Completed acquisition by FNZ of GBST

Remedies paper on the case remitted to the Competition and Markets Authority by the Competition Appeal Tribunal on 21 January 2021

Notified: 15 April 2021

The Competition and Markets Authority has excluded from this published version of the remedies paper 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 [✂]. Non-sensitive wording is also indicated in square brackets.

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Introduction

1.1 On 8 April 2020, the Competition and Markets Authority (CMA), in exercise of its duty under section 22 of the Enterprise Act 2002 (the Act) referred the completed acquisition (the Merger) by Kiwi Holdco CayCo, Ltd (KHC), FNZ (Australia) Bidco Pty Ltd (FNZ (Australia), FNZ (UK) Ltd (FNZ UK) (together FNZ) through its subsidiary FNZ (Australia) of GBST Holdings Limited (GBST) (together known as the Parties) for further investigation and report by a group of CMA panel members (Phase 2 Inquiry).

1.2 The CMA imposed an Interim Order on 13 May 2020 requiring FNZ and GBST to remain independent during the inquiry to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the Reference.

1.3 On 5 November 2020, the CMA announced its decision that the completed acquisition by FNZ of GBST has resulted or may be expected to result, in a substantial lessening of competition (SLC) as a result of horizonal unilateral effects in the supply of Retail Platform Solutions in the UK (Phase 2 Report). [1]

1.4 On 2 December 2020, FNZ submitted a Notice of Application (NoA) to challenge certain of the CMA's findings in the Phase 2 Report to the Competition Appeal Tribunal (CAT).

1.5 On 21 January 2021, following the CMA's request, the CAT ordered the remittal of the CMA's Phase 2 Decision to the CMA, for the CMA to reconsider the finding of a substantial lessening of competition and, if applicable, the final decision as to remedy.

1.6 Following the remittal by the CAT, a group of CMA panel members was appointed on 25 January 2021 to further investigate and report on the Merger (Remittal Group).

1.7 The starting point for the remittal has been the Phase 2 Report. In the remittal, the CMA has addressed specific errors in relation to market share data that led to the CMA requesting the remittal. The CMA has also considered the other representations made by FNZ in the four grounds of review advanced in

[1] Completed acquisition by FNZ of GBST, Phase 2 Report, 5 November 2020.

the NoA, alongside additional submissions from the Parties and third parties on other relevant issues for its decision in the remittal (Remittal Inquiry).

1.8 In the Provisional Report notified to FNZ and GBST (the Parties) on 15 April 2021, the CMA provisionally concluded that the Merger has resulted in the creation of a relevant merger situation (RMS), and that the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (the 'SLC statutory question'), as a result of horizonal unilateral effects, in the supply of Retail Platform Solutions in the UK.

1.9 Where the CMA concludes that an RMS has resulted, or may be expected to result, in an SLC, it is required to decide whether action should be taken to remedy, mitigate or prevent the SLC or any adverse effect resulting from the SLC[2].

1.10 This paper sets out the provisional decision of the CMA on remedies and the action it might take for the purpose of remedying the SLC and/or any resulting adverse effects identified in the Provisional Report.

1.11 At this stage, our provisional decision is that both of the following remedies would be effective at addressing the provisional SLC and the resulting adverse effects that we have found:

(a) the full divestiture of GBST;

(b) the full divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business (see paragraph 1.165 onwards)

1.12 We have found that neither remedy would be disproportionate to the SLC. However, the latter option would be the least costly and intrusive (ie less onerous) of the two effective remedies. While we currently consider that the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business represents an effective and proportionate remedy, we are actively considering whether there are any remaining risks associated with the proposed remedy and, if so, whether and how these risks can be effectively managed (see paragraph 1.213 onwards).

1.13 The CMA invites comments on this paper including the provisional decision on remedies set out in this paper by 17.00hrs, BST on 30 April 2021.

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[2] The Act, section 35(3).

CMA remedies legal framework

1.14 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 substantial lessening of competition and any adverse effects resulting from it'.[3]

1.15 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects.[4] The effectiveness of a remedy is assessed by reference to its:[5]

(a) Impact on the SLC and the resulting adverse effects;

(b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration;

(c) practicality in terms of implementation and any subsequent monitoring; and

(d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effect.

1.16 The CAT has held that the CMA has 'a clear margin of appreciation to decide what reasonable action was appropriate for remedying, mitigating or preventing the SLC'.[6]

1.17 Where the CMA has found equally effective remedies, it will choose the remedy which is least costly and intrusive. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.[7] In this consideration, the CMA may also have regard, in accordance with the Act,[8] to the effect of any remedial action on any relevant customer benefits (RCBs) arising from the Merger.

FNZ's submission about CMA's approach to the evidence

1.18 Below we consider FNZ's submissions in the NoA relating to the CMA's treatment and reliance on GBST's evidence. Other submissions made by

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[3] The Act, section 35(4).
[4] Merger remedies guidance CMA87.
[5] Merger remedies guidance CMA87, paragraph 3.5.
[6] Somerfield PLC v Competition Commission [2006] CAT 4 (Somerfield) at 88.
[7] Merger remedies guidance CMA87, paragraph 3.6.
[8] The Act, section 35(5). See also Merger remedies guidance CMA87, paragraph 3.4.

FNZ, including in the NoA, are considered in the appropriate sections on the effectiveness and proportionality of the potential remedy options.

1.19 In the NoA FNZ stated that 'FNZ urged the CMA to seek to rely on hard data and evidence [✂][9] and 'The CMA's reliance on [✂] is irrational'.[10] The NoA also stated that '[the CMA] does not appear to have taken the reasonable step of reviewing whether [✂], nor to have tested the evidence with an independent expert'.[11] This was broadly consistent with its response to the remedies working paper shared with the Parties during the Phase 2 Inquiry (phase 2 Remedies Working Paper), in which FNZ told us that [✂].

1.20 We noted in the Phase 2 Report 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 indeed of third parties, may be influenced to some extent by commercial or other incentives that make it difficult for them to be wholly objective. We considered all submissions carefully and with due scepticism, and we judged the extent to which other evidence available to us supports the views submitted. Where appropriate, we sought further evidence from third parties to ensure that our conclusions are properly informed. The steps we took are outlined in the Phase 2 Report.

1.21 As the risks that have been under consideration concerning our assessment of remedy options relate principally to the GBST business it has been appropriate for us to consider carefully the weight we should place on the evidence and views submitted by GBST. In assessing the effectiveness of the partial divestiture options (and their asset and composition risks in particular), we gave 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 familiarity with GBST's business, in part due to the hold-separate measures that have been in place since the Merger, which have limited FNZ's access to information about GBST's business.[12] However, we did not take evidence provided by GBST at face value, either in the Phase 2 Inquiry or in this Remittal Inquiry, and sought to corroborate such evidence, wherever possible, against other relevant evidence alongside the other steps discussed in the Phase 2 Report.[13]

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[9] NoA, paragraph 95.
[10] NoA, paragraph 97.
[11] NoA, paragraph 98.
[12] However, fully unredacted submissions by GBST during the Remittal Inquiry have been shared with FNZ's external legal advisers on a counsel to counsel only basis.
[13] See also Appendix B for our approach to evidence.

Types of remedy

1.22 As set out in our guidance,[14] 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.

1.23 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;

(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.[15]

Overview of the remedies process during the Remittal Inquiry

1.24 Our Remittal Inquiry has built on the work set out in the Phase 2 Report.[16]

1.25 Whilst no factual errors were highlighted in the NoA in relation to remedies, we have nonetheless used the Remittal Inquiry to re-evaluate, in parallel and without prejudice to the assessment of whether the Merger gives rise to an SLC, whether a full divestiture remedy or a partial divestiture remedy could be effective.

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[14] 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.
[15] Merger remedies guidance CMA87, paragraph 3.46.
[16] Phase 2 Report, Chapter 11.

1.26 Following the receipt of our provisional views on remedies in phase 2[17], FNZ focused its subsequent representations on a potential UK Wealth Management remedy. Whilst we assessed the effectiveness of a Global Wealth Management remedy during the Phase 2 Inquiry, at that time FNZ did not engage with this remedy to any material extent.[18]

1.27 During the Remittal Inquiry, FNZ has engaged constructively with exploring the potential effectiveness of a Global Wealth Management remedy. To this end, FNZ has made additional representations on the concerns the CMA raised in the Final Report in relation to the Global Wealth Management remedy. In FNZ's first submission on Remedies, FNZ stated that [✂] is therefore prepared to engage constructively with the CMA on the Global WM divestment option.'

1.28 In contrast, whilst FNZ made certain representations in the NoA regarding the effectiveness and/or proportionality of full divestiture and the UK Wealth Management remedy, these have not substantively added to or expanded on the representations made by FNZ on either of these remedies or the Source Code Licencing Remedy (SCLR) prior to the Phase 2 Report. Consequently, our focus for the remittal has been on addressing FNZ's key representations in the NoA and its subsequent submissions on a Global Wealth Management remedy, and establishing whether a Global Wealth Management remedy, which FNZ has provided further representations on, would effectively address the SLC.

1.29 During the Remittal Inquiry, as part of our evaluation of the Global Wealth Management divestment option (see paragraphs 1.55 to 1.67 below), we received further representations from FNZ and GBST, and two third parties with whom we did not engage during the Phase 2 Inquiry.

1.30 During the Phase 2 Inquiry as part of our evaluation of potential remedy options, we also collected evidence from GBST's UK Wealth Management customers, other industry participants and third parties noted to us by FNZ as being interested in acquiring a UK Wealth Management business.

1.31 The risks identified in the Phase 2 Report with partial divestiture options stem from the level of integration within GBST geographically and operationally, between its operations in the UK and Australia and between its Wealth Management and Capital Markets divisions. We found that third parties are

[17] Through a Remedies Working Paper.
[18] Following the Notice of Possible Remedies FNZ proposed a Source Code Licencing Remedy (SCLR) and latterly, following receipt of our provisional views on remedies (through a Remedies Working Paper), FNZ dropped the SCLR and focused on a potential UK Wealth Management remedy.

not particularly well placed to provide specific insight into these issues.[19] Therefore, given the nature of the risks identified with this remedy option in the Final Report, during this first stage of the remittal process we have focused on gathering further evidence from FNZ and GBST.

1.32 In the remainder of this paper, we set out our views of each of the remedy options we have considered in the Phase 2 Inquiry and this Remittal Inquiry, focusing our detailed assessment on various possible ways of implementing a Global Wealth Management remedy. We then conclude on the effectiveness of the remedy options (see paragraph 1.208).

Effectiveness of remedy options

Full divestiture

1.33 We provisionally found that the Merger is likely to result in an SLC in the supply of Retail Platform Solutions in the UK, as a result of horizontal unilateral effects.

1.34 In accordance with our guidance, the divestiture of the entire GBST business would represent an appropriate starting point for identifying a divestiture package, as it removes the loss of competition resulting from the Merger where we have found an SLC.[20] [21] To reverse the acquisition would be a simple, direct and easily understandable approach to remedying the SLC in question.[22]

1.35 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.

