procedures, such as unpicking third party arrangements.<sup>373</sup>
- 11.218 The evidence we have seen on the degree of integration within GBST and the nature of a partial divestiture indicates that it is likely to involve complex negotiations between FNZ and an acquirer and, depending on the outcome

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<sup>373</sup> [redacted]

of these negotiations, ongoing co-operation. This applies to both partial divestiture remedies. We consider that the negotiation, which may impact the composition of the final divestiture package, and the likely need for ongoing co-operation, which will be difficult to effectively monitor, raise the risk profile of these remedy options.

### ***Conclusions on effectiveness of partial divestiture remedies***

11.219 Our conclusions on the effectiveness of the two partial divestiture options are set out below.

#### ***Effectiveness of a UK Wealth Management divestiture***

11.220 We found that a UK Wealth Management divestiture has substantial composition, asset and purchaser risks. These risks arise because of how this business is integrated into, and benefits from, the wider GBST business.

11.221 We found that a divested UK Wealth Management business will either not retain access to the necessary expertise and infrastructure of GBST which is currently shared with its Capital Markets business, or will find that having access to this increases its cost base to the degree that it is financially unviable. In either scenario, separation of a UK Wealth Management business from the integrated GBST business would be likely to result in a structurally weaker competitor compared to the pre-Merger situation.

11.222 We identified the financial resilience of the divested business and consequently lower ability and incentive to invest in R&D as further composition risks.

11.223 A UK Wealth Management divestiture will not benefit from the current efficiencies and synergies from being part of a larger business, so will be weaker financially versus the pre-Merger situation.

11.224 We found that the asset risks of separating a UK Wealth Management business are material. GBST would have to commit significant resources to the implementation of any separation and this would disrupt its ongoing business and its ability to serve customers and compete for new ones. GBST customers are concerned about this prospect. This diversion of resources would therefore risk undermining the future competitive capability of the divested business. We do not consider that a reverse carve-out lowers this risk in a material way.

11.225 We found that sharing the Wealth Management source code with FNZ for use outside the UK was a fundamental asset risk. FNZ would gain access to

commercially sensitive information and insight into its rival's strengths and weaknesses that, absent the Merger, it would not have. This raises a fundamental concern regarding the ability and incentive of a divested UK Wealth Management business to compete effectively in the UK. We conclude that there is a material risk that it would be a weaker competitor than GBST was pre-Merger.

- 11.226 We found that there are some initially interested purchasers but we do not consider that these reduce the composition and asset risks outlined above, even if our purchaser criteria were stringent. We also consider that a purchaser is likely to identify the same composition and asset risks that we have when they conduct due diligence.
- 11.227 We also found that a UK Wealth Management remedy would likely require significant on-going cooperation and detailed negotiations between FNZ and the acquirer of the divested business with whom it would compete in the UK market for Retail Platform Solutions. This increases the risk profile of the remedy.
- 11.228 We considered whether the risks can be mitigated in a meaningful way. We found that access to GBST's Wealth Management source code was a material composition and asset risk that could not be mitigated. We also found that a reverse carve-out would not materially lower the asset risks of this remedy.
- 11.229 We found that attempts to address some specific risks would result in the creation of a different risk. For example, moving all or a large proportion of the technical resources and expertise or infrastructure to the divested business would increase its cost base without a corresponding increase in revenue and so damage its financial viability.
- 11.230 For the reasons set out above, we conclude that a UK Wealth Management divestiture would not be an effective remedy to the SLC and its adverse effects.

*FNZ proposal of [REDACTED]*

- 11.231 FNZ has proposed that [REDACTED]. It submitted: '[REDACTED].'
- 11.232 These are implementation considerations and they would be relevant if we found that the UK Wealth Management divestment was effective. As such these aspects of FNZ's proposals do not address our concerns. [REDACTED].



### *Effectiveness of a global Wealth Management divestiture*

- 11.233 We found that a global Wealth Management divestiture has composition, asset and purchaser risks. Although some of these risks may be lower than for a UK-only divestiture, they are nonetheless substantial.
- 11.234 We found that the composition risks associated with separating a global Wealth Management business are material due to the highly integrated nature of GBST.
- 11.235 We identified as a key composition risk that the divested business would not retain access to sufficient technical expertise, resources and infrastructure as these are currently shared with the Capital Markets business. Should they all be part of the divestiture package, then this would increase its cost base to a level that could make it financially unviable. While we consider that this risk is lower than for a UK Wealth Management remedy, we found that it may limit the divested business's ability to compete compared to the pre-Merger situation.
- 11.236 Linked to this, we identified financial resilience as a composition risk. A divested global Wealth Management business would have significantly lower revenues once separated from Capital Markets but is unlikely to see a proportionate reduction in costs over which to recover these revenues unless it loses necessary resource, expertise and infrastructure.
- 11.237 We found that the high level of integration of Wealth Management with Capital Markets within GBST results in synergies and efficiencies which would be lost in any partial divestiture. A separated global Wealth Management business would be on a weaker financial and competitive footing versus the pre-Merger situation.
- 11.238 We also found that there are a number of IP tools that are shared between Wealth Management and Capital Markets. Separation of the two businesses would give FNZ access to this proprietary and commercially sensitive IP. This would risk devaluing the competitiveness of the divested business and enable FNZ to use its knowledge to compete more strongly with the divested business.
- 11.239 We found that significant technical resources would be required for the implementation of a divestiture while still being required for the ongoing business. This is likely to impose material disruption and could undermine the competitive capability of the divested business.
- 11.240 We have found that there are purchasers with initial interest in the global Wealth Management business. However, we do not consider that these

mitigate the composition and asset risks outlined above, even if our purchaser criteria were stringent. We also consider that purchasers are likely to identify risks with the divested business when they conduct due diligence and this may lessen their interest.

- 11.241 We also found that a global Wealth Management remedy would be likely to require significant on-going co-operation and negotiation around the precise scope of the divestment between FNZ and the purchaser as it is not a stand-alone business. This materially increases the complexity and risk profile of the remedy.
- 11.242 We do not consider that the risks set out above can be mitigated in a meaningful way. We do not consider that a reverse carve-out would materially lower these risks.
- 11.243 We also note that mitigating some risks may result in increasing another one: for example, increasing the resource included in the scope of the divestment increases its cost base, thus adding to our concerns about its financial resilience.
- 11.244 We therefore conclude that a global Wealth Management divestiture would not be an effective remedy to the SLC and its adverse effects.

### ***Conclusion on partial divestment remedy options***

- 11.245 We found that the composition and asset risks we identified could not be satisfactorily mitigated either in design of the remedy or by identifying a suitable purchaser.
- 11.246 We found that both partial divestiture options would risk an outcome where the divested business would be a weaker competitor than GBST is today in the UK market for Retail Platform Solutions.
- 11.247 We therefore found that neither a divestment of GBST's UK Wealth Management business nor a divestment of GBST's global Wealth Management business would be an effective remedy to the SLC and its adverse effects.

### **Source code licencing remedy**

- 11.248 FNZ proposed a Source Code Licensing Remedy (SCLR) to address the SLC and its resulting adverse effects.
- 11.249 In its response to our RWP, FNZ stated that it 'continues to hold the view, expressed in its response to the Remedies Notice that the Source Code

Licensing Remedy (“SCLR”) would be fully effective in eliminating the SLC, and the most proportionate remedy in the circumstances, as well as generating pro-competitive effects. [redacted].’

