

**FNZ'S INITIAL REMITTAL SUBMISSION**

**dated**

**12 February 2020**

---

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

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

---

SLAUGHTER AND MAY

WJT/JFH/HXW/RXZW

# SLAUGHTER AND MAY

## TABLE OF CONTENTS

1.	Introduction	3
2.	The Transaction does not give rise to an SLC	3
3.	The platform allocation errors in the FR are sufficient in themselves to lead to a different outcome on remittal	7
4.	The market definition adopted in the FR is artificial, refuted by empirical evidence, and inconsistent with the CMA's guidelines; this has significant implications	8
5.	The evidence does not support an SLC finding	14
6.	FR placed too much weight [X]	22

**ANNEXES**

Annex 1	RBB report titled ' <i>Supporting data for market definition</i> ' enclosed separately
---------	--

# SLAUGHTER AND MAY

## 1. Introduction

- 1.1 This submission provides an overview of what FNZ perceives to be the main flaws in the CMA's Phase 2 Final Report (**FR**) and the main areas that must be reconsidered as part of the remittal inquiry. This submission:
- (i) briefly recaps why the acquisition of GBST by FNZ (**Transaction**) does not give rise to a substantial lessening of competition (**SLC**) – Section 2;
  - (ii) explains why the platform allocation errors acknowledged by the CMA are sufficient in themselves to undermine the SLC finding – Section 3;
  - (iii) shows that the market definition in the FR is fundamentally flawed – Section 4;
  - (iv) explains why the evidence does not support an SLC finding by reference to: the correct counterfactual, the CMA's key datasets, and the small subset of platforms that could conceivably be affected – Section 5;
  - (v) points out that the FR places too much weight [§<]– Section 6.
- 1.2 The CMA's finding of an SLC and its decision on remedies have been quashed and must be determined afresh. The arguments set out in FNZ's Notice of Application (**NoA**) were necessarily circumscribed by the judicial review standard applicable in review proceedings before the CAT. The CMA therefore rightly recognises that its review is not limited to those grounds and has invited parties to indicate what other issues should be considered. In this submission, FNZ focuses on the core areas of the FR where the CMA erred. It also identifies certain recent developments, in particular regarding the constraint posed by SS&C, which confirm submissions previously made by FNZ.
- 1.3 The nature of the flaws in the FR are such that FNZ anticipates that a significant amount of new evidence will need to be collected as part of the remittal inquiry. FNZ intends to make further submissions following disclosure of such evidence (as well as evidence collected during the original administrative process) and as the inquiry proceeds.
- 1.4 As there is no plausible basis on which an SLC arises, no remedy is necessary in this case. Notwithstanding this, the CMA's approach to remedies in the FR is disproportionate to the SLC identified. FNZ will continue to engage constructively with the CMA, on a without prejudice basis, to address questions regarding an effective partial divestment remedy.

## 2. The Transaction does not give rise to an SLC

- 2.1 This section provides a high-level recap of why FNZ firmly believes that the Transaction will not harm competition.

*There is very limited competition between FNZ and GBST*

- 2.2 It is important not to lose sight of the fact that FNZ and GBST do very different things.

## SLAUGHTER AND MAY

- (i) FNZ offers a fully-outsourced Platform-as-a-Service (**PaaS**) solution. This means that it assumes full responsibility – and all of the associated operational and regulatory costs and risks – for a wealth management platform’s investment processes (trading, settlement and administration) along with the supporting (cloud-based) software and infrastructure. As an FCA-regulated <sup>1</sup> MiFID investment firm, FNZ’s business in the UK [redacted].
  - (ii) GBST is a software business. It does not offer any of the services that form the core part of FNZ’s proposition. Unlike FNZ, it is not regulated by the FCA, does not need to maintain regulatory capital/liquidity and does not generally charge by reference to the value of assets on the platform (instead simply charging a licence fee).
- 2.3 From the perspective of a potential platform customer, these are fundamentally different propositions with radically different commercial implications. It is therefore unsurprising that the evidence shows clearly that there is limited competition between PaaS providers, such as FNZ, and software-only providers, such as GBST. Indeed, in the [redacted] there is no substantive competition between PaaS and software-only delivery models. They overlap at the commercial negotiation stage – which is when prices and service terms are negotiated – in just [redacted] of the [redacted] tenders in the CMA’s ‘Retail’ segment and in only [redacted] of the [redacted] tenders in the sensitivity case when ‘Retail’ and ‘Borderline’ tenders are considered together.<sup>2</sup>
- 2.4 This is borne out by the extremely limited competitive interactions between FNZ and GBST specifically. It is striking that:
- (i) Over the last ten years FNZ has participated in over 50 tenders in the UK, winning more than A\$[redacted] (~£[redacted]) of business, and yet it has lost only one tender, representing just £[redacted] of business, to GBST in 2013 (eight years ago).
  - (ii) [redacted].
  - (iii) [redacted].<sup>3</sup>
- 2.5 While FNZ does have a software-only solution for investment accounting software, as a result of acquiring JHC in 2019, this is differentiated from GBST’s offer.<sup>4</sup> First, JHC

---

<sup>1</sup> FNZ (UK) Ltd is permitted by the FCA to hold client money, deal in investments, safeguard and administer assets, and send dematerialised instructions in relation to investment transactions.

<sup>2</sup> [redacted]. Moreover, each of these tenders had [redacted].

<sup>3</sup> [redacted].

<sup>4</sup> In this submission, FNZ uses the term ‘JHC’ to refer to its software-only investment accounting solution, notably when discussing tender data and shares of supply (since these cover a time period when JHC was independent of FNZ and this helps shed light on the differentiation between FNZ/JHC and GBST).

## SLAUGHTER AND MAY

products do not have pension wrapper functionality. Second, based on the updated FNZ/JHC tender dataset, [§<].<sup>5</sup>

2.6 Finally, GBST's partnership with Equiniti does not make GBST a stronger competitor vis-à-vis FNZ. [§<]. Moreover, in 2018, Equiniti acquired Aquila (a software-only investment accounting software (**IAS**) and pension administration software (**PAS**) provider), which is a direct competitor to GBST.<sup>6</sup> This suggests that Equiniti's incentive to partner with a standalone GBST would be diminished. Indeed, FNZ understands [§<].

2.7 FNZ and GBST therefore cannot be viewed as in any way close competitors. This applies in the case of FNZ's primary delivery model (PaaS) as well as its secondary delivery model (JHC's IAS).