1.36 During the Phase 2 Inquiry, we concluded that the full divestiture of GBST would be a comprehensive and effective remedy to the SLC and its resulting adverse effects. We also concluded that it would address the SLC throughout its expected duration and could be implemented in a timely way with a low risk profile.[23]

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[19] Third parties were able to provide evidence concerning these types of separations more generally. However, because the evidence supports that the ease or difficultly of separation is largely dependent on the nature of the specific business(es) we have placed only limited weight on this third party evidence.
[20] 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.'
[21] See *Ecolab Inc. v CMA* [2020] CAT 12, paragraph 79.
[22] *Somerfield PLC v Competition Commission* [2006] CAT 4, paragraphs 98-99.
[23] Phase 2 Report, paragraph 11.75.

1.37 We have found no reason to question the findings and conclusions reached in the Phase 2 Report on a full divestiture (see paragraphs 11.18 to 11.75 of the Phase 2 Report) and, therefore, we provisionally conclude again that a full divestiture of GBST would be a comprehensive and effective remedy to the SLC and its resulting adverse effects.

1.38 As well as being a remedy option in its own right, unwinding the Merger through a full divestiture also provides a point of comparison in terms of effectiveness of other options, such as partial divestitures.

Partial divestiture options

1.39 A partial divestiture would involve FNZ divesting a part of GBST, but not the entire business.

1.40 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.[24]

1.41 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 the GBST UK Wealth Management business.

1.42 During the Phase 2 Inquiry we considered in detail two partial divesture options:

(a) A UK Wealth Management divesture (ie as explained at paragraphs 11.92 to 11.95 of the Phase 2 Report, this would have involved the separation and divestiture of GBST's UK Wealth Management business to a suitable purchaser); and

(b) A Global Wealth Management divestiture (ie as explained at paragraphs 11.97 to 11.98 of the Phase 2 Report, this would have involved the separation and divestiture of GBST's Global Wealth Management business to a suitable purchaser).

1.43 Below we set out our assessment and provisional views on the effectiveness of each of the above divestiture options.

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[24] Merger remedies guidance CMA87, paragraph 5.7.

UK Wealth Management divestiture

1.44 A full description of a UK Wealth Management remedy is set out in the Phase 2 Report. In summary, it would include divestiture of all the customers, personnel, assets and intellectual property (IP) directly related to the UK Wealth Management business and global use of the GBST brand. In addition, a purchaser, at its own request, could also have or gain access to personnel, resources or assets that were not solely utilised within the UK Wealth Management business.

1.45 FNZ offered to: [✂][25] [✂].

1.46 As set out in the Phase 2 Report, there is no standalone UK Wealth Management business: GBST operates a single global business with many staff, IP, assets, infrastructure and research and development (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 the UK.

1.47 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.[26,27]

1.48 In the Phase 2 Inquiry we identified a large number of potential risks with a UK Wealth Management remedy (see paragraphs 11.220 to 11.230 of the Phase 2 Report). We concluded that a 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.

1.49 Two important concerns, of particular relevance to a UK Wealth Management remedy, were that:

(a) GBST would have to commit significant resources to the implementation of any separation of its UK Wealth Management operations from its other functions, which would disrupt its ongoing business and its ability to serve customers and compete for new ones.[28] A UK Wealth Management

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[25] [✂]
[26] Merger remedies guidance CMA87, footnote 109. 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.
[27] Merger remedy Evaluations, paragraph 23(c). 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.
[28] Phase 2 Report, paragraph 11.172.

remedy requires the UK business to be separated from both the wider Wealth Management business and Capital Markets business (as opposed to just the Capital Markets business). The diversion of resources to achieve both a geographical and divisional separation would risk undermining the future competitive capability of the divested business. This concern was shared by GBST's UK Wealth Management customers.[29]

(b) Under a UK Wealth Management divestiture FNZ would gain access to GBST's core Wealth Management product, Composer. Through this, FNZ would gain commercially sensitive information and insight into its rival's strengths and weaknesses that, absent the Merger, it would not have.

1.50 The CMA's primary consideration is whether a proposed remedy would be effective at addressing the SLC. We found that sharing the Wealth Management source code with FNZ for use outside the UK was a fundamental source of asset risk, in that it raises a significant concern regarding the ability and incentive of any divested UK Wealth Management business to compete effectively in the UK.[30]

1.51 We did not consider that the identification of an upfront purchaser, or the inclusion of 'firewall' measures in the remedy specification (as offered as a potential means of addressing risks associated with FNZ having access to Composer), would be likely to address the composition and asset risks we identified in the Phase 2 Report. Nor did we consider that [✂] adequately mitigated these risks, since that did not avoid the creation and transfer of a structurally weaker competitor compared with GBST pre-merger.

1.52 During this Remittal Inquiry, we have found no reason to question the conclusions reached in the Phase 2 Report[31] on a UK Wealth Management divestiture, both in general and specifically in relation to the points set out above. We do not consider there to be a realistic prospect of finding this remedy to be effective and therefore we provisionally conclude again that a UK Wealth Management divestiture would not be an effective remedy to the SLC and its resulting adverse effects.

1.53 FNZ submitted in the NoA that the CMA objected to FNZ's partial divestiture proposals, in part, on the basis of a proposed IP licence for FNZ for use exclusively in Australia, notwithstanding such conduct would fall outside the CMA's jurisdiction.[32] In particular, FNZ submitted that "GBST could freely

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[29] Phase 2 Report, paragraph 11.173.
[30] Phase 2 Report, paragraphs 11.182-11.84.
[31] Phase 2 Report, paragraphs 11.220-11.230.
[32] NoA, paragraph 87. See also NoA, paragraphs 85 and 86.

license a copy of its software for use by another entity in a market where it no longer competed. “This would not raise a competition concern which could justify the CMA’s intervention”[33] and that “the CMA’s refusal to allow the reverse carve out remedy is based in part on a risk of unobjectionable behaviour in relation to a territory beyond its jurisdiction. The CMA had no regard to the fact that the issue which gave rise to concern was conduct outside the UK and the jurisdictional scope of UK competition law”[34].

1.54 However, FNZ’s submission has misapplied the remit and purpose of the CMA’s remedial powers. It is well established that the CMA’s primary consideration, required by statute, is whether, and if so what, remedial action would be effective at remedying, mitigating or preventing the SLC it has found, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable.[35] Accordingly, where a remedy proposal includes a key component which the CMA considers carries a significant risk of undermining the ongoing effectiveness of that remedy in addressing the SLC, it will not consider such remedy capable of satisfying this primary consideration. It is therefore not relevant whether either party, absent the Merger (and therefore absent any SLC adversely affecting UK consumers), could decide to enter into a standalone licensing arrangement outside the UK.[36]

Global Wealth Management remedy

Description of remedy

1.55 As noted in paragraph 1.27 above, FNZ has engaged constructively with various potential means of implementing a Global Wealth Management divestiture during the remittal process. Below we outline the proposal put forward by FNZ.

1.56 A Global Wealth Management remedy would entail FNZ divesting the entire Global Wealth Management division of GBST, while retaining or buying back assets that FNZ considers would enable FNZ to operate GBST’s Capital Markets business. As set out by FNZ, assets and operations to be divested would include in full, all the assets necessary for the divested business to compete effectively in the UK Wealth Management sector, including legal entities, customer contracts, IP (including software and worldwide use of the

[33] NoA, paragraph 86.
[34] NoA, paragraph 87.
[35] The Act, sections 35(3) and (4).
[36] Moreover, the CMA is able to require overseas businesses that carry on business in the UK to take action to remedy an SLC, see *Akzo Nobel N.V. v Competition Commission & ORS Metlac Holding S.R.L.* [2014] EWCA Civ 482, paragraph 26.

GBST brand), IT, infrastructure (including shared infrastructure), management, staff and property, with the option for the purchaser to acquire any head office assets, shared staff or other shared resources it wishes.

1.57 FNZ submitted that the divestiture could be structured as a reverse carve out.[37] Given this proposal, plus the fact that the Wealth Management division constitutes the majority of GBST's revenue, we consider that an appropriate way of looking at the proposed remedy is by establishing what FNZ would be able to ultimately retain, or have the option of buying back from the purchaser of GBST. FNZ submitted that, under a Global Wealth Management divestiture, it would retain, or buy back, GBST's Capital Markets business. FNZ submitted that this would include, as a minimum, the following 'non-negotiable' core assets (along with any other assets used by the Capital Markets business that a purchaser does not wish to take):

(a) All Capital Markets customer contracts;

(b) All core proprietary Capital Markets software[38], including source code and IP;[39] and

(c) Any other assets (including technical staff and Subject Matter Experts (SMEs)), used by the Capital Markets division that a purchaser does not wish to retain.

1.58 GBST raised concerns with categories b) and c). We assess these concerns and FNZ's response to them at paragraphs 1.171 to 1.174 below.

1.59 FNZ considers that there would be other GBST assets (eg technical staff / SMEs; senior management; real estate; legal entities) that also relate wholly or predominantly to the GBST Capital Markets division. FNZ told us [✂] these assets would only be included in the divestiture/sale back at the purchaser's full discretion.

1.60 FNZ told us that it is possible that it 'may request that the purchaser provide limited transitional services (eg access to HR data, payroll and accounting systems) relating to the CM business under a transitional services agreement ('TSA'), for a short period, until FNZ has moved the CM data on to its own systems'. However, for the avoidance of doubt, FNZ submitted that 'the purchaser would have full discretion to refuse to provide any transitional services to FNZ. FNZ considers any transitional or on-going

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[37] A reverse carve-out generally means the business is divested as a whole to a purchaser but the Merged Entity may retain one or more assets that are not necessary for the viability and competitiveness of the carved-divestment business.
[38] [✂]
[39] [✂]

cooperation/support/services to be subject to negotiation with the purchaser able to decline any request at its complete discretion'. In relation to the time period for such services, FNZ's submissions do [✂].' Apart from any transitional services provided by the purchaser to FNZ (which the purchaser will have full discretion to refuse to provide), FNZ has noted that the transaction 'will not necessitate any ongoing links between FNZ and the divestment purchaser' and that because the purchaser would by default 'receive all resources and assets necessary to fully support' the Global Wealth Management business, including all shared assets and resources, there would be 'no need for any transitional services from FNZ' to the purchaser.

1.61 With regards to implementation, FNZ proposed that the Global Wealth Management remedy could be implemented by way of a 'reverse carve out'. FNZ said that there 'are two main legal routes by which the separation of GBST can be implemented':

(a) 'Sale of […] Global WM to the purchaser – with the sale agreement defining the business to be acquired by the purchaser […]; or

(b) Sale of the entirety of GBST to the purchaser with a transfer back to FNZ of the business to be retained by FNZ – with the sale agreement defining the business to be transferred back to FNZ […].'

1.62 FNZ told us that it considered it important that a purchaser [✂]. Our assessment of these two implementation options is set out in paragraphs 1.175 to 1.181.

1.63 FNZ have noted that the sale of GBST to a purchaser would be expected to require approval of the Australian Foreign Investment Review Board (FIRB), with [✂].