11.250 We assessed the effectiveness of this remedy as it constituted one of the possible options.

### **Description of remedy**

11.251 FNZ described the SCLR as follows:

- (a) ‘FNZ would make a legally binding commitment 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.’
- (b) ‘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.’
- (c) ‘FNZ will continue to fund GBST’s budgeted expenditure for Project Evolve, which GBST estimates would be completed by September 2021.’
- (d) ‘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’.
- (e) ‘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, for example, to ensure that FNZ enters into licences (in a form agreed upfront with the CMA) with Suppliers who request one.’<sup>374</sup>

11.252 FNZ set out how it considers that the remedy would work: [redacted].

11.253 FNZ told us that the term licence is ‘a bit of a red herring’ as the owner of a licence would have a copy of the source code that it would own and have

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<sup>374</sup> FNZ response to Remedies Notice, Section 4.

the right to do whatever it wished to that code. FNZ considered that the GBST UK Source Code base could easily be copied and isolated from the remaining GBST IP and business to be provided to licensees.<sup>375</sup>

- 11.254 FNZ stated that the proposal addressed the SLC as it '[redacted]'.  
11.255 It stated that it would enhance competition compared to the pre-merger situation and a potential divestiture scenario: it 'Increases the number of suppliers who could credibly supply UK "Retail" customers e.g. including non-UK suppliers and UK suppliers currently focusing on "Non-Retail" customers'.  
11.256 Current GBST customers can invite multiple suppliers to tender for contracts based on Composer technology, generating enhanced competitive tension.  
11.257 FNZ stated that it would [redacted].  
11.258 FNZ told us that it had received no interest from third parties to date on this proposal.  
11.259 A supplier in an adjacent market to Retail Platform Solutions, [redacted], made a similar suggestion to the SCLR. It told us that 'an alternative would be for FNZ to divest the Composer software IP through an IP sale. I suspect there would be a number of non-platform providers who would be interested in this. We would be interested to explore how we could support Composer users and enhance the software to provide a viable additional option for platforms.'<sup>376</sup>

#### *Views of GBST*

- 11.260 GBST said that its software was not static and required updates, due to both regulations in the UK and technology updates. It said that, if the source code was provided by FNZ, a licensee would not have control over its own software and so would not be attractive to the market. There would also be an impact on client business with clients needing internal expertise to develop and support the product.  
11.261 GBST pointed to the need for brand, reputation and track record as important elements for an effective competitor. GBST said it would require on-going monitoring and enforcement. GBST also said it would not address the market concentration issues.

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<sup>375</sup> FNZ response to Remedies Notice, paragraph 4.2.

<sup>376</sup> [redacted].

## *Views of third parties*

11.262 We discussed this remedy proposal with customers and potential competitors. None of the third parties thought that this remedy would be an effective solution. They considered that the source code on its own is insufficient to compete in this market and that other attributes were required in order to become an effective competitor.

- (a) A customer, [REDACTED], told us that FNZ's proposal does not address FNZ's dominance in the market because it would still hold the expertise for using the source code.<sup>377</sup>
- (b) Another customer, [REDACTED], said that GBST does one update of its source code each year, then incorporates clients' customised developments. It said that since both updates are part of a single source code, it does not see how FNZ could centralise the source code, if it licenced it.<sup>378</sup>
- (c) A competitor, [REDACTED], said that, while FNZ's proposal created more competition in terms of number of organisations that can compete in a tender, it does not increase the number of platforms on offer and that 'if FNZ would be allowed to bid for the same tenders, then all other service firms offering the GBST licence will always be disadvantaged and are unlikely to win any business using GBST's licence'. [REDACTED] also told us that 'in the most aggressive and optimistic timeline, we or a similar acquirer could put a client live on a GBST platform in 36 months, but it is more likely to be longer. This includes familiarisation with the GBST platform and the sales and implementation processes.'<sup>379</sup>

### ***Assessment of effectiveness of the SCLR***

11.263 For an IP licensing remedy to be effective by itself, it must be sufficient to enhance significantly the ability of those using the IP to compete with the Merged Entity, restoring the competition lost through the merger, and addressing the SLC and any resulting adverse effects.

11.264 Such a remedy may not be effective if the IP needs to be accompanied by other resources (such as technical expertise and sales networks) to enable

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377 [REDACTED]  
378 [REDACTED]  
379 [REDACTED]

effective competition and if these resources are unlikely to be available to the potential purchasers of the IP.<sup>380</sup>

- 11.265 In view of the possible risks to effectiveness that may result from using IP remedies, the CMA will generally prefer to divest a business including IP rights, where this is feasible, rather than rely on licensing IP alone. This is because divestiture of a business is more likely to include all that the purchaser needs to compete effectively with the merger parties.<sup>381</sup>
- 11.266 Our guidance states that the licensing or assignment of IP, including patents, licences, brands and data, may be viewed generally as a specialised form of asset divestiture. In certain cases, the terms of a licence may contain ongoing behavioural elements such that the remedy is a structural/behavioural hybrid. The key element is the extent to which any material link between licensor and licensee will exist following award of the licence.<sup>382</sup>
- 11.267 The CMA treats a remedy that requires an assignment or licence of an IP right that is exclusive, irrevocable and non-terminable with no performance-related royalties as structural in form and subject to similar evaluation as an asset divestiture.
- 11.268 The CMA regards a licence that requires a licensee to rely on the licensor for updates of the technology or continuing access to specialist inputs or know-how as a behavioural commitment, which has significant risks of not being an effective remedy.<sup>383</sup>
- 11.269 We noted that FNZ considered this proposal to be structural. However, given the dynamic nature of Composer and the behavioural commitment to continue funding the Evolve project and to provide updates for a period of time, we considered that it was likely also to be subject to some of the risks associated with behavioural remedies.
- 11.270 Our guidance highlights four key risks that the design of behavioural remedies should seek to avoid. These are specification, circumvention, distortion and monitoring and enforcement risks.<sup>384</sup>
- 11.271 FNZ's proposal that the SCLR is be non-exclusive, royalty-free, irrevocable and perpetual may remove some specification risks but, as explained below,

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<sup>380</sup> [Merger remedies guidelines CMA87](#), paragraph 6.3.

<sup>381</sup> [Merger remedies guidelines CMA87](#), paragraph 6.4.

<sup>382</sup> [Merger remedies guidelines CMA87](#), paragraph 6.1.

<sup>383</sup> [Merger remedies guidelines CMA87](#), paragraph 6.2.

<sup>384</sup> [Merger remedies guidelines CMA87](#), paragraph 7.4.

we considered that circumvention, distortion and monitoring and enforcement risks may be applicable to it.

11.272 Given the hybrid nature of this proposal our assessment of the effectiveness included risk factors from both structural and behavioural remedies.

#### *Design considerations and risk assessment*

11.273 We assess the risk profile of a remedy by considering its effectiveness and its potential design. FNZ invited us to consider the SCLR as a structural remedy, alongside full and partial divestiture options. We have therefore assessed it first by reference to the categories of risk that could impair the effectiveness of a divestiture remedy, and in particular composition and purchaser risk (see above, paragraph 11.30).<sup>385</sup> We then considered the extent to which this proposal was subject to the risks associated with behavioural commitments – and in particular circumvention, distortion and monitoring and enforcement risks.