*The relevant market is the supply of Platform Solutions for all wealth management platforms for end-investors – no basis for 'Retail', 'Borderline' and 'Non-Retail' segments*

2.8 FNZ disagrees strongly with the FR's identification of a separate market for the supply of Platform Solutions to 'Retail', as opposed to 'Non-Retail' or 'Borderline' platforms. For the reasons set out in section 4 below, the remittal inquiry must revisit the fundamental issue of market definition. While meaningful distinctions between such platforms might have existed 15 years ago, they have been swept away by convergence; indeed, the FR notes that '*almost all*' respondents acknowledged that convergence had taken place (FR, para 6.46). FNZ has provided a wealth of evidence to support this view, much of which was not addressed adequately (or at all) in the FR.<sup>7</sup> Convergence has arisen from regulatory and technological developments. These changes have increased consumer cost transparency and created strong incentives for platforms to provide a wide range of investment offerings, and take advantage of automation and scalability.

2.9 The extent of convergence is stark when comparing the functionalities Platform Solutions suppliers offer. Annex 1 shows that Retail, Borderline and Non-Retail platforms (as categorised by the CMA) have similar characteristics and offer end-investors broadly the same range of products and services (regardless of whether end-investors are mass-affluent or high-net-worth individuals).

*The combined entity will be constrained by a large number of significant competitors*

2.10 The evidence shows that competition in this sector is vibrant. The effect of the artificially narrow approach to market definition in the FR was to exclude or significantly understate the importance of large, credible players that already regularly compete with the Parties. Such competitors would be very well-placed to win Retail platform customers if the combined entity were to try to increase prices or degrade its offering.

---

<sup>5</sup> [§<].

<sup>6</sup> FNZ's Initial Phase 2 Submission, para. 5.8(iii) and 7.20, and FNZ's response to the Issues Statement, para. 2.21.

<sup>7</sup> See FNZ's Initial Phase 2 Submission, section 3; FNZ's Response to the AIS and WPs, section 2; FNZ's Response to the New Frame of Reference dated 20 March 2020 and the supporting data in Annex 1 to this submission.

## SLAUGHTER AND MAY

2.11 But even within the FR's narrow 'Retail' segment there is fierce competition:<sup>8</sup>

- (i) at least [redacted] suppliers other than the Parties have participated in Retail tenders over the 2016-2020 period; of these suppliers, [redacted] made it through to the commercial negotiations stage where substantive competition takes place;
- (ii) GBST and FNZ have lost to a range of competitors in Retail tenders, including [redacted];
- (iii) once the shares of supply have been corrected and AuA updated, there are [redacted];<sup>9</sup>  
<sup>10</sup> and
- (iv) SS&C is a strong competitor and 'on the up', as evidenced by recent tender wins.

2.12 The competitive landscape is even more crowded if the market is expanded only slightly – and still on a conservative basis – to include supply to 'Borderline' platforms. As the FR recognises, 'Borderline' platforms have 'Retail' components and therefore logically require 'Retail' solutions:

- (i) at least [redacted] suppliers other than the Parties have participated in Retail or Borderline tenders over the 2016-2020 period; of these suppliers, [redacted] made it through to the commercial negotiations stage where substantive competition takes place;
- (ii) there are [redacted] additional players that are currently supplying or actively competing to supply such platforms but that were not identified in the FR as competitors for Retail Platforms: [redacted];<sup>11</sup> and
- (iii) it is notable that there are numerous suppliers of Borderline platforms that already also supply or have competed (i.e. at the late stage) to supply Retail platforms, including [redacted].

*Any impact on competition could not be substantial*

2.13 If FNZ had not acquired GBST, it is likely that SS&C would. As the most likely counterfactual, this is the benchmark against which any impact on competition brought

---

<sup>8</sup> For convenience, the terms 'Retail segment' or 'Retail market' are used to refer to the CMA's relevant market, namely the supply of Retail Platform Solutions excluding in-house software.

<sup>9</sup> All shares in this submission are calculated based on the updated AuA figures in Annex 3 of FNZ's response to the Section 109 notice of 28 January 2021. With regard to the new platforms which have been added in Annex 1, for the purposes of calculating Shares of Supply, [redacted] and [redacted] are classified as Retail whilst all other new platforms are classified as Borderline. This approach is consistent with the classifications set out in footnote 1 of FNZ's response of 9 February 2021 to Question 11 of the Section 109 notice of 28 January 2021.

<sup>10</sup> The further information provided in response to the s.109 notice of 28 January 2021 indicates that if the additional platforms supplied by TCS BaNCS were to be classified as Retail by the CMA, TCS BaNCS's share of relevant Retail supply is likely to be [redacted]. [redacted].

<sup>11</sup> [redacted].

## SLAUGHTER AND MAY

about by the Transaction must be measured. Contrary to the FR, had SS&C and GBST merged, the competitive landscape would have been materially different from a world in which GBST remained in independent ownership. For one, compared to the correct counterfactual, the Transaction does not result in any reduction in the number of competitors. What is more, SS&C is a material player: it is the third largest supplier in the narrow 'Retail' segment, and importantly it has had significant success in tenders, including very recently (since the FR), and against FNZ/JHC (see paragraph 5.11(iii) below). This undermines the plausibility of any SLC as a result of the Transaction. See section 5 below.

2.14 Even if the CMA were right about the counterfactual and market definition, it follows from the FR that any impact on competition could only accrue to a hypothetical 'Retail' platform that matched a narrow set of criteria:

- (i) it is not open to supply by a 'Non-Retail' or 'Borderline' solutions supplier; but
- (ii) it is open to either a software-only or a PaaS solution; and
- (iii) it intends to tender in the near future and is not currently self-supplying its software requirements (and would not view in-house supply as an alternative).

2.15 FNZ does not consider that a single platform would meet these criteria; much less that a sufficient proportion of the market would be affected for the Transaction to give rise to an SLC. Indeed, even if a platform did meet these criteria, it would still have at least [redacted] credible solution providers to choose from in the CMA's 'Retail' market.

### **3. The platform allocation errors in the FR are sufficient in themselves to lead to a different outcome on remittal**

3.1 FNZ and its advisers identified a number of apparent errors in the market shares presented in the FR. These errors have now been acknowledged by the CMA. Specifically, the CMA appears to have wrongly attributed to FNZ the supply of:

- (i) [redacted].<sup>12</sup> This platform is, in fact, supplied by Bravura (on a software-only basis) with TCS BaNCS as the servicing supplier. ([redacted]); and
- (ii) [redacted].<sup>13</sup> These platforms are, in fact, supplied by TCS BaNCS. ([redacted]).<sup>14</sup>

3.2 In addition, the CMA seems to have wrongly attributed supply of the [redacted] workplace platform, with recorded AuA of [redacted], to GBST. FNZ understands that this platform is, in fact, supplied by Temenos.

---

<sup>12</sup> The name of this platform has been updated to [redacted] in Annex 3 of FNZ's response to the Section 109 notice of 28 January 2021. (See para. 3.2(ii) of that response.)

<sup>13</sup> The AuA has been updated to £[redacted] in Annex 3 of FNZ's response to the Section 109 notice of 28 January 2021.

<sup>14</sup> [redacted].