1.64 FNZ also told us that the purchaser could have full ownership of any shared resources. FNZ submitted that the purchaser would by default (exclusively) receive all GBST's Wealth Management business and shared GBST assets and resources (although FNZ would retain, or buy back any shared assets the purchaser did not wish to keep).

1.65 FNZ would [✂]. Thus, by structuring the remedy as a reverse carve out, FNZ considers that it is FNZ, and not the divestiture business or the purchaser, that would be taking on the separation risks.

1.66 FNZ told us that it would be willing to offer (and pay for) the services of third party consultancy firms (including technical specialists and SMEs), with consultancy staff being embedded at GBST to plan and execute the necessary separation work. [✂]. In FNZ's view, the provisions of these

services by a third party will mean that 'there would be no (or extremely limited) diversion of [Global Wealth Management] or shared resources from day-to-day operations' and, thus 'Any potential for disruption to [Global Wealth Management] staff and ordinary course customer services during the transaction would be minimised.'

1.67 FNZ also noted that [✂].

1.68 We next assess the potential effectiveness of this Global Wealth Management remedy before concluding whether FNZ's proposal or a different version of it would be effective at addressing the SLC.

Assessment of the effectiveness of a Global Wealth Management remedy

1.69 We assessed the risk profile and potential design of FNZ's proposed Global Wealth Management remedy as part of our consideration of its effectiveness. In so doing, we followed the same framework as in the Phase 2 Report[40] and set out in our guidance:

(a) There are three categories of risk that could impair the effectiveness of any divestiture remedy: composition risk, asset risk and purchaser risk.[41]

(a) To be effective, a divestiture remedy (as a one-off intervention) must give the CMA a high degree of certainty that these risks can be properly addressed in its design and execution, 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.[42]

- *FNZ's views on a Global Wealth Management remedy*

1.70 FNZ considers that a Global Wealth Management remedy would enable a purchaser to effectively compete in the UK Wealth Management sector.

1.71 With regards to the Global Wealth Management remedy under consideration FNZ told us that it understands that there is limited overlap with GBST's Capital Markets business, with the two divisions offering separate suites of products running on different software.

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[40] Phase 2 Report, Chapter 11.
[41] Merger remedies guidance CMA87, paragraph 5.3.
[42] *Ecolab Inc. v CMA* [2020] CAT 12, paragraphs 83-85. In Ecolab the CMA was concerned with the length of a transitional period 'up to 3 years' or 12-18 months, which meant that the SLC would not be remedied quickly and concerned about the lack of certainty as to the scope of the divestment package.

1.72 FNZ considers that under the ‘reverse carve out’ option there would be no disruption to UK customers as they would continue to be served by the same GBST staff using the same infrastructure, under the same GBST brand (to which the purchaser will have exclusive, worldwide rights).

1.73 FNZ told us that it already has [✂].

1.74 FNZ also understands that there is only limited proprietary IP that is used in both the Wealth Management and Capital Markets businesses. FNZ told us that to the extent there is any shared IP between the Wealth Management and Capital Markets divisions, under the ‘reverse carve out’ proposal, the purchaser would own and have exclusive use of this common proprietary IP.

1.75 FNZ indicated that in addition to the [✂] noted in the Phase 2 Report (see paragraphs 11.205 to 11.206 of the Phase 2 Report) by January 2021 [✂] it had [✂].

- *GBST’s views on a Global Wealth Management remedy*

1.76 GBST submitted 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’.

1.77 GBST considers that a partial divestiture would give rise to ‘significant asset and composition risks because of how GBST operates. It stated 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’.

1.78 GBST submitted that separation 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’.

1.79 GBST told us that, for a Global Wealth Management remedy, it would be theoretically possible to split shared services, but that there were risks. GBST explained that its [✂] will probably take [✂] [12-24 months].

1.80 During the Remittal Inquiry, GBST submitted that the same issues that applied to a carve out remedy apply to a ‘reverse carve out’ scenario, namely:

(a) It will necessitate on-going links between FNZ and the divestment purchaser [✂], meaning an SLC would not be addressed in the short term and GBST's independence as a competitor to FNZ will be negatively impacted.

(b) It is impractical and would require extensive monitoring and enforcement over an extended period of time.

(c) It will give rise to the risk of FNZ accessing GBST's commercially sensitive information which could negatively impact GBST's competitiveness.

1.81 GBST also consider that such a remedy would impose [✂].

- *Views of third parties on partial divestiture options*

1.82 Third party views on the effectiveness of partial divestiture options are set out in the Phase 2 Report.[43] As acknowledged in paragraph 1.31**,** we considered that third parties will have limited specific insight into the risks of partial divestiture, which relate largely to the extent of integration between GBST's operating divisions, and the associated challenges of separating them.

1.83 We do however consider that the concerns raised by GBST's UK customers about partial divestiture options are important, as these customers would need to retain confidence in the capability of any divested business in order for it to remain competitive.

1.84 None of GBST's UK Wealth Management customers that we received responses from during the Phase 2 Inquiry supported any form of partial divestiture, whether a UK or global Wealth Management divestiture[44]. GBST's UK Wealth Management 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:

(a) [✂] 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'.

(b) [✂] 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

[43] Phase 2 Report, paragraphs 11.110-11.113.
[44] This included GBST's three largest UK customers by AUA.

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'.

(c) [✂] told us that 'We do not consider that any form of partial divestiture would be an effective remedy to the provisional SLC. Our provisional view is that 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 (eg 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'.

(d) [✂] 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.'

(e) [✂] 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.

1.85 Other third-party comments, where relevant, are included within our assessment below.

Risks of a Global Wealth Management remedy

1.86 We considered the risk profile of the Global Wealth Management remedy in light of FNZ's new submissions in the Remittal Inquiry. Our consideration of risks has informed our assessment of whether we can have a sufficient

degree of confidence that this remedy option would be effective. Our analysis is set out below as follows:

(a) Composition risks

(i) Risks associated with separating shared resources

(ii) Risks associated with separating shared infrastructures

(iii) Risks to financial resilience and incentives to invest

(b) Asset risks

(i) Risks of customer disruption

(ii) Risks associated with IP

(c) Purchaser risks

(d) Consequential risks

(i) Ongoing relationships between FNZ and GBST

- *Composition risks*

1.87 To be an effective remedy, the scope of a divestiture package must be sufficient to allow the divested business to operate as an effective competitor in the market and to attract a suitable purchaser. If not, this would give rise to a composition risk.[45]

1.88 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 SMEs, systems and programmes and it covers both businesses and geographies.

- *Risks of separating shared resources*

1.89 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. GBST told us that SMEs are not

[45] Merger remedies guidance CMA87, paragraph 5.3.

divided by geography or division but by a technology specialism (such as [✂]) 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. GBST told us that this was because the software is so complex that nobody is expert across all of it.

1.90 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. [✂];

(b) of approximately [✂];

(c) the [✂], 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) [✂]; and

(e) [✂].

1.91 GBST provided time sheet data for strategic R&D projects and Business as usual (BAU) product development and support activities that illustrates that on a number of projects GBST staff allocated to one division work [✂]. However, the same data also showed that a number of projects were staffed by personnel predominantly originally allocated to one division with limited or minimal input from the other division.[46]

1.92 In response to [✂], FNZ noted that [✂] and 'The required time period for implementation of the separation will in fact be shorter than in other, more complex carve-out transactions due to a well-defined asset perimeter [✂] and the lack of material interdependencies or shared resources between the GWM and CM businesses.' FNZ told us that this was because 'Any interdependencies and shared resources are minimal and generic… The reverse carve-out would therefore not involve any complex division or restructuring of integrated, proprietary assets or resources that could require specialist knowledge'. In support of this submission, FNZ refer to [✂].

1.93 GBST's description and evidence of its shared technology resources between the Global Wealth Management and Capital Markets divisions indicate that a

[46] GBST told us [✂].

Global Wealth Management divestiture would require the separation of some resources and expertise which are currently deployed across both Wealth Management and Capital Markets. To the extent that such sharing of resources is material – and we note FNZ's submissions to the contrary - a composition risk arises that a purchaser could lose access to the expertise it would need to compete effectively for Wealth Management business.

1.94 However, as proposed by FNZ (see paragraph 1.61), the structure of the Global Wealth Management remedy is that a purchaser would have control over whether it retained any such resources. For example, a purchaser would have the ability to retain all SMEs whose work overlaps the two divisions if it deemed it necessary. Under this scenario FNZ and a purchaser would negotiate the split of employees with the purchaser retaining the right to include all SMEs, even if their utilisation within the Wealth Management division is limited or minimal. This mitigates the risks associated with the potential loss of expertise for the purchaser to a material extent and would transfer this form of composition risk to FNZ, as owner of the Capital Markets business. There would, however, remain an asset risk associated with achieving a separation in practice, see paragraphs 1.125 to 1.144.

1.95 GBST also told us that a reverse carve out would expose its Capital Markets customers, who are outside the relevant market, [✂].

1.96 In response to these concerns, FNZ expressed confidence that 'the proposed … remedy would not generate any material disruption to GBST's existing CM customers, [✂]. This is because…FNZ [✂]. Any migrations and separation work streams would affect commoditised shared assets only (e.g. HR, payroll data, off-the-shelf third-party IP) and could be carried out without any material disruption to customers, with the assistance of external separation consultants, and due to FNZ's significant experience in managing migrations as part of its ordinary commercial activities as a platform-as-a-service (PaaS) provider.' [✂].

1.97 Notwithstanding FNZ's views, we acknowledge that a reverse carve-out creates a potential risk for GBST's Capital Markets customers and that the magnitude of this risk potentially increases with the proportion of shared SMEs that the purchaser retains. In this sense, with any form of Global Wealth Management divestiture, there will be a balance of risks between these two factors involving, on the one hand, the purchaser having sufficient SMEs to continue to operate GBST as an effective competitor in UK Wealth Management; and on the other hand, there being some disruption to GBST's Capital Markets customers. For the purposes of the assessment of the extent to which this remedy would effectively remedy the SLC we have provisionally found, we give greater weight to the former. The potential impact for GBST's

Capital Markets customers is relevant to our assessment of proportionality. While FNZ is confident that it has the capability to service these customers (see paragraph 1.73), we are mindful of these potential risks to third parties as a result of this remedy, which we consider further in our assessment of proportionality (see paragraph 1.213 below).

- *Risks of separating shared infrastructure*

1.98 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.

1.99 GBST told us that the following areas of infrastructure are jointly utilised by both the wealth management and capital market businesses and would need to be separated or duplicated for a Global Wealth Management divestiture no matter how the remedy is implemented:

(a) Premises, data centres and cloud services which are not separated by division;

(b) all internal business systems used to support the business;

(c) all systems needed to support the development of GBST's products for clients, eg 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.[47]

1.100 The need for separation of these areas of infrastructure has the potential to create a risk of disruption and of losing technological synergies between GBST's Wealth Management and Capital Markets businesses. The 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.