11.274 To be considered effective, the proposal would need to significantly enhance, in a timely manner and with a high degree of certainty, a licensee's ability to compete with the Merged Entity, such that the SLC and any resulting adverse effects would not arise.

#### *Scope and composition risk*

11.275 We found that the SCLR does not address some key aspects that we found to be important for effective competition in this market:

- (a) Brand, reputation, user experience, and track record (see Chapter 7) cannot be acquired simply by acquiring a licence or a copy of GBST's UK source code. It is not clear how the SCLR enhances a potential licensee's ability to compete in this respect.
- (b) It includes the transfer of some GBST technical experts or the provision of support upon request but does not include all the relevant staff at GBST who work with the code. The commitment is limited and poorly defined, because there could potentially be multiple licensees and the relevant experts to support UK-based licence holders appear to be located in Asia or Australia.

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<sup>385</sup> [Merger remedies guidelines CMA87](#), paragraph 5.3. Asset risk appears less relevant to this remedy, as the GBST business would remain intact and would be integrated with FNZ.

11.276 FNZ told us that no particular knowledge or expertise of this particular source code would be needed to effectively utilise it. However, evidence from third parties does not support this position. They questioned ability of the SCLR to enhance the competitive capability of a licensee:

- (a) A competitor, [REDACTED] told us that the ability to compete is not just about the software, goodwill and reputation which are built up over time. [REDACTED] said that market credibility, heritage and size of support structure were important parts of that reputation. [REDACTED] told us that a client might ask it to acquire the code but it would take a long time for it to become familiar with the code, perhaps six to nine months. Under such a scenario they may try and attract GBST staff.<sup>386</sup>
- (b) A competitor, [REDACTED] told us that the SCLR will be difficult to make work in practice. This is because licencing a source code alone will not assist customers, because they will need expertise in order to understand, use, maintain and enhance it. FNZ would still retain all the testing tools and resource related to the core product development. [REDACTED] told us that it would take a huge effort and a lot of time to be able to modify, update and understand the design principles of a code that has more than ten years of investment in it. It would continue to rely on FNZ.<sup>387</sup>
- (c) A customer, [REDACTED], said that the SCLR would provide new entrants with a base for a product; but without prior experience of the product, and in the absence of rest of the GBST business, a licensee might struggle to provide meaningful competition in the platform solutions market.<sup>388</sup>
- (d) A competitor, [REDACTED] told us that ‘Without access and control of the GBST staff who developed and maintain the Composer source code, building an understanding of its structure and logic would be an onerous task over months and years. That these experienced staff would remain in FNZ’s employ would compound the difficulties for any other user looking to build a competitive offering’.<sup>389</sup>
- (e) A competitor, [REDACTED] told us that [they] ‘see little to commend the suggested remedy. The strategic position already held by FNZ as owners of GBST is unaffected. The code remains theirs and the commercial dependency of users of the GBST system (Composer)

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386 [REDACTED]

387 [REDACTED]

388 [REDACTED]

389 [REDACTED]



remains unchanged. The proposed remedy does however increase dramatically the cost and the risk for GBST users'.<sup>390</sup>

### *Purchaser risk*

- 11.277 Our ability to evaluate potential purchasers during the divestiture process gives us confidence that a divestiture remedy will be effective in restoring competition.<sup>391</sup> The SCLR does not envisage the CMA playing an active role in assessing potential licensees and therefore would not enable us to assess whether licensees would have the necessary capability to compete, or their commitment to competing in the relevant market.
- 11.278 If potential licensees were to come forwards, it would be difficult to assess their commitment to developing the source code, given the time and cost that it would entail and the other barriers that they would need to overcome in order to win customers. If the licence can be acquired at no or minimal cost, then there may be interest among potential licensees in having access to the code (for example, to understand another Platform Solution) but without any commitment to invest from the licensee. A plausible scenario is that multiple licences are issued, but that there is no change to competitive conditions as a result, and the SLC is left unremedied.
- 11.279 Three third parties raised this risk with us:
- (a) A customer, [REDACTED] said that, although it did not have a detailed understanding of the proposal, it struggled to see why a licensee would invest significantly in delivering a product to bring to market without ownership of the underlying source code, although this would depend on the details and commercial terms of the licence agreement.<sup>392</sup>
  - (b) A competitor, [REDACTED] said that if no one takes the licence, then FNZ could remain in the same market position.<sup>393</sup>
  - (c) A competitor, [REDACTED] told us that acquiring the source code would not work for it, because it was interested in the broader business of GBST.<sup>394</sup> [REDACTED] also said that to make Composer fully competitive in the UK market, the Evolve programme would have to be completed as well as an ongoing programme to meet future market developments. It went on to say that

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<sup>390</sup> [REDACTED]

<sup>391</sup> [Merger remedies guidelines CMA87](#), paragraph 5.20.

<sup>392</sup> [REDACTED]

<sup>393</sup> [REDACTED]

<sup>394</sup> [REDACTED].

‘Offering the Composer source code in its current form fragments this development effort and forces each new user of the source code to complete their own Evolve programme with all the associated diseconomies of scale’.<sup>395</sup>

- 11.280 A supplier in an adjacent market to Retail Platform solutions, [X], was positive about the SCLR proposal but less positive that it would address the SLC. However, its interest does not override any of the concerns highlighted above, which relate largely to the ability to compete and utilise the licence and not a lack of interest. [X]. This does not mean that it is likely to become a strong and sufficient competitive constraint to address the SLC and any resulting adverse effects.<sup>396</sup>
- 11.281 A further challenge arising from the structure of the SCLR is the lack of CMA oversight of any agreements between FNZ and licensees. In a divestiture, it is not unusual for the CMA to accept a remedy where an acquirer may require access to key inputs or services for a transitional period. However, we would need to be satisfied that these were on appropriate terms from the Merged Entity, and on an interim basis, and strictly necessary in order to enable a divestiture to operate effectively. We may permit such arrangements for a limited period.<sup>397</sup> The SCLR provides limited ability for our input into such terms. Our powers to intervene in the design of a remedy are limited after final undertakings are agreed or a final order imposed. With the SCLR proposal, it is only after that point that the licence will become available, the licensees known, and the support they require apparent. Any support will therefore need to be negotiated on a case by case basis with each licensee.

#### *Circumvention and distortion risks*

- 11.282 The likely need for an ongoing relationship between FNZ and licensees, and commitments, for example, to continue to fund a specific work programme and to provide services to licensees, give this proposal some characteristics of a behavioural remedy.
- 11.283 This ongoing dependence of ‘remedy takers’ on the Merged Entity introduces additional risks to competition and we would generally only accept these risks if there were no other effective remedies available.

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<sup>395</sup> [X].

<sup>396</sup> [X].

<sup>397</sup> [Merger remedies guidelines CMA87](#), paragraph 5.25.