## SLAUGHTER AND MAY

- 3.3 These errors are material and sufficient in themselves to invalidate an SLC finding. The FR significantly overstates the strength of the combined entity. FNZ's advisers estimate that FNZ's and GBST's combined share of Retail Platform Solutions would [X] once these errors are corrected.<sup>15</sup>
- 3.4 At the same time, these errors understated the shares attributable to other competitors. In particular, Bravura's share would increase by [X] percentage points, TCS BaNCS's by [X] percentage points, and Temenos's by [X] percentage points.
- 3.5 These errors have material implications for the characterisation of the supply-side structure of the CMA's Retail market, on which the CMA's SLC finding was founded. Notably, correcting these errors results in:
- (i) **Temenos**, which FNZ understands supplies [X], being included as a Retail market competitor, when it was omitted entirely by the CMA;
  - (ii) **TCS BaNCS'** Retail share increasing [X] on the CMA's data. As emphasised by FNZ throughout the CMA's investigation, TCS BaNCS offers capabilities that overlap substantially with those of FNZ, and is already a major Retail competitor; and
  - (iii) **Bravura's** substantial position on the CMA's Retail market being further confirmed. Indeed, on the CMA's corrected data, Bravura was [X].
- 3.6 The corrected shares of supply therefore reveal a fundamentally different picture of the structure of the relevant market and the strength of rivals, even in the CMA's narrow Retail segment. No SLC can arise on this basis.
- 4. The market definition adopted in the FR is artificial, refuted by empirical evidence, and inconsistent with the CMA's guidelines; this has significant implications**
- 4.1 The evidence supports the relevant market being the supply of Platform Solutions for all wealth management platforms for individual end-investors. This definition properly encompasses all three of the FR's identified product segments, which the below section demonstrates are artificial constructs.<sup>16</sup>
- 4.2 The FR defines the relevant product market to be *'the supply of Retail Platform Solutions, excluding the in-house supply of software'* (para. 33). In so doing, the FR excludes Platform Solutions for Non-Retail and Borderline platforms (**'Non-Retail Platform Solutions'** and **'Borderline Platform Solutions'** respectively). The concept of a 'Retail Platform' used in the FR was created by the CMA towards the end of Phase 1 of its investigation. The CMA's approach is to identify features that, in its view: (i) differentiate

---

<sup>15</sup> As explained in FNZ's response to the Section 109 notice of 28 January 2021, the AuA of a number of platforms have been updated. (See response to Question 3 and Annex 3 for more details.) Hence, the share implications of correcting the CMA's platform allocation errors have changed slightly since FNZ's appeal to the CAT was made.

<sup>16</sup> For FNZ's previous submissions on market definition see: sections 3 and 4 of FNZ's Initial Phase 2 Submission; section 2 of FNZ's response to the AIS and WPs; section 3 of FNZ's response to PFs.

## SLAUGHTER AND MAY

Retail platforms from other platform types; and (ii) cause Retail platforms to require different solutions than Borderline and Non-Retail platforms.

- 4.3 This approach is both misconceived and unsubstantiated. The implications of this error are fundamental – the CMA fails to include at least [redacted] credible competitors of FNZ and GBST in the relevant market. Importantly, ‘Retail Platform’ is not an industry-recognised term.<sup>17</sup> The lack of clarity around the CMA’s definition also calls into question the robustness of its evidence, meaning that disclosure of third party questionnaires and responses is paramount (see further, paragraphs 4.25 to 4.27 below).
- 4.4 The CMA’s recognition that the FR contains potential errors of fact in respect of market shares makes it of particular importance that the remittal inquiry ensures that all findings are grounded in accurate, objective data and that such data is given appropriate weight. In particular, the extensive data FNZ provided [redacted] is dismissed in the FR as ‘*illustrative rather than a comprehensive assessment*’ (FR, para. 6.19). This dismissal is despite FNZ presenting a systematic treatment of over 45 platforms which carefully assesses Retail, Borderline and Non-Retail platforms against all criteria said to differentiate them - see Annex 1. There is no basis to dismiss this evidence as merely ‘*illustrative*’ and the FR notably fails to present any hard data in support of the selected market definition.

### *Retail vs Non-Retail Platforms*

- 4.5 In support of its product market definition, the CMA states that Retail and Non-Retail Platforms ‘*serve different groups of investors*’ (FR, para. 6.79). The CMA does not explicitly identify what these investor groups are, indicating only that Non-Retail platforms are more likely to serve ‘*wealthier investors*’ (FR, para. 6.80).
- 4.6 In reality, there is a material overlap in investor types served by Retail and Non-Retail platforms. For example, some stockbrokers termed Non-Retail by the CMA target *all* investor types – as the FR admits (FR, para. 6.16b) – and Non-Retail platforms clearly cater for mass-affluent investors.<sup>18</sup> Further, Retail platforms serve high-net-worth individuals (**HNWIs**) whom the FR associates with Non-Retail platforms.<sup>19</sup>
- 4.7 It is acknowledged that *some* Retail and Non-Retail platforms may have a different *target* customer base. However – and critically – even if a Retail platform is more likely to serve mass affluent investors, while a Non-Retail platform is more likely to serve HNWIs, it does not follow that the platforms have distinct solution requirements.
- 4.8 This point is key. HNWIs require the same services as mass affluent investors, *as well as others*. Just because an investor is wealthier does not mean they would fail to take advantage of pensions and tax wrappers. Neither does it mean that they would shun the

---

<sup>17</sup> The term ‘retail’ is generally understood in financial services to refer to non-institutional investors, excluding those with expertise in complex financial instruments and a minimum level of wealth.

<sup>18</sup> Section 5 of Annex 1. Some self-identified stockbrokers, such as AJ Bell and Novia, have also been classified in the FR as ‘Retail’ platforms.

<sup>19</sup> This can also be seen clearly from evidence in the FR – Figure 6.1, for example, provides examples of Retail platforms [redacted].