1.101 The extent and materiality of the level of integration within GBST's business is difficult for the CMA to assess, or indeed for GBST to precisely quantify. We therefore pressed GBST for specific examples, and available supporting documentation to corroborate its assessment. GBST provided examples of shared infrastructure that would require separating but the evidence that

[47] GBST mentioned: (a) [✂], (b) [✂] ([✂]); (c) [✂] ([✂]); and (d) [✂] ([✂]).

demonstrates the risks of separating such infrastructure has, to date, been limited.

1.102 GBST gave the example of the [✂] application [48] – GBST told us that to split this application 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'. [✂].

1.103 GBST gave another example regarding separation of its servers. They told us that 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 [✂] application but that it would not be simple. Under FNZ's proposal it would be FNZ's responsibility to solve any such issues and GBST's wealth management business would remain on its current systems without interference. However, it is possible that key personnel within GBST may need to provide input to enable FNZ's software engineers to configure the systems correctly.

1.104 A further challenge of separation highlighted by GBST related to its shared datacentres, which GBST considered could take up to [12-24] months to separate.

1.105 GBST told us that it has [✂] data centres that are a shared common resource across the Group used for both provisioning of internal services to the business, corporate systems, environments for development and support of GBST's products and managed services to GBST's clients for hosted solutions.

1.106 During the Remittal Inquiry, GBST provided contemporaneous documents that show how the data centre hosting for Wealth Management and Capital Markets customers uses [✂].These documents corroborate the integrated nature of GBST's data centres.

1.107 GBST also 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.

1.108 As set out in paragraph 1.57, FNZ told us that it would only retain the core, 'non-negotiable' elements (including customer contracts and select proprietary

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[48] [✂].

IP) of the Capital Markets business (plus any other assets used wholly or predominantly by the Capital Markets business that the purchaser did not wish to take), and the purchaser would [✂], with FNZ bearing the risk. In addition, as set out in paragraphs 1.60, any transitional services or separation support provided by GBST to FNZ would also be at the purchaser's discretion. To be effective the CMA would need to be satisfied that the combined the separation support provided by a purchaser and FNZ to GBST was sufficient to minimise disruption to the GBST Global Wealth Management business.

1.109 GBST told us that this is not how it currently operates and develops its product suite. GBST told us that the evolution of all products at GBST since 2007 has worked towards a [✂]. GBST further told us that even for products used predominantly in the Capital Markets division, such products are still dependent on layers of underlying software which are common across Capital Markets and Wealth Management. [✂].

1.110 FNZ told us that it would expect the purchaser [✂] following due diligence, after consulting with FNZ's separation consultant, their own third-party separation/integration consultants, and GBST. As such, FNZ considers that it would bear all separation risk, including [✂].

1.111 With the purchaser retaining control of any overlaps, and over whether or not any separation or transitional services are provided to FNZ or in connection with the separation, in line with FNZ's description of the remedy (see paragraphs 1.56 to 1.66 and 1.96), there is, at least in principle, a reduced risk to the competitive capability of the divestiture package, from separating shared software and infrastructure. This is because the purchaser would retain control of the process and FNZ would bear the bulk of separation cost and risk. Put simply, the proposed implementation of the remedy would not allow FNZ to leave the purchaser short of shared resources and infrastructure.

1.112 However, in practice, we expect that both the purchaser and FNZ would wish to be satisfied that they could effectively operate the part of the GBST business that they owned, without compromising customer outcomes. This may prove more challenging than FNZ currently anticipates. GBST's submissions suggest that FNZ's proposal is partly based on a misconception of the GBST business. In particular, FNZ considers that the divisions are largely separate and that there is core software used exclusively within one division, whereas GBST's submissions indicate that GBST's Capital Markets division is integrated into a shared architecture, as supported by GBST's internal documents (see paragraph 1.106).

1.113 The level of integration between the two businesses, which we consider to be material, creates risks associated with the separation of the shared infrastructure and resources. We consider that, irrespective of how the divestiture is structured, key personnel within GBST and FNZ are likely to have to work closely together for a period, creating a potential for disruption to the Wealth Management business. We discuss the extent to which this risk could potentially be further reduced through the design of the divestiture process in paragraphs 1.175 and 1.200.

- *Financial risks*

1.114 During the Phase 2 Inquiry we investigated the financial risk of the two partial divestiture options. We concluded that the financial risk profiles for each remedy were significantly different.

1.115 We concluded that the financial risk for a Global Wealth Management remedy were less than the financial risks for a UK Wealth Management remedy, albeit a Global Wealth Management remedy still carried a material composition risk relating to the financial resilience of GBST and its incentives to invest.[49]

1.116 Given its focus on other remedy options during the Phase 2 Inquiry, FNZ made limited representations on the financial position of a Global Wealth Management remedy. FNZ did submit that a UK Wealth Management business would be financially resilient because it is profitable at present and it represents [✂] of GBST's Wealth Management revenues globally. FNZ also submitted that some fixed costs, [✂].

1.117 In the NoA FNZ stated that 'the assessment of [✂] and lacks any reasonable basis, especially given [✂].'[50]

1.118 At the Oral Representations meeting, FNZ presented a high-level financial analysis of GBST noting that, if all overhead costs were allocated to GBST's Wealth Management division, it would not be loss making. In FNZ's view, this analysis showed that 'the [Global Wealth Management] business would be profitable [✂]. This is consistent with our conclusions in the Phase 2 Report in which we said 'As a larger business than a UK Wealth Management business, [a Global Wealth Management business] would be more likely to be profitable on a stand-alone basis once separated from GBST's Capital Markets business'.[51]

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[49] Phase 2 Report, paragraphs 11.133-11.151.
[50] NoA, paragraph 89 (c).
[51] Phase 2 Report, paragraph 11.145.

1.119 In addition, FNZ submitted that [✂].'

1.120 As the precise composition of a divested Global Wealth Management business would be subject to negotiation between any purchaser and FNZ, we cannot at this stage accurately predict its likely financial performance, though we would note that if profitability were materially lower than GBST pre-merger it could put the divested business on a weaker financial footing relative to the pre-merger situation.

1.121 Having noted this risk, we also acknowledge that GBST's Global Wealth Management business represents approximately [✂] of its current revenue. That is a clear majority of the company's revenues and we also know that this division is currently profitable.[52]

1.122 Whilst there is some uncertainty as to the ultimate financial performance of the divestiture business, we do not consider that this risk by itself would render the remedy ineffective. Given the current profitability of the Global Wealth management business, we consider there are two ways of mitigating this risk effectively, to ensure that GBST's Global Wealth Management business remains a profitable and effective competitor. First, the purchaser would be able to determine which shared assets form part of any partial divestiture and can therefore control the cost base of the Wealth Management business (see paragraph 1.64). Second, any sale agreement would be subject to CMA approval (which would not be forthcoming if the transaction perimeter did not provide for a financially viable Wealth Management business).

1.123 Furthermore, as FNZ notes, the purchaser would have [✂].

1.124 As noted in paragraph 1.155 below we think there is likely to be a suitable buyer.

- *Asset risks*

1.125 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.[53]

1.126 Three contextual aspects of this merger contribute to the asset risks facing this remedy proposal:

(a) GBST's Wealth Management customers are large financial services businesses that are themselves required to meet certain regulatory

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[52] GBST ASX Announcement.
[53] Merger remedies guidance CMA87, paragraph 5.3(c).

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 platforms are, by their nature, complex. This complexity – and the scope for customer disruption in the supply of Retail Platform Solutions - increases the potential for asset risk, including reputational harm, to arise during the implementation period.

(b) The acquisition of GBST by FNZ took place around 18 months ago, during which period GBST has been run by its pre-merger management team, under interim measures. Such a relatively long period of uncertainty as to GBST's future is likely to contribute to asset risks associated with personnel, reputation and customer confidence (see Chapter 8, Competitive Assessment in relation to evidence that [✂]).

(c) As noted in the Phase 2 Report, FNZ will remain a competitor of the divested business in the UK and so will have conflicting incentives between wishing to retain those parts of GBST it needs to run GBST's Capital Markets operations and the requirement to divest the operations needed for the Wealth Management business with which it will compete. While FNZ will wish to secure a good price for the divested business, it has no incentive to create a strong competitor. Structuring the divestiture as a 'reverse carve out' and, in particular, giving a purchaser control of the overlaps and over whether and to what extent (if any) it provides transitional services and separation support to FNZ, has the potential to reduce this risk.

1.127 Against this background we now consider two specific sources of asset risk:

(a) The risk of customer disruption during the separation process and the associated risk of damage to the reputation of the divested business, particularly with its UK Wealth Management customers;

(b) The risk of compromising GBST's IP during the separation process.

- *Risks associated with customer disruption*

1.128 We found that a positive reputation and track record are important considerations for customers when selecting a Retail Platform Solutions provider.[54] GBST had these attributes pre-Merger, which in our view contributed to GBST being an effective competitor in the UK pre-merger.

[54] See Chapter 8.

1.129 As set out in paragraph 1.84, GBST's UK Wealth Management customers were not supportive of a partial divestiture and expressed concerns during the Phase 2 Inquiry that a partial divestiture could have ramifications for the quality and level of service they receive and could potentially disrupt the development cycle at GBST.

1.130 Given these concerns, we sought to understand further the nature of any contractual obligations that GBST has towards its UK Wealth Management customers.[55] We found that GBST had Service Level Agreement (SLA) terms contained within each client's Composer licence. The clauses set out the timescales with which GBST must action solutions for [✂]. [✂].

1.131 In light of the customer concerns expressed during the Phase 2 Inquiry, and the importance attached by customers to continuity and quality of service, we considered whether the potential disruption associated with implementing a partial divestment risked undermining the competitive position of the divested business. The level of asset risk would itself depend on the scale and ease of separation, as well as the process through which it was carried out.

1.132 FNZ submitted that there would be minimal or no customer disruption with a divestiture of GBST's Global Wealth Management business structured as a reverse carve-out. Specifically, FNZ told us that Wealth Management customers 'would experience no change in their customer experience - they would continue to be serviced using the same IP/IT, staff and under the GBST brand (to which the purchaser will have exclusive, worldwide rights).' FNZ told us that it has a well-resourced M&A team and has acquisition experience in this sector. Such experience [✂]. Based on the evidence provided to us these acquisitions have been successfully integrated into FNZ's wider business. [✂].

1.133 GBST told us that the time needed to separate integrated systems would depend on the system, as some were easier to separate than others. In some cases, it could take up to [✂] [12-24] months to complete separation of the [✂]. GBST also told us that 'various components within its software: [✂] can be replicated but they are designed bespoke for the GBST products and there is complexity (and high cost) in replacing them'. In our view, separating the Global Wealth Management business from the Capital Markets business is likely to, in relative terms, be easier than separating the UK Wealth Management business from the rest of GBST. This is because, in the former situation, there is no need to separate the UK business from the Global

[55] We note that, in the assessment of the effectiveness of any divestiture options, we are mainly concerned with the ability of the divestment business to compete in the UK with FNZ as GBST would have done absent the Merger.

business, in addition to separating Wealth Management from the Capital Markets business.

1.134 We considered that the Parties' competitors were not generally well placed to comment specifically on the challenge of separating GBST's Wealth Management division from its Capital Markets division. They did, however, provide their opinions and experiences of carve outs in the broader financial technology sector. Two such examples were provided by two competitors, [✂] and [✂]:

(a) [✂], 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.