- 11.284 The prospect of ongoing links and licensees' potential reliance on FNZ would create relationships between FNZ and competitors. Any ongoing information sharing and communication between competitors creates a distortion risk that would not exist absent the merger.
- 11.285 If this remedy were to lead to market entry, it would be on the basis of multiple providers offering the same or similar software in the short to medium term. However, FNZ would retain the IP, know-how, brand and customer track record and goodwill. In the short to medium term it would be highly challenging for any licensee to become an effective competitor to FNZ in this market, particularly by comparison to GBST today which owns the relevant IP and has all the supporting resources and capabilities.
- 11.286 Moreover, under the SCLR, FNZ would own the proprietary IP, which it would then offer to licensees. Each licensee and FNZ would have detailed access and knowledge of the IP underpinning the licensees' Retail Platform Solutions which would reduce each licensee's ability to compete effectively (see paragraph 11.174 onwards).
- 11.287 Although FNZ gave a commitment to continue the Evolve programme, the SCLR provides no certainty that it would progress in a manner that would have occurred absent the Merger. We would expect FNZ to develop this programme in a manner that is most beneficial to its commercial interests, which could undermine the source code's value to other third parties. The SCLR commits FNZ to completing the Evolve programme by providing the remaining investment to September 2021 of AUD\$[redacted].<sup>398</sup> Absent the Merger, GBST would have needed to fund any cost overruns but it could have expanded the programme of works if new capabilities became available. FNZ makes no commitment to do so.
- 11.288 Moreover, we found that GBST's software was not part of FNZ's merger rationale and that FNZ intended to [redacted].<sup>399</sup> We have no evidence that FNZ would have any commercial incentive to support licensees of this source code with which it competes.

#### *Monitoring and enforcement risks*

- 11.289 FNZ submitted that the SCLR requires no monitoring, but that it would accept such a requirement if the CMA deemed it necessary.

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<sup>398</sup> FNZ response to the Remedies Notice, page 13, paragraph 4.6.

<sup>399</sup> Provisional Findings, pages 16 to 18, paragraphs 2.16 to 2.23.

- 11.290 We find that there are monitoring and enforcement requirements and risks associated with this remedy. These generally flow from the limitations with the proposal set out above.
- 11.291 The following is a non-exhaustive list of the areas where monitoring would be required:
- (a) Confirmation of the transfer of the complete source code, all patches and updates;
  - (b) confirmation and monitoring of all requests for access to confirm that FNZ does not deliberately exclude or restrict access to any competitors;
  - (c) monitoring and assessment of all commercial terms and arrangements between FNZ and any licensee;
  - (d) monitoring the engagement and information sharing between FNZ and each licensee;
  - (e) overseeing a dispute resolution procedure; and
  - (f) monitoring and evaluating the progress of Project Evolve.
- 11.292 Monitoring each of these would be complex, and separate monitoring arrangements would be needed for every licensee. We identified that the commitments relating to the Evolve programme would give us the greatest concern, as the asymmetry of information and expertise between a Monitoring Trustee and the Merged Entity means that the Trustee could not be well placed to judge whether delays, changes or progress are being influenced by FNZ to the detriment of the licensee.

### ***Conclusion on effectiveness of the SCLR***

- 11.293 Our assessment, based on the evidence gathered, in particular from third parties, indicates that it is highly unlikely that the SCLR would be effective remedy of the SLC we found and its resulting adverse effects.
- 11.294 We found that the structure of the remedy disregards important attributes of effective competition in this market. In particular, source code would need to be accompanied by other resources and attributes such as technical expertise, brand, track record, and goodwill to enable effective competition. Absent these, we have no confidence that the SCLR would adequately restore competition lost as a result of the Merger in a timely manner.
- 11.295 We have seen no evidence that demonstrates that a competitor would be likely to be able to use and compete effectively with the source code within

an acceptable time horizon. Evidence from third parties, as well as from GBST, suggests that this is an unlikely outcome.

11.296 We have identified a variety of further detailed problems with the SCLR. For example, we would have no role in assessing a licensee's ability or commitment to the market which are important factors for assessing a purchaser's suitability and a licensee would not be required to commit any investment, and therefore takes no risk, to acquire the source code. The remedy also comes with material risks with regard to circumvention, distortion, monitoring, and enforcement.

11.297 We therefore conclude that the SCLR is not an effective remedy to the SLC which we found, and we have not found that there is any way in which it could be amended to make it so.

### **Conclusions on remedy effectiveness**

11.298 Based on our assessment of the effectiveness of each remedy option, we conclude that a full divestiture of GBST represents the only effective remedy to the SLC and its resulting effects.

### **Relevant customer benefits**

11.299 When deciding on remedies, the CMA may have regard to the effects of remedial action on any relevant customer benefits (RCBs). An effective remedy could be considered disproportionate if it prevents relevant customers from securing substantial benefits arising from the merger. Insofar as these benefits constitute RCBs, the statutory framework allows us to take them into account.<sup>400</sup> RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy.<sup>401</sup>

### ***Legal framework for our assessment***

11.300 RCBs are a benefit to relevant customers in the form of lower prices, higher quality, or greater choice of goods or services in any market in the UK, or greater innovation in relation to those goods or services.<sup>402</sup> Relevant customers are direct and indirect customers (including future customers) of

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<sup>400</sup> Sections 30 and 36(4) of the Act.

<sup>401</sup> [Merger remedies guidelines CMA87](#), paragraph 3.16.

<sup>402</sup> Section 30(1) of the Act.

the merger parties at any point in the chain of production and distribution<sup>403</sup> and not limited to end consumers.

- 11.301 The burden of proof of whether RCBs arise from a merger is on the merging parties: '[t]he merger parties will be expected to provide convincing evidence regarding the nature and scale of RCBs that they claim to result from the merger and to demonstrate that these fall within the Act's definition of such benefits'.<sup>404</sup>
- 11.302 In addition, in the case of completed mergers, to be properly considered as an RCB under the statutory definition, we must believe, on the basis of evidence submitted by the merger parties, that:
- (a) The benefit has accrued as a result of the creation of the RMS concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and
  - (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.<sup>405</sup>
- 11.303 With regard to the latter, in practice we will consider whether the merger parties' evidence is sufficient to demonstrate that the claimed benefit could not be achieved by any plausible less anti-competitive alternatives to the merger.
- 11.304 We would also expect to see evidence of support from customers and third parties. Where RCBs have been accepted, parties have provided evidence of support for the merger from customers and third parties, detailed and advanced implementation plans in order to realise the benefits claimed and timing and likelihood that the benefits will be realised in a reasonable period.
- 11.305 We determine whether the benefits are likely to be realised on the basis of the evidence presented to us. The level of information required to demonstrate a benefit will vary on a case-by-case basis. The merging parties' incentives to implement and pass on the benefits post-merger will also be relevant to the likelihood of RCBs being realised in practice.

### ***RCBs submitted by FNZ***

- 11.306 FNZ initially submitted that the Merger would result in the following RCBs:

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<sup>403</sup> Section 30(4) of the Act. See also Merger Remedies Guidelines, paragraph 3.18.

<sup>404</sup> [Merger remedies guidelines CMA87](#), paragraph 3.20.

<sup>405</sup> Section 30(2) of the Act.

- (a) Improved quality of GBST products (including from access to enhanced FNZ product functionality that is not currently available with GBST) and increased innovation;
- (b) reduced ongoing operational costs following migration to Software as a Service (SaaS) or Platform as a Service (PaaS); and
- (c) 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).<sup>406</sup>

11.307 In response to the RWP, FNZ reiterated its description of the RCBs as follows:

- (a) Lower-priced, faster, and less-disruptive transition to SaaS solutions;
- (b) lower-priced access to existing FNZ functionality; and
- (c) lower-priced access to PaaS.