## SLAUGHTER AND MAY

opportunity to invest in ‘mainstream’ assets such as cash, equities, and bonds – that would be inefficient from the perspective of asset allocation. A Non-Retail platform therefore requires ‘Retail functionality’ to serve its investor base, whether it targets HNWIs or a mix of HNWIs and mass-affluent investors.<sup>20</sup>

- 4.9 The FR also claims that Retail and Non-Retail platforms have ‘*different propositions*’ (FR, para. 6.79). How propositions differ is not specified; rather, the FR states: ‘*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 [emphasis added]’ (FR, para. 6.79). However, ‘*more*’ and ‘*larger*’ are not useful terms in this context.*
- 4.10 First, even if Non-Retail platforms offer ‘less commoditised’ (e.g. bespoke or manual) products, they also offer mainstream (i.e. commoditised) products for the reason just explained – their investors want both complex and commoditised investments.<sup>21</sup>
- 4.11 Second, even if a Retail platform considers tax wrappers to be (relatively speaking) a more important part of its offer, this does not mean such wrappers are unimportant for Non-Retail platforms and their investors. On the contrary, most Non-Retail platforms offer their investors a wide range of tax wrappers that are indistinguishable from those offered by Retail platforms.<sup>22</sup> Indeed, HNWI require access to tax wrapper benefits as much as mass affluent investors (see paragraph 4.8 above).
- 4.12 Finally, even if Retail platforms, on average, serve more investors than Non-Retail platforms, this does not matter if the number of investors served by Non-Retail platforms is such that they still require scalable, automated technology (like Retail platforms). The FR suggests that Retail Platforms would require different solutions to Non-Retail Platforms in order to efficiently manage a larger number of accounts than Non-Retail Platforms (FR, paras. 6.21 – 6.22). To support this claim, the FR refers to examples of FNZ platforms serving [§<].<sup>23</sup> However, the FR’s argument is misconceived. Serving [§<] investor accounts is not a manual exercise. It requires automated, scalable technology. More generally, a standard feature of good software is that it is linearly scalable and therefore an increase in the number of investor accounts by a certain rate, would require an increase of the same rate in the processing power (i.e. hardware, not software) to support it. Scalability is a standard feature of the software industry and not one that would prevent solutions providers to Non-Retail platforms from serving Retail platforms.<sup>24</sup>
- 4.13 In summary, when considering the market for the *supply of Platform Solutions*, even if *some* Retail and Non-Retail Platforms target different groups of end-investors, there is no basis to distinguish Platform Solutions by reference to the platform’s target investor group.

---

<sup>20</sup> Sections 3-6 of Annex 1.

<sup>21</sup> Section 3 of Annex 1.

<sup>22</sup> Section 6 of Annex 1.

<sup>23</sup> [§<].

<sup>24</sup> See FNZ’s Initial Phase 2 Submission, paras. 4.41-4.42.

## SLAUGHTER AND MAY

The evidence outlined above demonstrates that the technology solutions the platforms require are materially the same regardless of the investors they serve.

### *Retail vs Borderline Platforms*

4.14 [redacted].<sup>25</sup> The FR classifies a Platform as Borderline if: (i) the platform said that its platform involved both Retail and Non-Retail components;<sup>26</sup> or (ii) FNZ or GBST (but not both) submitted the platform should be Retail (per the CMA's definition), and the CMA did not have other evidence (Appendix G, paras. 15 and 16).

4.15 The FR acknowledges that allocating platforms to the Borderline category is '*[c]onsistent with the lack of a clear line of delineation between some Retail and Non-Retail Platforms*' (FR, para. 6.21). But the FR does not recognise the important implications of this finding. The large number of Borderline platforms relative to Retail and Non-Retail platforms (see below) reflects the absence of a clear basis for distinguishing between them. Moreover, since Borderline platforms could be allocated to the Retail or the Non-Retail category a solutions provider for a Borderline platform must be able to serve a Retail platform: (i) the provider must have Retail functionality to serve the Retail components of a Borderline platform; and (ii) serving the Non-Retail components of the Borderline platform is also likely to require Retail functionality (because Non-Retail functionality encompasses Retail functionality). By way of example with reference to FNZ's platform customers:

(i) [redacted].

(ii) [redacted].

4.16 It is illogical, therefore, for Borderline Platform Solutions to be excluded from the market and doing so distorts the analysis to the point that it is no longer reliable.

### *Evidence shows functionality provides no basis to differentiate platform requirements*

4.17 To shed further light on the relevant market, Annex 1 (i) identifies the features which the FR considers distinguish Retail and Non-Retail platforms, and (ii) assesses the extent to which those features are common across Retail platforms and absent from Borderline and Non-Retail platforms. Annex 1 shows clearly that Retail, Borderline and Non-Retail platforms (as categorised by the CMA) have similar characteristics and offer end-investors broadly the same range of products and services. To the extent platform offers differ, either such differences arise within segments (i.e. they do not give rise to a clear demarcation between segments), or Borderline and Non-Retail platforms offer a wider range of products and services, i.e. encompassing those offered by Retail platforms.

4.18 The table below summarises the results. The first column indicates requirements which the FR alleges differentiate Retail and other platform types. The next columns indicate whether the requirement is associated with most of the platform types assessed in

---

<sup>25</sup> [redacted]. It seems to be the case that [redacted].

<sup>26</sup> Except where the CMA considered a 'Retail-focussed' supplier reached the final stage of a tender related to the platform, in which case it was classified as 'Retail' instead.

Annex 1. The evidence is clear. All three platform types require the same functionality when assessed against the indicators that the FR says are important. That is, solution providers that can credibly supply Borderline or Non-Retail platforms can supply Retail platforms.

**Table 4.1**  
**Solution requirements alleged to differentiate Retail, Borderline and Non-Retail platforms**

<b>Solution requirement implied by the CMA's FR to be a key differentiator</b>	<b>Required by most Retail platforms?</b>	<b>Required by most Borderline platforms?</b>	<b>Required by most Non-Retail platforms?</b>
Capability to serve mass affluent investors (para 6.16(a))	✓	✓	✓
Capability to deal with a large number of investors (para 6.79)	✓	✓	✓
Capability to offer restricted range of mainstream investment products (para 6.16(a))	✓	✓	✓
High automation and efficient systems for managing investor accounts (para 6.79)	✓	✓	✓
Provision of tax wrappers such as pensions (para 6.79)	✓	✓	✓
Capability to deal with open architecture (para 6.16(a)) <sup>27</sup>	✓	✓	✓
Capability to offer bespoke products and a more customised service for investors (para 6.16(c), 6.80)	✓ <sup>28</sup>	✓	✓

Source: CMA's FR, FNZ, LEK, Company websites, The Lang Cat Platform Analyser.

- 4.19 The conclusion that there is no meaningful basis for defining separate markets for the supply of Platform Solutions to Retail platforms, on the one hand, and Borderline or Non-Retail platforms, on the other, holds firm even if brand, reputation, user experience and track record are important, as explained by the FR (paras. 7.29 and 7.34). If a solutions provider to Borderline and Non-Retail platforms has been able, in undertaking such supply, demonstrably to fulfil all the requirements of Retail platforms (e.g. because the functionalities required by Borderline and Non-Retail platforms encompass those required by Retail platforms), then this solutions provider must have a suitable brand, reputation, user-experience and track-record to supply Retail platforms.
- 4.20 It would be entirely circular for the CMA, instead, to adopt an arbitrary Retail platform classification and then determine that only solutions providers that already supply Retail platforms, as defined, are capable of supplying Retail platforms.

<sup>27</sup> Para. 6.16(a) of the FR claims Retail platforms are increasingly using open architecture. In fact, most Retail platforms already are open architecture (see Annex 1).

<sup>28</sup> Evidenced by a finding that the majority of Retail platforms offer discretionary services (see Section 8 of Annex 1).