(b) [✂] said that it had previously acquired a business unit [✂] and it took two years after lifting out the unit to unravel all of the IT systems [✂].

1.135 While we have received differing views on the ease and risk of separation, the balance of evidence suggests that the separation process could be a complex and time-consuming undertaking, with associated risks of disruption of the services received by the Retail Platforms served by GBST.

1.136 A related concern is the potential diversion of GBST resources away from running its ongoing business in order to implement the separation of software, infrastructure and / or migration of customers. 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 existing UK Retail Platform Solutions business would be unaffected by this process. The risks associated with fragmenting GBST management and technical resources, appear to us to be particularly acute were separation to take place prior to divestiture, as GBST would not be able to benefit from oversight and resources from the acquirer to oversee this process. The diversion of GBST resources can potentially affect both the quality and reputation of GBST's services to Retail Platforms in the UK and its ability to compete for new business, in particular during the implementation period.

1.137 As set out in paragraph 1.66, FNZ would offer to provide and pay for third-party support of the separation planning and implementation process to reduce the burden on GBST. We consider that this could reduce some of the burden on GBST management and staff. However, we also observe that many of GBST's systems, software and infrastructure are bespoke and consequently GBST is likely to have to commit at least some internal

resources to the separation process (examples include but are not limited to the [✂][56], [✂][57], [✂][58], [✂][59] [✂][60] and [✂][61]). This may risk leaving GBST without the resource it requires to serve customers and compete for new business.

1.138 We consider it would be essential for the effectiveness of this remedy to maintain GBST's service standards and corresponding positive reputation with, its UK Wealth Management customers. In particular, if this remedy were to be taken forward, any divestiture and separation process would need to be structured and carried out in such a way as to minimise the likelihood of disruption to the services received by GBST's Wealth Management customers (see paragraphs 1.165 to 1.202)

- *IP*

1.139 GBST told us that it has common proprietary IP underpinning its products in Wealth Management and Capital Markets[62] to which FNZ would gain access under a Global Wealth Management divestiture and that this is competitive IP.

1.140 By contrast, FNZ told us that these were [✂].

1.141 GBST told us that access to [✂] that is common across Wealth Management and Capital Markets would enable FNZ to [✂] GBST to prospective and existing clients. [✂]. GBST also told us that some IP was internally developed[63] and some was used in a bespoke way, such as its [✂].

1.142 Given the number of tools and infrastructure coupled with the specialist nature of each, it is difficult for the CMA to definitively conclude on the commercially sensitive nature of each piece of IP owned and operated by GBST, and the ease with which FNZ could replace them.

1.143 Overall, however, we consider that access to IP that is common to GBST's Wealth Management and Capital Markets operations could, at least in principle, provide FNZ with insight into commercially sensitive assets of the divested business that, pre-merger, it did not have. This in turn might be utilised against the divested business, undermining its competitive capability.

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[56] [✂]
[57] [✂]
[58] [✂]
[59] [✂]
[60] [✂]
[61] [✂]
[62] [✂]
[63] [✂]

1.144 In circumstances where the purchaser determines whether or not to retain any shared assets or people, this should mitigate this risk for the purchaser of the business: for example, they could require FNZ to replace or duplicate tools and IP, rather than sharing them, which would have less impact on the divestiture business. With a divestiture following this structure, a purchaser would have control over any such overlaps (see also paragraphs 1.170 to 1.182). However, it may not be possible for all common tools and infrastructure to be easily replaced or replicated in a reverse-carve out in a low risk, timely manner, so some residual risk remains.

- *Purchaser risk*

1.145 We considered the risk that a suitable purchaser would not be found for a Global Wealth Management divestiture.

1.146 During the Phase 2 Inquiry FNZ told us that [✂]. These include trade and private equity buyers.

1.147 As part of the initial Phase 2 Inquiry, we spoke to three of these, [✂], [✂] and [✂] and they confirmed their interest in the UK Wealth Management business. (Our discussions focused on the UK Wealth Management Business as, at that time, this was the focus of FNZ's submissions.) These parties indicated they have not had the opportunity to assess properly the feasibility and practicality of separation:

(a) A competitor, [✂] told us that it was interested in the UK business and specifically mentioned Aegon and AJ Bell as important GBST customers. However, [✂] 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. [✂] estimated it would take three to six months to complete its due diligence.

(b) Another competitor, [✂] 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, [✂] noted that 'dividing this team between the Wealth Management and Capital Markets businesses may create challenges and argues in favour of a complete divestment of the GBST business instead'.

(c) [✂] confirmed that it expressed its potential interest to FNZ in acquiring GBST's UK Wealth Management business, should it become available. [✂] said it was not aware of the details of GBST's UK business set-up. [✂] has no prior experience in acquisitions of other businesses.

1.148 We also received some evidence during the Phase 2 Inquiry from [✂], [✂] and [✂] that suggest they would be interested in the global Wealth Management business.

1.149 FNZ told us that in preparing for the sale of GBST after the Phase 2 Report, FNZ [✂].

1.150 GBST has some large and [✂] UK Wealth Management customer relationships. In any divestiture scenario where these customers would be acquired, we consider that there would be interest from prospective purchasers. We would note, however, that the indication of potential interest does not, by itself, establish that a purchase would be completed – this will be impacted, among other things, by the extent to which purchasers have confidence that the composition and separation risks identified above can be overcome and the CMA also being satisfied with the sale agreements.

1.151 We consider that there are likely to be purchasers interested in acquiring the Global Wealth Management business. While this package has not been specifically marketed at this stage, this view is consistent with the expressions of interest already received for various potential divestiture packages. Furthermore, GBST's Global Wealth Management business is profitable and there were other bidders for the whole of GBST prior to the Merger with FNZ. We received some evidence from [✂], [✂] and [✂] that suggest they would be interested in the Global Wealth Management business.

1.152 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.[64]

1.153 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.[65]

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[64] Merger remedies guidance CMA87, paragraph 5.21.
[65] Phase 2 Remedies Notice, paragraph 25.

1.154 We consider that the sale of GBST's Wealth Management business to a purchaser with complementary operations and capabilities could potentially mitigate some of the composition and asset risks we have identified above. For example, a sale to a trade buyer with an international footprint, a strong reputation and material resources of its own might help alleviate potential customer concerns about disruption during the separation processes, as well as the purchaser's experience and commitment to the UK market.

1.155 On the basis of the evidence set out above, we found that there are likely to be potential purchasers who are interested in participating in a Global Wealth Management remedy. We consider that divestiture to a purchaser with complementary operations and capabilities could potentially mitigate some of the risks associated with the scope of the package, although the underlying challenge of separating GBST's Wealth Management and Capital Markets operations would remain.

- *Consequential risks*

1.156 A common concern for the CMA in relation to partial divestitures is the reliance on a remedy with on an ongoing relationship between a purchaser and the Merged Entity with which it may compete. The longer such relationships last and the greater the degree of mutual reliance and co-operation, the higher the risk. We consider this as a "consequential" risk as it ultimately stems from the composition and asset risks associated with, in this case, separating GBST's Wealth Management and Capital Markets operations.

1.157 The evidence we have received regarding the integrated nature of GBST's Wealth Management and Capital Markets resources, infrastructure and IP suggest that some degree of interaction – in the form of negotiated support for separation and transitional services – may be required between FNZ and a purchaser for a transitional period while the separation takes place.

1.158 The outcome of the negotiations will determine the precise perimeter of the assets of the Capital Markets business being bought back by FNZ, taking into account the degree of support needed for separation to occur. Given the potential for the implementation of any separation of capital markets assets to be disruptive to the GBST wealth management business, we therefore consider it important that this remedy be subject to the safeguards set out below (see paragraph 1.187 below) including a strict framework and timeline for concluding the negotiations for any divestiture and buy back and ensuring that the combined support provided to GBST by FNZ and any purchaser was sufficient to minimise any disruption to GBST's Wealth Management business that may result from the separation process (including through GBST

providing FNZ any post-separation transitional services). This is particularly the case, because the purchaser's and FNZ's interests may not be fully aligned (eg they will both compete in the UK market to provide Retail Platform Solutions), although we also acknowledge that FNZ will be incentivised to ensure it gets a good price particularly as it will be selling a majority of the GBST business by revenue and assets beyond just the UK.

1.159 As proposed by FNZ, the purchaser would determine whether or not to retain any shared assets or personnel, and would not be required to (but may choose to) provide separation support or transitional services. This approach, taken together with the further safeguards set out in paragraphs 1.165 to 1.202, is likely to mitigate this risk in terms of the remedy's effectiveness in addressing the SLC. This is because FNZ would not depend on GBST or the purchaser for support for any Capital Markets operations it retained or bought back, and the purchaser would have control over the resources needed for the continued operation of the Wealth Management business.

1.160 In this context, FNZ told us that it may, for example, request that the purchaser provide limited transitional services (eg access to HR data, payroll and accounting systems) relating to the Capital Markets business, or support for the separation, under a TSA but the provision of such support/transitional services would be at the purchaser's discretion and not a requirement of the buy-back. FNZ also [✂] (see paragraph 1.66 above).

1.161 GBST took a more cautious view, considering that a reverse carve out exposes its Capital Markets customers [✂]. GBST's Capital Markets division is an important post-trade and settlement clearing system provider for equity trading in Australia. We also spoke to the ASX, whom, whilst it has no contractual relationship with GBST, told us that GBST provides a post-trade and settlement clearing system used by ASX's customers. Approximately half of the participants in the Australian equity market connect to the ASX's equity clearing and settlement system using GBST's systems The ASX told us that it would have concerns, in the short term, that there would be a delivery risk to the implementation of CHESS[66] that would likely result from a divestment.

1.162 A third party in this market gave us an example of the issues that can arise in such a scenario: [✂] told us that it had a 14-month transitional agreement for a recent acquisition. It acquired [✂] from [✂]. It estimates that it may have taken the vendor 12 months to align the business in order to separate it. [✂] 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,

[66] Clearing House Electronic Subregister System - it facilitates the clearing and settlement of trades in shares and provides an electronic subregister for shares in listed companies.

this ended with 14 months of transitional procedures, such as unpicking third party arrangements.

1.163 The extent of ongoing support that FNZ would require to service GBST's Capital Markets customers and the amount of separation support GSBT will require to minimise the risk of disruption to its Wealth Management business is disputed by the Parties and we cannot ascertain, at this stage, precisely what separation support or transitional services FNZ would seek. Nor can we ascertain, at this stage, the level of GBST resource that will be required to achieve separation, and accordingly we cannot assess the level of separation support that GBST will require from FNZ and any purchaser. However, FNZ's submissions indicate that, in their view, only minimal separation support will be required from GBST and it has the capability to operate the Capital Markets business without transitional services from GBST.

1.164 While it may be possible to structure the divestiture process to eliminate or minimise the extent to which this ongoing relationship impacts on the divested UK Wealth Management business, the potential need for ongoing cooperation represents a residual risk to be taken into consideration.