11.308 FNZ submitted that these benefits were RCBs within the meaning of the Act because they would result in lower prices and better quality to GBST customers in the UK and were specific to the Merger.

11.309 FNZ submitted that, in addition to improved service, FNZ would be able to reduce the costs of GBST's customers. These claims were not set out in a systematic or detailed way. We have distilled the different cost savings into the following types:

- (a) Offer additional FNZ software as part of GBST Composer at a lower price than GBST customers would pay if procuring individual components from different third-party providers<sup>407</sup> (£[redacted]) per annum of customer cost savings).
- (b) Offer GBST Composer as part of a software as a service (SaaS) model by migrating Composer from customer premises to FNZ's data centres (£[redacted]) of customer cost savings). FNZ submitted that due to FNZ's existing investments, this would cost FNZ less than the costs that GBST would incur from building and operating its own data centres.<sup>408</sup> FNZ also submitted that its SaaS model included a switch to a '[redacted]'.<sup>409</sup>

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<sup>406</sup> FNZ Response to Remedies Notice, 3.2.

<sup>407</sup> FNZ response to Remedies Notice, paragraph 3.6(ii).

<sup>408</sup> FNZ response to Remedies Notice, paragraphs 3.9-3.12.

<sup>409</sup> FNZ response to Remedies Notice, paragraph 3.6(i).

- (c) Offer FNZ's servicing together with GBST Composer as part of FNZ's Platform as a service (PaaS) model (£[x] to £[x]per annum). FNZ submitted that it has historically lowered the costs of customers that have switched to its PaaS proposition by around [x]%. FNZ stated that these cost savings reflect complementarities that arise from providing software and servicing together as well as the scale benefits that FNZ is able to offer.<sup>410</sup>

### **Assessment of RCBs**

11.310 We assessed FNZ's claimed RCBs in light of evidence from FNZ, GBST, and third parties.

11.311 FNZ's two submissions on RCBs did not fully align with each other. We have assessed the claimed RCBs under the following heading structure covering all of the potential RCBs put forward by FNZ:

- (a) Improved quality and enhanced functionality of GBST software;
- (b) Lower-priced access to existing FNZ functionality;
- (c) GBST customer benefits from lower-priced, faster, and less-disruptive transition to SaaS solutions;
- (d) GBST customer benefits from lower-priced access to PaaS

#### *Improved quality and enhanced functionality of GBST software*

##### *Evidence from the Parties and third parties*

11.312 FNZ submitted that, as a result of the Merger, it would improve the quality of GBST's Composer software by integrating it with existing FNZ products and services in a similar way that FNZ had done after its acquisition of JHC, thereby providing the former GBST customers with 'an enhanced and seamless end-to-end digital solution'.<sup>411</sup> FNZ submitted that it would not offer GBST's customers FNZ functionality in combination with Composer absent the Merger.

11.313 FNZ also submitted that it would increase innovation at GBST by completing the software re-write programme (Evolve) centrally from its data centres

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<sup>410</sup> FNZ response to Remedies Notice, paragraph 3.6(iv).

<sup>411</sup> FNZ response to Remedies Notice, paragraph 3.3(i).



which would enable a faster and more cost effective roll out of improved solutions.<sup>412</sup>

11.314 FNZ outlined the unique functionality of some of its products which would be available to GBST customers as evidence of increasing the quality of GBST's software. However, FNZ did not provide any evidence of GBST customers' current, unsatisfied demand for these products.

11.315 GBST told us that, due to Composer's open architecture, customers were able to add on other products already, but it was not aware of [REDACTED].

11.316 We asked GBST's customers for their views:

(a) A GBST customer, [REDACTED] also referred to GBST's commitment to allow third-party software to interface with Composer, noting that, as a result, it has been able to combine 'best of breed' software components from different suppliers.<sup>413</sup>

(b) Another GBST customer, [REDACTED], told us that FNZ was well resourced and could move the GBST business forward, but 'under [REDACTED] current business model, it considers it beneficial to be able to train its own staff to deal with product/customer service issues and saw in-house operations as fundamental to maintaining its reputation for delivering a high quality service.<sup>414</sup>

(c) Another GBST customer, [REDACTED], told us the GBST business would benefit from an owner who knows the market, has the ability to invest and commit to remain innovative.<sup>415</sup> [REDACTED] also told us that it was not aware of any product it could only obtain from FNZ.<sup>416</sup>

11.317 A competitor, [REDACTED], told us that FNZ may be able offer additional capabilities to GBST customers (as FNZ is a larger business) and be able to offer those customers a technology-only solution alongside its own offering.<sup>417</sup>

11.318 Another competitor, [REDACTED] told us it could not comment on whether FNZ would improve the quality of GBST's products. Regarding innovation, [REDACTED] noted that GBST was already in the process of running the Evolve R&D

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<sup>412</sup> FNZ response to Remedies Notice, paragraph 3.3(iv).

<sup>413</sup> [REDACTED]

<sup>414</sup> [REDACTED]

<sup>415</sup> [REDACTED]

<sup>416</sup> [REDACTED]

<sup>417</sup> [REDACTED]

programme and FNZ's commitment to this did not change the improvement prospects; but FNZ might find other areas for improvement. [X] also said that GBST has always been innovative and believes it would have continued to do so, in the absence of the Merger.<sup>418</sup>

- 11.319 Another competitor, [X] said that the market is moving towards open architecture and that, as a result, there are no components that GBST customers could only obtain from FNZ, following the merger. It said that FNZ's ability to provide additional functionality for GBST's software is not a benefit unique to this Merger. [X] also told us the Evolve programme was in progress before the Merger and therefore FNZ's involvement would not materially change innovation in this respect.<sup>419</sup>

### *Our assessment*

- 11.320 We received no evidence of strong or widespread demand for FNZ's functionalities from GBST's customers. There was also no indication in the evidence that any ability to enhance the GBST software with additional technology was specific to this Merger. Evidence from third parties was that the open architecture of Composer already makes it possible for customers to add additional functionalities. FNZ did not provide convincing evidence that its additional technology was superior to other alternatives available to GBST's customers.
- 11.321 FNZ's main evidence on potential increased innovation at GBST was its intention to continue the Evolve R&D programme. FNZ told us that it would spend more than GBST on Composer, but we did not see any evidence of its incentives to develop software in competition with its own existing products. We found FNZ's submission on increased innovation was at odds with our findings that any future product development post-Merger would be subject to reduced incentives to innovate (see Chapter 8).
- 11.322 Based on the available evidence, we are not convinced that there is unsatisfied demand for FNZ's technology among GBST's customers. The evidence presented by FNZ also did not enable us to believe that improvement in the quality of GBST's software or further innovation at GBST were specific to this Merger. Instead, we found that competition with FNZ is a key driver of GBST's product development.