## SLAUGHTER AND MAY

4.21 The evidence instead suggests that the main demand-side consideration for a platform is whether to choose a PaaS or software-only solution because these delivery models offer very different solutions for platform customers. The economic evidence, [38], supports that platform customers typically make a choice between delivery model early on (see further paragraph 2.3 above).

*The FR failed to properly assess demand- and supply-side substitution and suggests significant flaws in the CMA's evidence gathering*

4.22 The Merger Assessment Guidelines (**MAGs**) establish that in defining the relevant product market *'the Authorities will assess whether the hypothetical monopolist could profitably raise the price of at least one of the products in the candidate market by at least a small but significant amount over a non-transitory period of time (ie by a 'SSNIP'...)*' (para. 5.2.11).

4.23 The outcome of the SSNIP test depends on responses to the hypothesised price change. To apply the test, therefore, it is critical to gather evidence on how the behaviour of platform customers (demand-side) and potential new suppliers (supply-side) would change in response to the SSNIP. The conceptual validity (and practical usefulness) of the SSNIP also applies to circumstances where quality is a key parameter of competition, with a reduction in quality being equivalent to an increase in the quality-adjusted price.<sup>29</sup>

4.24 There is no suggestion in the FR that the CMA considered demand- or supply-side responses to a SSNIP (or a commensurate reduction in quality). This is an important omission. It has been established above that Borderline and Non-Retail Platform Solution providers have the necessary capability to supply Retail platforms and that, by definition, Borderline platforms require Retail functionality. Given this:

- (i) any alleged weakness of one provider's IAS or PAS solution relative to another's is likely to be minor from a platform customer perspective (since both are likely to meet the platform customer's requirements), compared to the cost of a 5-10% price rise (or equivalent quality reduction); and
- (ii) any investment required by a Platform Solution provider to address such a weakness may be small relative to the extra profit available following a SSNIP.<sup>30</sup>

4.25 The FR also hints at significant flaws in the evidence gathering process (only partially apparent at this stage, given the lack of disclosure to date). Since the concept of a 'Retail' platform does not have currency in the industry, in gathering information from third parties

---

<sup>29</sup> See, for example, para. 6.1 of the FR of the Somerfield Plc/Wm Morrison Supermarkets Plc merger inquiry (2005) and footnote 2 of the FR of the Competition Commission's groceries market investigation (2008).

<sup>30</sup> To illustrate, suppose a Retail platform considered a solutions provider serving Non-Retail platforms to have a good IAS solution but to lack strong tax wrapper functionality. Were prices of 'Retail' solutions to rise by 5-10%, the Retail platform might well be willing to use the Non-Retail IAS in combination with a third-party integrated pension solution from a specialist PAS provider (e.g. Delta Financial Systems (acquired by Bravura), Dunstan Thomas, CTC Pensions Technology). Equally, the solutions provider might decide to invest in its tax wrapper solution, not least because – having done so – it could then offer that to other platforms (whether Retail, Borderline or Non-Retail, since nearly all platforms offer tax wrappers to their investors – see Section 6 of Annex 1).

## SLAUGHTER AND MAY

the CMA *'provided customers descriptions for each Investment Platform type'*.<sup>31</sup> This creates a problem from an evidence gathering perspective.

- 4.26 Framing questions by reference to a non-standard definition of 'Retail' is liable to steer respondents to follow the CMA's lead. For example, if at the beginning of a questionnaire the CMA defines a Retail platform as having certain characteristics that distinguish it from a Non-Retail platform, any response to a question that then asks respondents for their own views on the comparison and contrast between Retail and Non-Retail platforms is invalidated – the CMA would already have steered the respondent towards a particular answer (i.e. that these platform types are different).
- 4.27 In addition, the definition put forward by the CMA changed over the course of its investigation. This matters because the CMA issued questionnaires at various points during the Phase 2 process. If different definitions of 'Retail' were adopted across questionnaires, there is a material risk that evidence gathered in relation to one definition of 'Retail' will not be relevant to a later definition, and must be discarded or down-weighted accordingly. This concern relates not only to evidence gathered during Phase 2, but also to evidence from Phase 1 relied on in the FR.<sup>32</sup> For this reason, it is paramount that FNZ sees not only the questionnaires issued by the CMA but also the answers – the latter must be understood in the context of any definitions used when framing questions.

### 5. The evidence does not support an SLC finding

- 5.1 The MAGs state that a merger gives rise to an SLC where *'it has a significant effect on rivalry over time'* (para. 4.1.3). In particular, *'a merger that gives rise to an SLC will be expected to lead to an adverse effect for customers'* (para. 4.1.3). In mergers involving differentiated products, like this one, the MAGs state that unilateral effects are more likely *'where the merger firms' products compete closely'*, *'where the merger eliminates a significant competitive force in the market'* or *'where customers have little choice of alternative suppliers'* (MAGs, paras. 5.4.5-6, 5.4.12).<sup>33</sup>
- 5.2 As summarised in section 2 above, no such circumstances arise in this case. To the contrary: the Parties' highly differentiated offerings mean that the firms' products do not compete closely; GBST is not a significant force in the market; and there are *at least* [X] major competitors ([X]) who already provide alternative options in either the 'Retail' segment post-Transaction or who could expand easily into it from the 'Borderline' segment.
- 5.3 The MAGs go on to say that *'the application of the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the*

---

<sup>31</sup> At various places in the FR, the CMA indicates that third parties were asked questions that were framed in terms of 'Retail Platforms'. See for example Appendix G of the FR, para. 13.

<sup>32</sup> See e.g. Appendix A, para. 5 of the FR.

<sup>33</sup> The CMA is currently consulting on revised Merger Assessment Guidelines. FNZ notes that the draft revised guidelines (not yet final), do not materially differ in this respect, albeit the phrases quoted above do not all feature in the revised draft. See draft paras. 2.6 and 4.7.

## SLAUGHTER AND MAY

*merger*' (in other words, the counterfactual) (para 4.3.1). The MAGs require the CMA to adopt '*only the most likely scenario*' as the counterfactual (para. 4.3.6).

- 5.4 As this section demonstrates in detail, no SLC can arise: (i) when the Transaction is compared to the correct counterfactual (SS&C acquiring GBST); (ii) on a proper analysis of the CMA's key datasets; and/or (iii) taking into account the small subset of platform customers that could conceivably be affected.