Provisional conclusion on the risk profile of a Global Wealth Management divestiture

1.165 We have found that a Global Wealth Management divestiture involves a number of composition and asset risks that ultimately arise from the current level of integration between GBST's two operating divisions. Of these, it appears to us, at this stage, that the most material risks are:

(a) Composition risks associated with separating GBST's shared IT infrastructure, and the related SMEs (see paragraphs 1.89 to 1.113 above), both of which are currently shared between GBST's two operating divisions; and

(b) The asset risks associated with disruption to GBST's UK Wealth Management customers during any separation process, and the consequent risk of harm to GBST's reputation in Wealth Management and hence its ability to retain these customers or attract new ones (see paragraphs 1.125 to 1.138 above).

1.166 An overarching factor common to both these sets of risks relates to the management and technical resources needed from within GBST to separate its two operating divisions, while also being required to support GBST's business-as-usual Wealth Management operations, in competition with FNZ and others. Such concerns were articulated to us by GBST's UK Wealth

Management customers during the Phase 2 Inquiry (See paragraph 1.84 above).

1.167 Our concerns about the risk profile of this remedy therefore relate primarily to the feasibility and practicality of separating GBST's two operating divisions in a way that retains the competitive capability of GBST's Wealth Management business. We are concerned that the separation process might affect GBST's [✂], or otherwise causing [✂], thereby undermining the effectiveness of the remedy at addressing the SLC. We have particular concerns about these risks in the context of a separation process overseen by FNZ prior to the divestiture of GBST's Wealth Management business. We have therefore given careful consideration to alternative implementation methods to help reduce the risk.

1.168 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. 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.

1.169 Under FNZ's proposed remedy, FNZ would be required to divest GBST's Global Wealth Management business to an approved purchaser but could retain or buy back GBST's Global Capital Markets business. In assessing the effectiveness of this remedy we have considered:

(a) The minimum assets, in principle, that FNZ may be entitled to retain or buy back;

(b) The transaction structure, which affects how the separation of GBST's Global WM and CM businesses must be implemented in order for the risk profile to be acceptable;

(c) The support that FNZ will provide to GBST and any purchaser in connection with separation; and

(d) Other safeguards to which this remedy will be subject to.

- *Assets FNZ may be entitled to seek to retain or buy back*

1.170 A key requirement of any divestiture in which FNZ is allowed to retain or buy back certain assets is that the assets retained or bought back by FNZ do not include assets that could undermine the effectiveness of the remedy (composition risk).

1.171 FNZ's proposal provides for a list of asset categories that it should be able to retain or reacquire. These categories were stated as:

(a) All Capital Markets customer contracts.

(b) A defined list of core proprietary Capital Markets software[67], including the source code of and IP in that software.[68]

(c) Any other assets (including technical staff and SMEs), used by the Capital Markets division that a purchaser does not wish to retain..

1.172 GBST raised concerns with category (b), submitting that 'The proprietary products listed by FNZ are dependent on layers of underlying software which are common across' GBST's Capital Markets and Wealth Management businesses.' In our view, access to any proprietary products used in GBST's Wealth Management business could potentially give FNZ a competitive advantage over GBST. Therefore, if GBST's submissions are correct, FNZ having access to the software listed in category (b) would create a composition risk. In response, FNZ submitted this category did not raise any composition risk as 'any layers of underlying software which are common across the GWM and CM businesses are limited, generic and commoditised IP.' However, in their latest submission, FNZ have clarified that they are [✂]. Given this clarification and GBST's concerns, we think that the proprietary Capital Markets software to be included in the perimeter of the carve-out should be limited to any proprietary Capital Markets software, including source code of and IP in that software, which is used exclusively by the Capital Markets division.

1.173 In relation to category (c), GBST raised concerns that this category may not include many, if any assets, due to the interdependencies and shared resources within the GBST business. However, as this category only includes shared assets that a purchaser does not wish to retain, any additional risk arising from this concern would be borne by FNZ and, as such, would not undermine the effectiveness of the remedy.

1.174 The purchaser will have discretion as to the inclusion of any other assets in the perimeter of the carve-out, as long as it does not include any assets that are necessary to ensure the ongoing competitiveness of the Global Wealth Management business.

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[67] [✂]
[68] [✂]

- *Transaction structure*

1.175 In its submissions, FNZ submitted to us that there are two main legal routes by which divestiture and separation of GBST's Global WM and CM businesses can be implemented:

(a) Sale of […]Global WM to the purchaser – with the sale agreement defining the business to be acquired by the purchaser […] (which they term 'Option A') or

(b) Sale of the entirety of GBST to the purchaser with a transfer back to FNZ of the business to be retained by FNZ – with the sale agreement defining the business to be transferred back to FNZ […]' (which they term 'Option B').

1.176 FNZ submitted that both Options A and B present an equal risk profile because, under both options, it is the purchaser who would determine which option to take and the scope of the carve-out. We consider that the risk profile of Options A and B is materially different in relation to the effectiveness of the remedy.

1.177 A key difference between Options A and B is who owns GBST at the time the separation of the two divisions takes place and thus who formally controls and oversees that process. Under Option A this will be FNZ, under Option B this will be the purchaser as they acquire the entire GBST business prior to any buy back. We consider this makes Option A materially riskier than Option B because:

(a) Under Option A, both the agreement in relation to the content of the carve-out and the implementation of the carve-out would occur within the Initial Divestiture Period[69]. FNZ would own GBST during this period and would be able to influence how the carve out is implemented. This increases the risk of this Option as FNZ's incentives are to prioritise the carve-out over the potential disruption to GBST's Global Wealth Management business. In addition, carrying out separation steps within this time limit could put additional pressure on the GBST business, potentially harming the Wealth Management business. Whereas, under Option B, no steps to implement the separation will be completed by the Initial Divestiture Period, i.e. while GBST is under FNZ's ownership; and

[69] The period (to be specified by the CMA) between accepting Undertakings or imposing an order and the final disposal to a prospective purchaser.

(b) Under Option A, if there are difficulties with the implementation of the separation of the carve-out, it would be FNZ, not the purchaser, who would have formal control over how any such difficulties will be resolved. FNZ does not have the same level of incentive as a purchaser to maintain the competitive strength of the GBST Global Wealth Management business and minimise disruption to their customers. 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. We therefore consider there is an increased risk, under Option A, that decisions on how to resolve any separation difficulties will be more likely to have any adverse impact on the GBST Global Wealth Management business.

1.178 As noted at paragraph 1.172 above, FNZ submitted that it was important that any purchaser have the [✂]. We agree this may be the case. In our view, such a choice could also be driven by the proposed purchase price e.g. with a purchaser willing to take the risks highlighted above in exchange for a lower purchase price. It is because a purchaser may choose Option A, for reasons including the above, that, in our view, they should not have the ability to do so. The risks set out above, if they materialised, could harm and thus undermine the ongoing competitiveness of the GBST Global Wealth Management business, reducing the competitive constraint on FNZ that would have existed absent the Merger. The costs of this loss of competition would ultimately be borne by UK consumers and, therefore, are not capable of being compensated by the purchaser paying a lower purchase price or the other considerations mentioned by FNZ.

1.179 For the reasons set out above, we have provisionally found that Option A, under which FNZ would implement the agreed separation and divest only the assets that were outside the carve-out to a purchaser, would not be effective.

1.180 By contrast, it is consistent with Option B for the GBST business to be divested in full to a purchaser within the Initial Divestiture Period, after agreement over the perimeter of the assets that FNZ will buy back and the perimeter of any separation resource or transitional services that will be required from GBST (and how FNZ will support separation). This structure avoids the risks that arise from separation being implemented under FNZ's ownership as GBST would be under independent ownership before any separation occurs. This approach will minimise the composition risk that a divested Global Wealth Management business would be a weaker competitor than would have been the case absent the Merger.

1.181 Under this scenario a purchaser would have to buy the whole of GBST and then sell back certain assets. As noted by FNZ (see paragraph 1.149 above)

a number of third parties expressed an interest in acquiring the GBST UK Wealth Management business. We provisionally think it is likely that a number of these purchasers would also be interested in acquiring the Global Wealth Management business, given it is profitable and contains the UK Wealth Management business. The inclusion of the, also profitable, non-UK divisions of the Wealth Management business may also increase the attractiveness of the divestiture and cause new purchasers to come forward. In our view there are therefore likely to be suitable purchasers.

1.182 Below we set out further aspects for the implementation of this remedy, consistent with Option B, which for ease of reference we hereafter refer to as the 'divestiture of GBST with the right to buy back certain assets of the Capital Markets business'.

- *Approval of the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business*

1.183 As with any divestiture remedy the CMA would approve both the Purchaser and transaction documents, including (i) the terms of the divestiture including the agreed assets to be re-acquired by FNZ, (ii) the scope and amount of any resource to be committed by GBST/Purchaser to the separation process; (iiii) the scope and amount of any transitional services to be provided by GBST/Purchaser to FNZ and (iv) the level and nature of separation support to be provided by FNZ to the GBST business and the Purchaser. In order for a Purchaser to reach an informed agreement on these matters with FNZ, it will need sufficient access to information and individuals from the GBST business. The CMA will therefore seek to ensure that the due diligence process proposed by FNZ grants approved potential Purchaser(s) the level of necessary access.

1.184 As part of this approval process, the CMA would liaise closely with prospective purchaser(s) to ensure that any assets to be re-acquired by FNZ (to the extent they go beyond the minimum identified in paragraphs 1.171 and 1.174 above) would not adversely impact the competitiveness of the GBST Wealth Management business and conformed to the principles and parameters set out in the undertakings offered by FNZ (s82 of the Act) or in a final order (s84 of the Act). Similarly, the CMA would also seek to ensure that any GBST resource that a Purchaser agree would be committed to separation and/or providing transitional services to FNZ would not adversely impact the competitiveness of the GBST Wealth Management business, and that the purchaser and FNZ agreed to commit sufficient non-GBST resources and external support to minimise any disruption to GBST's Wealth Management

business in implementing the separation of the assets to be re-acquired by FNZ.

- *Support provided to and by GBST*

1.185 FNZ told us that it would be willing to offer (and pay for) the services of third party consultancy firms (including technical specialists and SMEs), with consultancy staff being embedded at GBST to help carry out the necessary separation work. [✂].

1.186 In our view, FNZ's offer to provide such support is unlikely to remove all the burden from GBST but may be important in limiting it, and thereby mitigating potential disruption. It therefore should form part of this remedy. In addition, the \purchaser will also likely need to commit some of its own resources to supporting the separation process within GBST. The support and arrangements for the implementation of the separation would be agreed commercially between FNZ and a Purchaser. However, as noted above, the CMA would seek to ensure that (i) the level of GBST resource committed to support separation will not adversely impact the competitiveness of, and to minimise any disruption to, the GBST Wealth Management business, and (ii) the combined resources provided by the purchaser and FNZ to achieve separation without recourse to GBST resource is sufficient to not adversely impact the competitiveness of, and to minimise any disruption to, the GBST Wealth Management business.