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<sup>418</sup> [X]

<sup>419</sup> [X]

### *Lower-priced access to existing FNZ functionality*

- 11.323 FNZ submitted that, when it offers GBST customers additional FNZ software, its pricing would internalise the benefits that a price reduction on one component would deliver in terms of increased demand for complementary functionalities. FNZ stated that separate third-party providers would not take this into account, and that FNZ would therefore charge lower prices overall than what GBST customers would have been paying.
- 11.324 FNZ submitted that:
- (a) It was '[redacted]';
  - (b) [redacted];
  - (c) GBST's UK customers would benefit 'from a reduction in customer purchasing costs (for functionalities they already procure) are equal to £[redacted]' but this figure excluded the additional value the enhanced functionality would deliver; and
  - (d) this benefit was Merger-specific as FNZ would not offer GBST the additional functionality absent the Merger.
- 11.325 As set out above, [redacted],<sup>420</sup> GBST and its customer [redacted] referred to Composer's existing ability to interface with other third-party software, which gives GBST customers a range of software options to meet their specific requirements.<sup>421</sup> [redacted] told us that cost savings for GBST customers would not be immediate as FNZ would need time and investment to understand GBST's software before undertaking integration.<sup>422</sup>

### *Our assessment*

- 11.326 FNZ submitted estimated savings to GBST UK customers of this potential benefit of £[redacted] but did not provide any detail on the [redacted].
- 11.327 We found the material submitted by FNZ did not amount to convincing evidence that would be required to sufficiently demonstrate that the claimed benefit was likely to arise as a result of the Merger, and that it was unlikely to arise without it.

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<sup>420</sup> [redacted].

<sup>421</sup> Paragraphs 11.316(a) and 11.319 above.

<sup>422</sup> [redacted].

- 11.328 We received no evidence from GBST customers that they either intended to replace or acquire any complementary software with an alternative from FNZ or that they required additional FNZ software.
- 11.329 We found that price is only one consideration in the choice of software, the capability of the software also being relevant. We found that there may also be costs and disruption associated with switching software supplier, and that there was no certainty in the level of cost savings accruing to GBST customers. This indicates to us that there is significant uncertainty over whether GBST customers would take up FNZ's additional software, the level of financial incentive FNZ would need to offer as an inducement, and cost reductions which would accrue to GBST UK customers.
- 11.330 While we understand the theoretical argument, we did not receive evidence from FNZ to substantiate its claim that offering FNZ additional software at a reduced price would increase demand for other complementary software, how strong this effect would be, and what specific complementary software FNZ is referring to. In particular, FNZ gave no reason why a GBST customer would significantly increase its use of Composer (and pay more for this usage), should FNZ offer other products to this customer at a reduced price. In our view, any increase in demand for complementary software would need to be significant in order to weaken the Merged Entity's incentives to increase prices as a result of a loss of competition between GBST and FNZ. We have seen no evidence to suggest a change in demand of this scale.
- 11.331 We found that GBST customers have a range of plausible options absent the Merger for sourcing other software given the open interfaces offered by Composer. They could source any additional software from the same provider, whether FNZ, GBST or another supplier, to realise benefits in the form of cost savings. Alternatively, they could source software from different providers to realise other equivalent benefits such as software to meet their requirements best. GBST's customers could also switch to FNZ's PaaS Solution absent the Merger. FNZ has not provided evidence that the difficulties of switching would prevent GBST's customers from doing this.
- 11.332 We also found that, if customers did want this functionality, they could choose FNZ themselves, absent the Merger. In such circumstances FNZ would be supplying the whole customer bundle itself and so would be able to secure the cost externalities and offer a compelling package.
- 11.333 We are therefore not convinced, on the basis of the evidence provided to us, that any benefits from FNZ offering GBST customers additional software at a lower price would be expected to arise as result of the Merger and would be unlikely to arise without it.

*GBST customer benefits from lower-priced, faster, and less-disruptive transition to SaaS solutions*

*Evidence from the Parties and third parties*

- 11.334 FNZ submitted that GBST customers would benefit from cost savings by transitioning to FNZ's SaaS model. FNZ submitted that the costs GBST would most likely have passed on to its customers in whole or in part, as a result of developing a SaaS operation, would not be incurred because FNZ already has the infrastructure and support in place to support SaaS and PaaS operations. FNZ would undertake any migrations to either SaaS or PaaS at much lower cost and risk to the customer. Customers would also benefit from FNZ's experience in hosting these operations.<sup>423</sup>
- 11.335 FNZ further submitted that [REDACTED] and GBST customers would not have access to its data centres absent the Merger. GBST customers would also benefit from switching to a more efficient provision of a software only solution and a [REDACTED].
- 11.336 FNZ submitted that, by leveraging its existing expertise and infrastructure, the upfront build costs and annual customer costs would be [REDACTED]% or less than the standalone costs likely to be incurred by GBST offering the same service.<sup>424</sup>
- 11.337 GBST told us that it already offers a SaaS model to customers who want it, and that it was 're-architecting the underlying componentry to take advantage of cloud-based architecture'. GBST noted that, for clients in the UK, it currently uses cloud services for its SaaS service, and that moving to a SaaS model was not just a matter of cost as there were risks as well.
- 11.338 A customer, [REDACTED], told us that it is currently moving Composer onto Microsoft's Azure cloud service, and saw no benefits in using FNZ's SaaS model to host Composer instead.<sup>425</sup>
- 11.339 Other GBST customers told us that they could consider the commercial benefits of a SaaS model but were not looking to move to that in the immediate future:

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<sup>423</sup> FNZ Response to Remedies Notice, paragraph 3.10.

<sup>424</sup> FNZ Response to Remedies Notice, paragraph 3.12.

<sup>425</sup> [REDACTED]

(a) [REDACTED]<sup>426</sup>

(b) [REDACTED] told us that there could be benefits to a SaaS provider owning its data centre but that it was also open to a SaaS provider using a third-party cloud provider.<sup>427</sup>

(c) [REDACTED] told us that there were advantages to having a third party cloud provider in terms of service quality and expertise as this was the third-party's business.<sup>428</sup>

11.340 A competitor, [REDACTED], told us that the industry trend was moving to hosted applications with many variations, including private and third-party cloud hosting.<sup>429</sup>

11.341 Another competitor, [REDACTED], told us that there was an opportunity to make savings from cloud hosting but a customer could explore these options on a standalone basis.<sup>430</sup>

11.342 We found no third party evidence that indicates FNZ's approach to building and operating its own data centres is generally considered best practice, or that GBST would need to build such a data centre in order offer a credible SaaS model, even if there were some benefits associated with an in-house data centre. There are no clear customer preferences for in-house data centres as submitted by FNZ. While one customer ([REDACTED]) has indicated there could be some benefits of this, another ([REDACTED]) saw no benefit of such an approach and has instead opted to use a third party cloud provider.

### *Assessment*

11.343 In our view, FNZ has not presented convincing evidence that it would lower the costs of GBST's existing SaaS proposition. FNZ's SaaS model would involve replacing GBST's outsourced cloud infrastructure with FNZ's in-house data centres. FNZ has provided no analysis on the difference in costs between these two approaches.<sup>431</sup>

11.344 In addition, FNZ has not provided convincing evidence of its incentive to pass on any lower costs of its SaaS model to customers, taking into account

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<sup>426</sup> [REDACTED]

<sup>427</sup> [REDACTED]

<sup>428</sup> [REDACTED]

<sup>429</sup> [REDACTED]

<sup>430</sup> [REDACTED]

<sup>431</sup> FNZ only presents analysis on the difference in cost between GBST building and operating its own data centres compared to the cost of FNZ using its existing infrastructure.

the loss of competition between the Parties. Such incentives are needed in order to expect the benefits of any lower costs to accrue to customers. While FNZ may have a track-record of price reductions, this is not sufficient evidence of an incentive to pass on any lower costs to customers brought about by the Merger.