### *Under the correct counterfactual – no SLC can arise*

- 5.5 The most likely counterfactual is that SS&C would have acquired GBST:<sup>34</sup>
- (i) On 1 July 2019, the GBST Board indicated its intention to recommend SS&C's offer of A\$3.25 unanimously to its shareholders (subject only to standard provisos around due diligence and the absence of a superior offer).<sup>35</sup>
  - (i) On 2 July 2019, GBST granted SS&C exclusive access to GBST's data room and SS&C increased its offer for GBST.
  - (ii) On 8 July 2019, despite receiving three competing offers from FNZ, the GBST Board announced its unanimous intention again to recommend SS&C's proposal to its shareholders absent a superior proposal.<sup>36</sup>
  - (iii) The CMA's own finding of fact was that, absent competing offers from FNZ, '*it was likely that GBST would have sought to conclude the acquisition by SS&C*'.<sup>37</sup> The CMA did not identify any factor arising from SS&C's due diligence that changed this view. Indeed, as the CMA noted in its working papers '*had FNZ not presented GBST with its higher offer (of AUD\$3.85), it is likely that GBST would have recommended SS&C's proposal to its shareholders*'.<sup>38</sup>
  - (iv) SS&C told the CMA it was '*surprised and disappointed*' not to have won the acquisition (FR, para. 5.18).
- 5.6 The FR notes that the GBST announcement on 8 July included the caveat that there was '*no certainty that the Updated Indicative Proposal will result in an agreed transaction*' (FR, para. 5.22). But this is a standard caveat for a market announcement of this type and should in no way be taken as an indication of the likelihood of the transaction being agreed.<sup>39</sup> In any case, the relevant test for determining the correct counterfactual is not

---

<sup>34</sup> See: FNZ's Final Merger Notice, para. 11.1; FNZ's Response to PFs, para. 2.1(iv); FNZ's NoA, paras. 38 and 39.

<sup>35</sup> GBST ASX Announcement, 1 July 2019.

<sup>36</sup> GBST ASX Announcement, 8 July 2019.

<sup>37</sup> FR, para. 5.22, after having summarised the evidence of the competing offers in para. 5.21.

<sup>38</sup> CMA Counterfactual Working Paper, para. 49.

<sup>39</sup> There are numerous examples of transactions that have concluded which have used the same caveat. See, for example, the announcements by Coca-Cola Amatil Limited in relation to a proposal from Coca-Cola European Partners plc (26 October 2020); Windlab Limited in relation to a proposal from Federation Asset Management (20 January 2020)



## SLAUGHTER AND MAY

what is certain (which would make selecting a counterfactual all but impossible in any case), but what is most likely on the balance of probabilities (MAGs, para. 4.3.6).

- 5.7 GBST asserts that *[a]t 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* (FR, para. 5.14(c)), but this is no reason why, on the balance of probabilities, an SS&C acquisition would not have proceeded. The contemporaneous evidence shows that there was a clear desire on both sides to proceed with the deal (in the case of GBST, in the absence of a superior offer). This intention is evident from an SS&C briefing paper which noted that [§<].<sup>40</sup> There is no dispute to be had over whether SS&C's offer was satisfactory to GBST, given the GBST Board's unanimous intention to recommend it.<sup>41</sup>

*An SS&C/GBST merger would produce a meaningfully different market structure compared to a scenario where GBST remained independent*

- 5.8 According to the FR:

*'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'* (para. 5.24).

- 5.9 This does not stand up to scrutiny. Indeed, on this logic the CMA could have no cause for concern in the present case (FNZ too intends to continue to operate GBST) – or in fact in most mergers (since acquirers typically intend to continue to operate targets). An SS&C/GBST merger would clearly have resulted in a meaningfully different market structure, and therefore a meaningfully different benchmark for the purposes of assessing the Transaction. Apart from anything else, there would have been one fewer competitor bidding for tenders compared to a scenario where GBST remained independent.

- 5.10 What is more, SS&C is an important competitor, and particularly in the CMA's 'Retail' segment. FNZ disagrees with the FR's conclusion that SS&C provides a 'weak' competitive constraint on both GBST and FNZ for the reasons set out below. But even if the CMA considers that the constraint posed by SS&C is not strong, the evidence is clear that it is not *de minimis* such that the merger of SS&C and GBST would have had no impact in the market or be equivalent to GBST operating under independent ownership.

---

and Village Roadshow Limited in relation to a proposal from BGH Capital Pty Ltd (24 January 2020) ([https://ccaauaesprdrsq057str001.blob.core.windows.net/media/media/ccamatil/ccamatilau/files/asx/2020/201026\\_ccepindicativeproposalandamatiltradingupdate.pdf](https://ccaauaesprdrsq057str001.blob.core.windows.net/media/media/ccamatil/ccamatilau/files/asx/2020/201026_ccepindicativeproposalandamatiltradingupdate.pdf); <https://www.asx.com.au/asxpdf/20200120/pdf/44dctsm012llm4.pdf>, and <https://villageroadshow.com.au/-/media/VRL-Corporate-Media-Library/Documents/ASX-Announcements/2020/January/BGH-Indicative-Proposal.pdf>).

<sup>40</sup> CMA Counterfactual Working Paper, para. 34.

<sup>41</sup> GBST's Board instructed Marlin & Associates *'to assist in identifying alternative suitors willing to pay a higher price than Bravura and work with them to create a competitive bidding process'*. See: <https://www.marlinllc.com/transactions/financial-technology/gbst-has-agreed-to-be-acquired-by-fnz>.

## SLAUGHTER AND MAY

- 5.11 The evidence summarised in the FR (as available to FNZ) supports the view that SS&C is an important competitor:
- (i) Based on the CMA's share of supply figures, SS&C is the third largest provider in the Retail segment (joint with GBST), at [§]. An SS&C/GBST combination would result in a new number two provider, overtaking Bravura at [§].<sup>42</sup> While FNZ's view is that market shares are not a reliable indicator of market power in this industry,<sup>43</sup> the FR notes shares of supply do 'provide an indication of the Parties', and their competitors', position in the market' (FR, para. 8.26).
  - (ii) Third parties also identify SS&C as an alternative provider to both FNZ and GBST (FR, para. 8.126). The FR recognises that FNZ's and GBST's internal documents call out SS&C as an important competitor (sometimes using the name 'IFDS'<sup>44</sup>), and that GBST monitors SS&C as an alternative supplier (FR, paras. 8.14, 8.16, 8.122 – 8.123).
  - (iii) The FR cites some third-party concerns about hurdles they say SS&C faces in winning new platform customers in the UK.<sup>45</sup> However, the FR does not balance these concerns against more recent evidence of SS&C's performance:<sup>46</sup>
    - (a) In 2019, SS&C successfully migrated St James's Place (currently with £129bn AUA) onto Bluedoor.<sup>47</sup>
    - (b) SS&C has had recent success with a number of platform customers. As such, it is 'on the up' (in contrast to GBST, which, to FNZ's knowledge, has not won against FNZ/JHC since 2016 and has [§]).

---

<sup>42</sup> [§].

<sup>43</sup> There are significant limitations to using AuA as a basis for estimating shares of supply. For example, a platform's AuA can fluctuate significantly based on factors completely outside the control of its solutions provider (such as the composition of the assets administered). This can lead to a misleading picture of the relevant competitive dynamics, because solutions providers' market shares may change irrespective of whether they have won or lost any business in a given year. See further FNZ's Final Merger Notice, paras. 14.25 to 14.28.