1.187 FNZ's submissions also raise the question whether, under a divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business, GBST would have to provide some transitional services to FNZ, after the divestiture of GBST to a purchaser. The provision of such services raises the risk of disruption to the GBST Global Wealth Management business as a result of GBST staff being diverted from the Wealth Management business to providing these services. FNZ's proposal makes clear that any such services would be at the full discretion of a purchaser. This should mitigate this risk as a purchaser could choose to provide no such services, albeit it may risk adversely impacting GBST's Capital Markets business. In this situation, there may therefore be a balance of risks between, on the one hand, the purchaser retaining sufficient staff, including SMEs, to maintain the competitiveness of GBST's Wealth Management business; and on the other hand, diverting some staff to avoid disruption to GBST's Capital Markets customers. As noted at paragraph 1.97 above, for the purposes of the assessment of the extent to which this remedy would be effective in remedying the SLC we have provisionally found, we give greater weight to the former risk. As such, in our view, it is important that a purchaser has full

discretion to not provide any transitional services to FNZ. Also, as with separation support, although the transitional service arrangements would be agreed between FNZ and the purchaser the CMA would seek to ensure that (i) the level of GBST resource committed to providing transitional services will not adversely impact the competitiveness of, and will minimise disruption to, the GBST Wealth Management business, and (ii) the combined resources provided by the purchaser and FNZ in connection with the provision of transitional services without recourse to GBST resource is sufficient to minimise any disruption to, and not adversely impact the competitiveness of, the GBST Wealth Management business.

- *Other safeguards*

1.188 In addition to the above, as with any divestiture remedy we will ensure there is:

(a) an appropriate timescale for the divestiture of GBST to an approved purchaser; and

(b) appropriate interim measures in place until completion of the divestiture of GBST to an approved purchaser.

- *Timescale*

1.189 We considered what would be an appropriate timescale to allow FNZ to negotiate the terms of the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business and divest GBST in full to a suitable purchaser (the 'Initial Divestiture Period'). This would normally run from the acceptance of final undertakings or the making of a final order until legal completion of an effective divestiture (that is, the completion of the divestiture of GBST to a purchaser approved by, and on terms approved by, the CMA).

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

1.191 As set out in the Phase 2 Report for a full divestiture we concluded that [✂] divestiture period should be sufficient .[70] Given that under Option B, the separation and reacquisition of assets by FNZ would occur after disposal of the entirety of GBST to a suitable purchaser we do not consider there to be any reason to depart from this [✂] divestiture period. In this context, we note that FNZ told us that [✂].[✂] would appear ample time for FNZ to identify a purchaser and negotiate a full divestiture that included a subsequent reacquisition by FNZ of the approved asset package, including any separation support/transitional services arrangements. Moreover, a timely disposal of GBST is, in our view, important to manage the asset risks of this divestiture, given the time that has elapsed since FNZ acquired GBST (see paragraph 1.165(b) above).

1.192 As part of the approval of the transaction documents, including the terms of any GBST resource committed to separation and any resources committed by the purchaser and FNZ (without recourse to GBST resource) to achieve separation, and any transitional services provided to FNZ, the CMA would ensure that any on-going interaction between these businesses is limited to that which is strictly necessary and would not harm and would minimise disruption to the Wealth Management business.

- *Divestiture trustee*

1.193 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 (ie a divestiture of GBST to a suitable purchaser) 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.

1.194 The task and mandate of a Divestiture Trustee, if appointed, would be to complete the divestiture of GBST, in full, with no sale back of assets to FNZ, to a potential purchaser approved by the CMA in a timely manner, [✂].

1.195 To ensure a timely completion of this remedy, we provisionally reserve the right to appoint a Divestiture Trustee including if:

(a) The CMA reasonably believes that there is a risk that the divestiture of GBST to a suitable purchaser would be delayed or fail to complete within the Initial Divestiture Period; or

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[70] Phase 2 Report, paragraph 11.73.

(b) the CMA reasonably believes FNZ is not engaging constructively with the divestiture process; or

(c) FNZ fails to complete the above divestiture within the Initial Divestiture Period.

- *Interim Measures*

1.196 Interim measures are in place to ensure the continued independent operation of GBST during this inquiry. These will expire upon final determination of the merger reference: that is, when the CMA accepts final undertakings or makes a final order. However, in this case, as with most completed mergers, we consider there will be a continuing need to preserve the independence and competitive capability of the GBST business until it is divested to a suitable purchaser. This is because, 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'.[71]

1.197 We therefore provisionally find that this remedy would involve maintaining similar provisions to our existing interim measures during the implementation of this remedy until completion of the divestiture of GBST to a suitable purchaser. The existing Monitoring Trustee's appointment will continue, in order to monitor the Parties' compliance with these interim measures. The Monitoring Trustee will also be involved in certain aspects of the divestiture process, as appropriate and consistent with our guidance, in order to monitor the Parties' compliance with any final order or undertakings setting out the terms and conditions of this remedy and to ensure an efficient divestiture process.

1.198 The Monitoring Trustee's enhanced role will include, but not be limited to:

(a) monitoring FNZ's progress in relation to the divestiture process;

(b) monitoring both FNZ's and GBST's conduct during the divestiture process;

(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

[71] Merger remedies guidance CMA87,paragraph 5.4.

information is appropriately protected during any due diligence process; and

(d) monitoring any separation planning activity that takes place ahead of completion.

1.199 We would adjust the Monitoring Trustee's mandate to reflect these new functions as part of any final order or undertakings. Once GBST is under independent ownership we would envisage the Monitoring Trustee's Mandate ceasing.[72]

Provisional conclusion and areas for further consultation

1.200 We have provisionally found the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business would be an effective remedy if FNZ can secure such a deal. The remedy would be subject to the conditions and protections set out above.

1.201 We are consulting on our provisional decision and invite views in particular in relation to the questions below:

(a) Whether suitable purchasers are likely to be forthcoming, were this remedy to be taken forward;

(b) What, if any, further monitoring and enforcement processes the CMA should put in place to oversee the separation process, noting that GBST would be under independent ownership at such a point;

(c) Are there areas where further, or less, discretion should be given to a purchaser in relation to (a) the assets to be sold back, and (b) the scope and amount of any (i) separation support; and (ii) transitional services provided to FNZ;

(d) Aside from prohibiting re-acquisition as is typical with merger remedies, are there any other post completion conditions that should be imposed on FNZ; and

[72] For clarity, under this remedy, the separation and transfer of the assets sold back to FNZ will take place after the divestiture of GBST to a purchaser. However, we are not proposing that interim measures or the Monitoring Trustee's role be extended beyond the completion of the divestiture of GBST. At that stage, the CMA will have approved the content of the asset package, the levels of separation support and the scope and amount of any transitional services, which would be set out in the transaction documents. Following the completion of the divestiture, we consider that compliance with the transaction documents and the terms of any undertaking or order will be adequately safeguarded by the purchaser.

(e) What criteria the CMA should use in evaluating the sale and purchase agreement and related support/service agreements between FNZ and a prospective purchaser.

Source code licencing remedy

1.202 As set out in the Phase 2 Report, FNZ proposed a SCLR to address the SLC and its resulting adverse effects.[73]

1.203 In essence the SCLR would entail FNZ making 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.

1.204 FNZ set out how it considered that the remedy would work: [✂].The CMA's reasoning for rejecting this remedy in the Phase 2 Inquiry was set out in the Final report.[74]

1.205 In its response to our Remedies Working Paper in the Phase 2 Inquiry, FNZ stated that it 'continues to hold the view, expressed in its response to the Remedies Notice that the SLCR would be fully effective in eliminating the SLC, and the most proportionate remedy in the circumstances, as well as generating pro-competitive effects. [✂]

1.206 We have found no reason to re-open our investigation into this remedy and therefore we maintain that the SCLR is not an effective remedy to the SLC which we found, and do not consider there is any way in which it could be amended to make it so.

Provisional conclusions on remedy effectiveness

1.207 Based on our assessment of the effectiveness of each remedy option, we provisionally conclude that both the full divestiture of GBST and the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business would represent effective remedies to the SLC and its resulting adverse effects.

1.208 As noted in paragraph 1.202, however, we are actively considering there are any remaining risks associated with the proposed remedy and, if so, whether

[73] Phase 2 Report, paragraphs 11.251-11.259.
[74] Phase 2 Report, paragraphs 11.293-1.297.

and how these risks can be effectively managed through additional safeguards

Relevant customer benefits

1.209 When deciding on remedies, the CMA may have regard to the effects of remedial action on any 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.[75] RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy.[76]

1.210 As set out in the Phase 2 Report we assessed FNZ's claimed RCBs in light of evidence from FNZ, GBST, and third parties and concluded that there was insufficient evidence to conclude that RCBs within the meaning of the Act, arise from the Merger.

1.211 During the Remittal Inquiry, FNZ made no further submissions on RCBs. Accordingly, we have not reopened our inquiry into RCBs and therefore provisionally conclude again that there is insufficient evidence to conclude that RCBs within the meaning of the Act, arise from the Merger.

Proportionality of effective remedies

1.212 We set out below our provisional assessment of and conclusions on the proportionality of the two effective remedy options, which we have identified at this stage: a full divestiture of GBST and a divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business.

Framework for assessment of proportionality of effective remedies

1.213 For the reasons set out above, at this stage we have identified two effective remedy options: a full divestiture of GBST and a divestiture of GBST with FNZ having the right to buy back certain assets of the Capital Markets business.

[75] The Act, sections 30 and 36(4).
[76] Merger remedies guidelines CMA87, paragraph 3.16.

1.214 Consistent with the CMA's Guidance[77] and EU and UK case law,[78] to find that a remedy is proportionate, that remedy:

a) must be effective to achieve the legitimate aim in question (appropriate);

b) must be no more onerous than is required to achieve that aim (necessary);

c) must be the least onerous, if there is a choice of equally effective measures; and

d) in any event must not produce adverse effects which are disproportionate to the aim pursued.

1.215 Therefore, to reach a provisional view on the proportionality of the effective remedies we have identified we have, below, assessed these remedies we against the four principles set out above.

1.216 However, before doing so, we first consider the relevant issues raised by FNZ's submissions.

Issues raised by FNZ's submissions on proportionality of the remedies

1.217 In the NoA, FNZ submitted that:

(a) The full divestiture of GBST, without FNZ having the right to buy back any assets of the capital markets business, would prevent [✂][79] and that, in the Phase 2 Report, the CMA failed to take into account the impact of any remedy on the Australian markets in its assessment of whether: (i) a full divestiture without any right for FNZ to buy back certain assets of the Capital Markets business was proportionate to the SLC and its adverse effect; and (ii) there was an alternative less onerous effective remedy .