- 11.345 Based on the evidence available, we are not convinced that any potential cost saving from moving customers to a SaaS model are unique to the Merger. We have evidence that some GBST customers have moved to a SaaS model already, are considering a move at some time in the future or could achieve similar benefits to a SaaS model by hosting Composer on a third-party cloud provider of their choice. The evidence from GBST customers does not indicate that the Merger would prompt a move to a SaaS model.
- 11.346 We are also not convinced that the Merger would enable a faster transition to SaaS with less disruption to GBST customers as FNZ has provided no evidence to substantiate this. GBST already offers SaaS and the speed of any transition to this model is dependent on the plans of GBST's customers. There is no indication that GBST's customers are looking to move to such a model in the immediate future.
- 11.347 In light of the above assessment, we do not believe that benefits from GBST customers transitioning to FNZ's SaaS model are likely to accrue as a result of this Merger. We believe that there are plausible, less anti-competitive options available to GBST customers to achieve any benefits from moving to a SaaS model.

#### *GBST customer benefits from lower-priced access to PaaS*

##### *Evidence from the Parties and third parties*

- 11.348 FNZ submitted that a customer taking up its PaaS Solution would benefit from procuring business process outsourcing (BPO) services from FNZ and integrating it with the Composer software, with costs 'around [X]% lower than what customers would pay to procure these services separately from third-party providers (including in-house)'. It submitted that 'GBST's customers would be able to save around [X] per annum on the BPO element' and the 'estimated additional benefits that would accrue to GBST's

customers from these savings are significant – around £[redacted] for [redacted] and £[redacted] for [redacted].<sup>432</sup>

11.349 FNZ further submitted that:

- (a) [redacted].
- (b) The ‘complementarities that arise between software and service provision within a PaaS proposition (such as FNZ’s PaaS model) are not internalised by a partnership’.
- (c) The ‘price that the service provider sets for the servicing component in a partnership will need to reflect the substantial operational and financial risks that it undertakes as a result of the lack of ownership, control and access over the software component’. This risk is mitigated under FNZ’s PaaS model where FNZ supplies both the software and servicing.

11.350 GBST told us that, before the Merger, it offered a PaaS solution in partnership with Equiniti and that this would be a competitive alternative to any FNZ PaaS solution using GBST software.

11.351 A GBST customer, [redacted] said that it would not procure a PaaS offering. Under its current business model, it considers it beneficial to be able to train its own staff to deal with product and customer service issues and sees in-house operations as fundamental to maintaining its reputation for delivering a high quality service. PaaS also constrains proposition design, for example, [redacted] can offer a full range of tax wrappers and investments and present, whereas under a PaaS model it would be limited to providing those supported by its supplier.<sup>433</sup>

11.352 Another GBST customer, [redacted] told us that it would consider a PaaS model, but whether it adopted this model would depend on it being cost-effective and not degrading the quality of its service. [redacted] noted that, at this stage, it had opted to have its servicing in-house, as this was the most cost-effective option while maintaining its quality standards.<sup>434</sup> It also told us that it was open to [redacted] although how commercially attractive this was depended on whether prices [redacted].<sup>435</sup>

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<sup>432</sup> FNZ Response to Remedies Notice, paragraph 3.6(iv).

<sup>433</sup> [redacted]

<sup>434</sup> As noted in Chapter 8, [redacted]

<sup>435</sup> [redacted]



- 11.353 Another GBST customer, [REDACTED] told us that it prefers a fixed cost pricing model rather than [REDACTED] and whilst it would not rule out a PaaS model, it would adopt a model which best served its commercial interests.<sup>436</sup>
- 11.354 A competitor, [REDACTED], considered that it could be in a stronger position than FNZ to offer GBST customers cost savings through the provision of outsourced servicing, given [REDACTED] greater experience with Composer.<sup>437</sup>

### *Assessment*

- 11.355 We found that, while some GBST customers may be open to a PaaS model, they have not indicated that they would expect to switch to this model as a result of the Merger. As noted above, whether GBST customers would switch to this model depends on whether this would best meet their commercial interests.
- 11.356 We were not convinced by the evidence FNZ provided to us that it would pass on any cost savings to GBST customers, for the following reasons:
- (a) First, FNZ has not submitted any analysis on whether, [REDACTED], it would gain more from passing on a share of any cost savings to GBST customers, compared to retaining these cost savings for itself.
  - (b) Second, FNZ has not explained why it would have an incentive to pass on any cost savings in the context of the loss of competition between the Parties as a result of the Merger.
  - (c) Third, FNZ has not demonstrated any incentives to pass on cost savings to GBST customers, for example by referring to pre-Merger business plans or internal financial modelling that set out the business case for this pricing strategy with respect to GBST's customers following the Merger.
- 11.357 Given the uncertainty over what GBST customers might do and the lack of evidence of FNZ's incentives to pass on any cost savings, we are not convinced that any benefits of FNZ offering a PaaS solution would be expected to accrue to customers as a result of the Merger.
- 11.358 We do not believe that the benefits (if any) of moving to a PaaS model would be unlikely to arise without this Merger as other less anti-competitive options in the form of partnership arrangements are available. GBST

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<sup>436</sup> [REDACTED]

<sup>437</sup> [REDACTED]

customers could realise benefits from a PaaS solution, for example, by using Equiniti in partnership with GBST, instead of FNZ. Or, absent the Merger, GBST customers could switch to FNZ's PaaS offering to gain its benefits.

11.359 In light of the above assessment, we do not believe that customer cost savings from using FNZ's PaaS model are likely to accrue to any material extent as a result of this Merger and unlikely to accrue without it and there are plausible, less anti-competitive options to achieve these cost savings, if any.

### ***Conclusion on RCBs***

11.360 We have considered whether the claimed benefits submitted by FNZ constitute RCBs for the purposes of the Act. On the basis of the analysis set out above, we conclude that there are no RCBs arising from the Merger.

### **Proportionality of effective remedies**

11.361 We set out below our assessment of and conclusions on the proportionality of our proposed remedy, which is the full divestiture of GBST.

#### *Framework for assessment of proportionality of effective remedies*

11.362 In order to be reasonable and proportionate, we seek to select the least costly remedy, or package of remedies, that we consider will be effective. If we are choosing between two remedies which we consider will be equally effective, we select the remedy that imposes the least cost or that is least restrictive (we call this the 'least onerous effective remedy'). In addition, we seek to ensure that no remedy is more onerous than necessary to achieve the aim pursued or disproportionate in relation to the SLC and its adverse effects.<sup>438</sup>

11.363 To determine this, we first consider whether there are any relevant costs associated with each effective remedy option. When considering relevant costs, our considerations may include (but are not limited to):

(a) Distortions in market outcomes;

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<sup>438</sup> [Merger remedies guidance CMA87](#), paragraph 3.6.