<sup>44</sup> SS&C acquired DTS Systems in 2018, including IFDS UK. The remainder of the IFDS business, IFDS Canada, Ireland, and Luxembourg, are owned by SS&C in a 50/50 joint venture with State Street (see: <https://www.ifdsgroup.com/about-ifds/about-ifds#>). See also FNZ's Final Merger Notice, para. 15.60.

<sup>45</sup> FR, para. 8.127(b)(i): in particular, (i) SS&C's only material platform customer relationship is with St James's Place, for which SS&C provides a specific (closed architecture) solution, and (ii) a high-profile failure to implement a Platform Solution for Quilter (Old Mutual Wealth).

<sup>46</sup> FNZ's Response to PFs, para. 4.9; FNZ's Initial Phase 2 Submission, para. 5.7(ii).

<sup>47</sup> <https://investor.ssctech.com/investor-relations/press-releases/press-release-details/2019/SSC-Successfully-Re-platforms-St-Jamess-Place-onto-Bluedoor/default.aspx>

## SLAUGHTER AND MAY

- (I) In October 2020, SS&C announced that St James' Place (the largest UK wealth management platform) had renewed and extended its relationship with SS&C until 2034.<sup>48</sup>
  - (II) In October 2020, Brooks MacDonald (classified in the FR as a 'Borderline' platform) announced that it was migrating its platform to SS&C (switching from JHC and proprietary), which Brooks MacDonald considers will allow it to offer 'a *best-in-class adviser experience*' using SS&C's technology.<sup>49</sup>
  - (III) In 2020, SS&C won Rowan Dartington in a tender that FNZ participated in.
  - (IV) In 2019, [REDACTED].
  - (V) In 2017, SS&C [REDACTED].<sup>50</sup>
- (c) FNZ expects that SS&C would readily be able to build integrations necessary for basic open architecture (if it has not done so already) given that Bluedoor is the underlying PaaS solution running large open-architecture platforms in Australia for many years and SS&C recently won Brooks MacDonald which is open architecture. As such, the fact that it uses a closed architecture solution for St James's Place is immaterial.
- (iv) In any event, the requirements to supply an open-architecture platform are straightforward. An open-architecture platform requires two elements: (i) the platform needs to have the necessary fund manager agreements (i.e. the solutions provider is not responsible for this); and (ii) the IAS solutions provider needs to have a system which can connect with a range of fund managers so that the platform can send details of the value and quantity of any client orders, together with the client ID, and receive confirmation that the trade has been executed. This can be done by building a simple integration with a fund order routing and settlement messaging network service (e.g. Calastone).<sup>51</sup>
  - (v) SS&C itself told the CMA that it is actively competing in the UK (FR, para 8.127(b)(ii)).

*An SS&C/GBST merger would not result in an SLC*

---

<sup>48</sup> <https://investor.ssctech.com/investor-relations/press-releases/press-release-details/2020/St.-Jamess-Place-Extends-Multiyear-Relationship-with-SSC/default.aspx>.

<sup>49</sup> <https://citywire.co.uk/wealth-manager/news/brooks-to-transfer-up-to-60-jobs-in-new-tech-alliance/a1417941>.

<sup>50</sup> [REDACTED].

<sup>51</sup> If useful, FNZ is happy to speak with a member of the CMA's DaTA unit or other specialists at the CMA regarding any technical parts of this submission.

## SLAUGHTER AND MAY

5.12 An SS&C/GBST merger would produce a meaningfully different market structure compared to an independent GBST. But it would not result in an SLC. Even in the CMA’s ‘Retail’ market, SS&C/GBST’s share would be below [X]; in ‘Retail’ and ‘Borderline’ combined its share would be [X]. [X] players with shares of [X] or above would remain, including from a ‘Retail’ perspective [(X)]. Despite an SS&C/GBST merger resulting in one fewer competitor, a large number of alternative providers would continue to supply Retail or Borderline platforms (or both). As such, competition would continue to be fierce.

5.13 In addition, like FNZ and GBST, SS&C and GBST are highly differentiated. While SS&C offers both software-only and PaaS delivery models, its success has been primarily in its PaaS offer, in contrast to GBST’s software-only delivery model. The evidence in the FR does not present SS&C and GBST as particularly close competitors. [X].

*The incremental competitive impact of the Transaction relative to an SS&C/GBST merger does not support an SLC finding*

5.14 When assessing the Transaction against the correct counterfactual, the evidence does not support an SLC finding.

(i) The Transaction does not reduce the number of competitors.

(i) The market share increment is small. [X].

5.15 A side-by-side comparison of the Transaction against the counterfactual highlights the limited differences between the two (see Table 5.1 below). To the extent there is a difference between an SS&C/GBST merger versus the Transaction, it arises only in relation to the broader Retail + Borderline segment, where the FNZ/GBST combination gives rise to a moderate share of [X]%. However, this difference cannot indicate a cause for concern given the numerous credible alternatives to FNZ and GBST, the fact that this is a bidding market where the majority of contracts are put out to competitive tender, and the marked differentiation between FNZ and GBST in the Retail + Borderline segment (see further below).

**Table 5.1**  
**FNZ/GBST and SS&C/GBST merger comparisons**

	FNZ/GBST	SS&C/GBST
<b>Shares of supply</b>		
<i>Retail</i>	[X]	[X]
<i>Retail + Borderline</i>	[X]	[X]
<b>Differentiation</b>		
<i>Platform served (based on CMA definitions)</i>	[X]	[X]
<i>Delivery model</i>	FNZ offers PaaS; GBST does not	SS&C offers PaaS; GBST does not

## SLAUGHTER AND MAY

	FNZ/GBST	SS&C/GBST
<i>Software-only product</i>	GBST & JHC both offer software-only, but differentiated models	SS&C and GBST both offer software-only. [redacted]
<b>Tender analysis</b>	[redacted]	[redacted]

### *In the alternative – Bravura as a plausible acquirer*

- 5.16 The FR does not take into account that FNZ was involved in a bidding process for GBST not just against SS&C, but also Bravura. The possibility that Bravura might have acquired GBST should have been considered in the FR as a potential counterfactual. No reason is given as to why this counterfactual was dismissed. Based on the evidence, this scenario appears *more likely than* the pre-merger conditions. For example:
- (i) Bravura’s first formal bid of AU\$2.50 per share in April 2019 was a significant premium on GBST’s share price (which traded as low as AU\$1.55 in December 2018).<sup>52</sup>
  - (i) Bravura told the CMA that, if FNZ and SS&C had not placed bids, it thought that its bid would have been accepted (FR, para. 5.17).