(b) 'the CMA failed to take into account the principle of comity and weigh in the balance the effects of… [a full divestiture of GBST] on FNZ's conduct in foreign markets'.[80]

(c) 'when considering whether a remedy is proportionate, the extraterritorial effect of any remedy is clearly a highly relevant consideration'[81] 'and it

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[77] Merger remedies guidance CMA87, paragraph 3.6.
[78] See *Tesco plc v Competition Commission* [2009] CAT 6, paragraph 137, drawing on the formulation by the European Court of Justice in Case C-331/88 *R v Ministry of Agriculture, Fisheries and Food, ex p. Fedesa*, ECLI:EU:C:1990:391, paragraph 13.
[79] NoA, paragraph 82.
[80] NoA, paragraph 80(a).
[81] NoA, paragraph 81.

was incumbent upon the CMA specifically to consider the nature and extent of any extraterritorial effect of any remedy.'[82]

1.218 In response to the issues raised by FNZ in its NoA and as context to our assessment of proportionality, we note the following:

(a) First, the CMA's Guidance states that '[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. 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', [83] 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 the CMA would expect this risk to be reflected in the agreed acquisition price'.[84] As noted by the CAT, in completing the Merger, the Parties have taken a foreseeable risk that the CMA may order a divestiture.[85] Therefore, we do not consider it appropriate to give weight to any potential losses to FNZ that may occur on the execution of a full divestiture of GBST, with or without a buy back of certain assets of the Capital Markets business, or that arise from the impact of either of the above remedies on FNZ's main strategic rationale for acquiring GBST.

(b) Second, as is clear from the four principles set out above, it is only necessary to compare the proportionality of two remedies when they have both been found to be effective in achieving the legitimate aim in question, i.e. effectively addressing the SLC we provisionally found. As set out in the CMA's Guidance, it is only after the CMA decides which of the remedy options would be effective in addressing the SLC and resulting adverse effects that the CMA will then consider the costs of those remedies.[86] In this case, as noted above, we provisionally identified two remedies as effective and, having done so, therefore compared the proportionality of them.

(c) Third, in principle, while certain extraterritorial effects of a remedy may be a relevant consideration when assessing the proportionality of a proposed remedy, this is subject to (i) the CMA's primary consideration of effectiveness (whereby conduct outside the UK can be within the CMA's

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[82] NoA, paragraph 81.
[83] Merger remedies guidance CMA87, paragraph 3.8.
[84] Merger remedies guidance CMA87, paragraph 3.9.
[85] *InterContinental Exchange, Inc. v Competition and Markets Authority* [2017] CAT 6, paragraphs 100-101.
[86] Merger remedies guidance CMA87, paragraph 3.6.

jurisdiction if it impacts the CMA's ability to achieve an effective remedy in the relevant market[87]), and (ii) the principle noted at paragraph 1.81 above about costs to the Parties. We have applied this principle as part of our provisional assessment of which remedy is effective and proportional to the SLC we have provisionally identified.

Effective to achieve the legitimate aim in question

1.219 As noted above, at this stage, we have provisionally identified the following remedies to be effective:

(a) The full divestiture of GBST; and

(b) The divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business.

1.220 For the reasons set out in this paper (see paragraphs 1.33 to 1.202 for our assessment of effective remedies), which have built on our assessment in the Phase-2 Report, we consider that these remedies are the only ones that would be effective in achieving the legitimate aim of effectively addressing the SLC and its resulting adverse effects.

No more onerous than is required to achieve that aim

1.221 We acknowledge that both remedies are intrusive remedies. However, we carefully assessed the effectiveness of the available remedy options including all the proposals put forward by FNZ and only, provisionally, found the two remedies set out above to be effective in comprehensively addressing the SLC we provisionally found and the resulting adverse effects. Individually and collectively the other remedies proposed by FNZ were provisionally found to not be effective in comprehensively addressing the SLC we have provisionally found.

1.222 We have therefore provisionally concluded that both a full divestiture of GBST and the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business are no more onerous than is required to achieve the legitimate aim of effectively addressing the SLC and its resulting adverse effects.

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[87] *Akzo Nobel N.V. v Competition Commission & ORS Metlac Holding S.R.L.* [2014] EWCA Civ 482.

Identification of the least onerous equally effective measure

1.223 Having provisionally identified two effective remedies we assess below the relevant costs associated with each remedy.

1.224 In relation to the first remedy - a full divestiture of GBST, without any buy back: This would restore competition in the market where we provisionally found an SLC to pre-Merger levels, and as a result would not distort market outcomes and would incur no ongoing compliance or monitoring costs. We acknowledge that this is an intrusive remedy and would impose significant costs on FNZ. However, as our guidance states, the CMA will not normally take account of costs or losses that would be incurred by the merger parties as a result of a divestiture remedy, as it is open to the merger parties to make merger proposals conditional on the approval of the relevant competition authorities.[88,89]

1.225 With respect to the second remedy - a divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business: As this would involve the entire GBST Wealth Management business being independent of FNZ, it will also restore competition in the market where we provisionally found an SLC to pre-Merger levels. As such, our provisional view is that, with appropriate safeguards built in through the sale implementation to ensure that any separation cooperation and/or transitional services between the purchaser and/or GBST and FNZ are limited to avoid any adverse impact on the competitiveness of the GBST Wealth Management business, we do not consider that it would lead to material distortions in market outcomes for GBST's Wealth Management business. As noted above, once the terms of the divestiture and buy back, and any related services, are agreed and approved by the CMA, in our provisional view, this remedy would not require any ongoing monitoring by the CMA and it would not result in the loss of any RCBs.

1.226 We recognise that this second remedy may entail some adverse impact on Capital Market customers. However, irrespective of the precise package of assets being bought back, FNZ has assured us that it will be able to continue to service such customers effectively (see paragraph 1.73 above). As such, in our view, to the extent that such risks arise they are likely to be low. They may

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[88] Merger remedies guidance CMA87, paragraph 3.9.
[89] The CAT and the courts have upheld divestiture remedies in a number of investigations where this approach has been taken by the CC and the CMA. See *Groupe Eurotunnel S.A. v Competition Commission* [2013] CAT 30, *InterContinental Exchange, Inc. v Competition and Markets Authority* [2017] CAT 6, paragraphs 100-101. Also *Ryanair Holdings PLC v Competition Commission & Or* [2014] CAT 3, paragraphs 182-185: 'significant costs may be incurred as a result of divestiture, these may have to be borne if behavioural or other structural remedies would not be effective.'

also be further reduced by the nature and scope of any agreed (subject to CMA approval) transitional services and/or separation resource/support committed/provided by GBST, the purchaser and/or FNZ in connection with separation.

1.227 If FNZ fails to reach an agreement to implement this remedy with any suitable purchaser within the initial divestiture period, in accordance with the safeguards set out above, a divestiture trustee would be appointed [✂].

1.228 As the second remedy would result in FNZ being able to buy back certain assets of the Capital Markets business, we consider that it is likely to be the least onerous effective remedy from FNZ's point of view.

Does not produce adverse effects which are disproportionate to the aim pursued

1.229 Having provisionally concluded above that the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business is likely to be the least onerous effective remedy for FNZ, we now assess whether this remedy would produce results disproportionate to the aim of effectively addressing the SLC we have provisionally found, such as incurring costs or a loss of RCBs, such that it would not be proportionate to impose that remedy.

1.230 This remedy requires the complete divestiture of GBST's Wealth Management business, and therefore would prevent harmful structural changes to the market in which we have provisionally found our SLC. As such there is no risk of distortions in market outcomes and our provisional view is that there would be no ongoing compliance or monitoring costs in that market once GBST is under independent ownership.

1.231 As noted above (see paragraph 1.227), we recognise that there may be some adverse impact on Capital Market customers. However, for the reasons set out above, any such impact is likely to be minimal or low and we, therefore, do not consider the risk of this impact to be disproportionate to the aim of effectively addressing the SLC we have provisionally found.

1.232 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. The initial divestiture of GBST as a whole to a purchaser is therefore, in our view, unlikely to result in material operational costs from unwinding agreements or integrated infrastructure or transferring customers.

1.233 The subsequent separation process to separate the agreed assets of the Capital Markets business to be sold back to FNZ will have been agreed

upfront by FNZ and the purchaser and approved by the CMA. In addition, the separation process is only implemented once GBST is under independent ownership. Both FNZ and the purchaser will be strongly incentivised to ensure that any such process avoids disruption to their respective businesses thus reducing the likelihood of adverse effects.

1.234 Any RCBs foregone as a result of this divestiture would constitute a relevant cost of the remedy. However, we considered at paragraph 1.210 above if there were any RCBs that would be lost as a result of this divestiture and provisionally found there were none.

1.235 We also considered if there were other costs of this divestiture that we should take into account but we received no evidence of such costs to third parties, aside from Capital Market customers which we have assessed above, arising from it. In accordance with our guidance and the case law referenced at paragraph 1.215 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 the required divestiture of GBST as a whole should not be treated as relevant costs.

1.236 Under this remedy, following the divestiture of GBST to a purchaser, the agreed assets of the Capital Markets business would then need to be separated and sold back to FNZ. However, it is important to note that the buy back aspect of the remedy is not necessary to its effectiveness. Instead, the right for FNZ to buy back certain capital markets assets, envisaged in this remedy, would be solely to make the remedy less onerous for FNZ. As such, any additional costs for FNZ arising from being granted this right are not ones we take into account when assessing its proportionality. We also note that FNZ would have strong incentives to manage the smooth transfer of Capital Markets customers to its own platform, should it choose to take up this remedy option. We therefore consider that this remedy would not give rise to relevant costs that are disproportionate to the SLC.

Provisional conclusion on proportionality

1.237 We provisionally find that the full divestiture of GBST with or without the right for FNZ to buy back certain assets of the Capital Markets business are effective to achieve the legitimate aim of comprehensively remedying the SLC and its adverse effects. For the reasons set out above, we provisionally find that that the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business and subject to the other safeguards we have identified would be the least onerous effective remedy to achieve this aim and that the costs of the remedy were outweighed by its benefits.

1.238 We therefore provisionally find that the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business, and subject to the other safeguards outlined above in connection with such buy back, would be a proportionate remedy to the SLC and its adverse effects.

Provisional decision on remedies

1.239 We have provisionally found that the full divestiture of GBST with or without the right for FNZ to buy back certain assets of the Capital Markets (in the latter case subject to the other safeguards outlined in this paper in connection with such buy back) business would represent effective remedies to the SLC and its resulting adverse effects that we have found.

1.240 We provisionally find that that the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business subject to the other safeguards outlined in this paper in connection with such buy back would be the least onerous effective remedy to achieve this aim and that the costs of the remedy were outweighed by its benefits.

1.241 We therefore provisionally find that the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business and subject to the other safeguards outlined in this paper in connection with such buy back would be a proportionate remedy to the SLC and its adverse effects.

1.242 While we have provisionally found that the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business is an effective and proportionate remedy to the SLC and its resulting adverse effects, we are actively considering whether there are any remaining risks associated with the proposed remedy and, if so, whether and how these risks can be effectively managed through additional safeguards to those set out at paragraph 1.47 to 1.54 above.

1.243 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, including the period for any formal public consultation on the draft undertakings or order.[90]

1.244 Once this remedy has been fully implemented, we provisionally conclude 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

[90] The Act, section 82 (final undertakings) and section 84 (final order). See also the Act, schedule 10.

prohibition to a period of 10 years.[91] We find no compelling reason to depart from the guidance in this case by imposing a shorter or longer prohibition period.

[91] Merger remedies guidance CMA87,paragraph 5.10.