(b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and

(c) the loss of any RCBs that may arise from the Merger which are foregone as a result of the remedy.<sup>439</sup>

11.364 The costs of a remedy may be incurred by a variety of parties, including the merger parties, third parties, the CMA and other monitoring agencies. As the merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties.<sup>440</sup>

11.365 In particular, for completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy, as it is 'for the merger parties to assess whether there is a risk that a completed merger would be subject to an SLC finding, and we would expect this risk to be reflected in the agreed acquisition price'.<sup>441</sup>

11.366 Having identified the least costly effective remedy, we then consider whether this remedy is more onerous than necessary or would be disproportionate to the SLC and its resulting adverse effects. In doing so, we are required to compare the extent of harm which is likely to arise from the SLC with the relevant costs of the proposed remedy.<sup>442</sup>

### ***Assessment of proportionality of full divestiture***

#### *Identification of the least onerous, effective remedy*

11.367 We found that a full divestiture of GBST is the only effective remedy to the SLC and its adverse effects.

11.368 A full divestiture is an intrusive remedy and may impose significant costs on FNZ. However, divestiture is a foreseeable risk where merging parties choose to complete a merger prior to obtaining merger control clearance. The costs incurred as a result of disposing of an asset are not considered relevant costs of a divestiture remedy.<sup>443</sup>

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<sup>439</sup> [Merger remedies guidance CMA87](#), paragraph 3.10.

<sup>440</sup> [Merger remedies guidance CMA87](#), paragraph 3.8.

<sup>441</sup> [Merger remedies guidance CMA87](#), paragraph 3.9.

<sup>442</sup> [Merger remedies guidance CMA87](#), paragraph 3.6.

<sup>443</sup> See [InterContinental Exchange, Inc. v Competition and Markets Authority \[2017\] CAT 6 at 100-101](#). Also [Ryanair Holdings PLC v Competition Commission & Or \[2014\] CAT 3 at 182-185](#): "significant costs may be

11.369 We found no other effective remedy and therefore find that the full divestiture of GBST is the least onerous, effective remedy to the SLC.

*Proportionality to the SLC and its adverse effects*

11.370 We assessed whether a full divestiture would produce results disproportionate to its aim such as costs or a loss of RCBs such that it would not be proportionate to impose the remedy, despite it being the only effective remedy.

11.371 A full divestiture would prevent harmful structural changes to the market which would negate any risk of distortions in market outcomes and would incur no ongoing compliance or monitoring costs.

11.372 The Merger removes an independent competitor. The effect of the resultant loss of rivalry on pricing, service quality and product development is, in our view, substantial given that:

(a) FNZ and GBST compete closely against each other in the supply of Retail Platform Solutions; and

(b) with the exception of Bravura, other suppliers and in-house supply generally offer only a weak constraint.<sup>444</sup>

11.373 In terms of the relevant costs of the remedy, there has been limited integration between FNZ and GBST as the interim measures we have imposed have ensured that the two businesses have been run separately during the inquiry. A full divestiture is therefore in our view unlikely to result in any operational costs from unwinding agreements or integrated infrastructure or transferring customers.

11.374 Any RCBs foregone as a result of a full divestiture would constitute a relevant cost of the remedy. We therefore considered if there were any RCBs that would be lost as a result of this remedy and found there were none RCBs.

11.375 We also considered if there were other costs of a full divestiture remedy that we should take into account but we received no evidence of costs to third parties arising from it. Therefore, other than the costs to FNZ of selling the GBST business we have found no other costs arising from the full divestiture remedy. In accordance with our guidance and case law

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incurred as a result of divestiture, these may have to be borne if behavioural or other structural remedies would not be effective.”

<sup>444</sup> See Chapter 8.

referenced above, we found that the costs to FNZ of running a sale process or any reduction in value of GBST that FNZ may suffer as a result of a full divestiture remedy should not be treated as relevant costs.

11.376 We therefore find that full divestiture of GBST would not produce effects that are disproportionate to the aim of comprehensively remedying the SLC and its resulting adverse effects.

### ***Conclusion on proportionality***

11.377 We found that a full divestiture of GBST is the only effective remedy to achieve the legitimate aim of comprehensively remedying the SLC and its adverse effects. We consider that a full divestiture is no more onerous than is required to achieve this aim. We found there were no relevant costs such as loss of RCBs we should take into account.

11.378 We therefore found that a full divestment of GBST is proportionate remedy to the SLC and its adverse effects.

### **Final decision on remedies**

11.379 We concluded that a full divestiture of GBST would be an effective and proportionate remedy to address the SLC and the resulting adverse effects that we have found.

11.380 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings if the Parties wish to offer them, or by making a final order. Either the final undertakings or the final order must be implemented within 12 weeks of publication of a final report (or extended once by up to six weeks under exceptional circumstances), including the period for any formal public consultation on the draft undertakings or order.<sup>445</sup>

11.381 Once this remedy has been fully implemented, we have decided that FNZ should be prohibited from subsequently acquiring the assets or shares of GBST or acquiring any material influence over GBST without the prior consent of the CMA. Our guidance states that the CMA will normally limit this prohibition to a period of 10 years.<sup>446</sup> We find no compelling reason to depart from the guidance in this case by imposing a shorter or longer prohibition period.

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<sup>445</sup> Section 82 (final undertakings) and Section 84 (final order) of the Act. Also Schedule 10.

<sup>446</sup> Merger Remedies Guidance CMA87 at paragraph 5.10.

- 11.382 We recognise that our concerns about the competitive impact of this merger do not relate to any overlap between FNZ and GBST's Capital Market activities, except insofar as the challenges and risks associated with separating these from GBST's Wealth Management operations are such as to render a partial divestiture of GBST's Wealth Management business ineffective. In keeping with our standard approach to the variation of remedies, should a purchaser of GBST, as a commercial decision, subsequently decide that it wished to take on the risk of effecting such a separation, we would expect that the CMA would be able to take the nature of the competitive overlap between the FNZ and GBST businesses in the UK into account in considering whether or not to grant consent for FNZ to acquire the Capital Markets operations from the Divested Business during this prohibition period.
- 11.383 We put in place interim measures to ensure the continued independent operation of GBST during this inquiry.<sup>447</sup> These will expire upon final determination of the merger reference: that is, when the CMA accepts final undertakings or makes a final order. With a full divestiture remedy, there will be a continuing need to preserve the independence and competitive capability of the GBST business until the divestiture is completed. As our guidance acknowledges, although 'merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves'.<sup>448</sup>
- 11.384 We will therefore maintain similar provisions to our existing interim measures during the implementation of this remedy until completion of the full divestiture remedy. The existing Monitoring Trustee's appointment will continue, in order to monitor the Parties' compliance with them. The Monitoring Trustee will also be involved in certain aspects of the divestiture process, as appropriate and consistent with our guidance,<sup>449</sup> in order to monitor the Parties' compliance with any final order or undertakings in relation to a full divestiture remedy and to ensure an efficient divestiture process.
- 11.385 The Monitoring Trustee's enhanced role will include, but not be limited to:
- (a) Monitoring FNZ's progress in relation to the divestiture process;

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<sup>447</sup> [CMA Interim Order](#).

<sup>448</sup> [Merger remedies guidance CMA87](#), paragraph 5.4.

<sup>449</sup> [Merger remedies guidance CMA87](#), paragraphs 4.43 and 5.38.

- (b) monitoring both FNZ's and GBST's conduct during the divestiture process; and
- (c) overseeing the operation of any data room and clean teams to ensure that robust controls and safeguards are put in place and complied with to ensure GBST's proprietary, confidential and commercially sensitive information is appropriately protected during any due diligence process.

11.386 We will adjust the Monitoring Trustee's mandate to reflect these new functions as part of any final order or undertakings.