### *In the alternative – [redacted] in GBST’s position*

- 5.17 In the alternative, it is likely that GBST’s business would have [redacted].<sup>53</sup> SS&C (who had conducted due diligence) noted that the valuation of GBST needed to reflect the fact that investment was needed to modernise GBST’s offering, and it needed to justify its bid offer in the context of this spend (FR, para. 5.19).
- 5.18 For extensive evidence of GBST’s [redacted]. More recent evidence is provided by [redacted]. If GBST had not been acquired by a third party [redacted], it is more likely that [redacted].

### *CMA datasets do not support an SLC finding, as further confirmed when the unduly narrow market is subjected to a conservative sensitivity test*

- 5.19 Empirical evidence based on the CMA’s shares of supply and tender datasets demonstrates that, even in the FR’s narrow market, there is no substantive basis for an SLC finding. This view is even more compelling when the FR’s unduly narrow market is subject to a conservative sensitivity test.
- 5.20 The lack of a clear distinction between the solution requirements of Retail, Borderline and Non-Retail platforms, as evidenced at Annex 1, undermines the FR’s market definition. Proper sensitivity analysis is needed. This analysis should assess how the CMA’s base case findings (i.e. assuming a narrow market for the supply of Retail Platform Solutions)

<sup>52</sup> See further: FNZ’s Final Merger Notice para. 11.3.

<sup>53</sup> See: FNZ’s Final Merger Notice, paras. 11.1 to 11.4; FNZ’s Initial Phase 2 Submission, section 7; FNZ’s Response to Counterfactual Working Paper, paras. 1, 25 and 30, FNZ’s Response to PFs, para. 2.1(iv).

## SLAUGHTER AND MAY

are affected when solutions for other platforms (both Borderline and Non-Retail) are included.<sup>54</sup>

- 5.21 At the very least, the remittal inquiry should consider a conservative sensitivity test that includes Borderline Platform Solutions in the relevant market. The number of platforms that the FR identifies as Borderline is striking (notably as compared to the number of platforms identified as Retail). Specifically, in the CMA's shares of supply analysis there are 30 Borderline platforms in addition to the 48 Retail platforms.<sup>55</sup> In the CMA's tender analysis, there are [redacted].<sup>56</sup>
- 5.22 The CMA accepts that the boundary between Retail and Non-Retail Platform solutions is very 'fuzzy', containing numerous platforms that have Retail components and hence require Retail functionality. If the FR is wrong to exclude Borderline platforms (which the data indicates is the case) this is a significant error: 30 out of 78 platforms would wrongly be excluded from the assessment.
- 5.23 Given the compelling case for including Borderline Platform Solutions in the relevant market (see section 4 above), the CMA must give as much weight to the results from this sensitivity test as to those from its base case analysis. In any event, the CMA's shares of supply and tender data refute an SLC finding under either view.

*To the extent the Transaction results in any lessening of competition (which is denied), any such lessening does not qualify as 'substantial'*

- 5.24 Importantly, when the CMA decides whether or not the legal test is met for an SLC finding, it must consider the impact of the Transaction taking into account the magnitude of any adverse effect on platform customers. In this case, it is highly relevant that only a small subset of platform customers could conceivably be affected by the Transaction.
- 5.25 This is recognised in the FR's findings of fact, but not in its analysis or conclusion. The FR 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 [emphasis added]' (FR, para. 8.189). Indeed, on the CMA's own finding of fact, Retail platforms can only be expected to experience reduced competition when three conditions hold:<sup>57</sup>
- (i) the platform is not open to supply from a 'Non-Retail solutions provider' (this category includes 'Borderline' platform solutions as well as Non-Retail platform solutions);

---

<sup>54</sup> FNZ would exclude only a handful of private banks from the analysis - see section 4 of FNZ's Initial Phase 2 Submission.

<sup>55</sup> Appendix H of the FR.

<sup>56</sup> [redacted]. The corresponding tender information in the FR is redacted.

<sup>57</sup> For further detail see FNZ's NoA, para. 67.

## SLAUGHTER AND MAY

- (ii) it is open to supply from either a software-only delivery model or a combined platform service delivery model; and
  - (iii) it intends to tender in the near future and is not currently self-supplying (and does not view in-house supply of software as a good alternative to out-sourcing).
- 5.26 The first point follows from the fact that the inclusion of suppliers of Borderline and/or Non-Retail Platform Solutions substantially widens the effective competitor set (although, as substantiated above, even within the CMA's 'Retail' frame, numerous credible suppliers exist).
- 5.27 The second point follows from the strong differentiation between FNZ and GBST. FNZ's primary model is PaaS, while GBST's is software-only.<sup>58</sup> FNZ's product development is clearly unaffected by the presence of GBST and it is hard to believe that FNZ has been a key driver of GBST's product development given that [redacted] operates a fundamentally different delivery and operating model.
- 5.28 The final point follows from the fact that in-house supply is plainly an alternative for platform customers that currently rely on it (as the CMA acknowledges), and there are notable examples of in-house wins.<sup>59</sup>
- 5.29 FNZ does not consider that a single platform would meet the above criteria; much less a sufficient proportion of the market to give rise to an SLC. Even if a platform did meet these criteria, it would still have at least [redacted] credible solution providers to choose from in the CMA's 'Retail' market. It is self-evident therefore that, on the balance of probabilities, any reduction in competition brought about by the Transaction is unlikely, and, if it arose at all, *de minimis*.<sup>60</sup>
- 6. FR placed too much weight [redacted]**
- 6.1 From the outset of the Phase 2 investigation, FNZ has told the CMA that [redacted].<sup>61</sup>
- 6.2 The FR claims to have treated submissions from [redacted] and states that the CMA has sought to [redacted]. But the FR does not bear witness to this approach. Three examples follow.
- (i) The 'Retail' distinction that forms the core of the FR's approach to market definition [redacted].

---

<sup>58</sup> JHC's software-only solution is differentiated from that of GBST.

<sup>59</sup> See FR, para. 6.74 – in-house supply is a viable option for new platforms not replacing an in-house solution and platforms that rely on in-house software already. [redacted].

<sup>60</sup> For FNZ's previous detailed submissions explaining why the Transaction will not give rise to a SLC see: FNZ's response to the AIS and WPs, from section 3; FNZ's response to the PFs, section 5; FNZ's NoA, section 4.

<sup>61</sup> [redacted].

## SLAUGHTER AND MAY

- (ii) The FR states that where it was not possible to classify a platform using evidence from third parties [§<]. Where views differ, the CMA should evaluate the underlying evidence and reach a reasoned conclusion based on the facts.
  - (iii) Notwithstanding the claim to scepticism referred to above, the FR acknowledges that [§<].
- 6.3 As part of the remittal inquiry, it is incumbent upon the CMA to [§<]. More generally, the CMA's remittal inquiry should ensure that it has evidence to properly test assertions (particularly where their views are contested), including using its formal powers where necessary.