

**FNZ RESPONSE TO THE REMITTAL PROVISIONAL REPORT
DATED 16 APRIL 2021**

Case No. ME/6866/19

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

SLAUGHTER AND MAY

WJT/HXW/RXZW

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1. Introduction and executive summary

- 1.1 FNZ welcomes the CMA's provisional conclusion that the divestment of GBST accompanied by a right to buy back its capital markets business would provide an effective, proportionate remedy to any concerns that arise as a result of FNZ's acquisition of GBST (the **Transaction**). As explained in FNZ's separate response to the Remedies Paper, FNZ will continue to engage constructively with the CMA in relation to this possible remedy. However, this is strictly without prejudice to FNZ's firm and sustained view that no substantial lessening of competition (**SLC**) in fact arises.
- 1.2 The Provisional Report (**PR**) is in certain respects very similar to the Phase 2 Final Report (**Final Report**); in others, notably different. In one significant change, the PR accepts that absent the Transaction it is likely that GBST would have been acquired by SS&C. But this is found not to matter, on the basis that conditions of competition in this counterfactual would not differ materially from pre-merger conditions. FNZ challenges the rationality of this finding, including because it cannot be right that an SS&C/GBST combination would have such a negligible impact on competition while an FNZ/GBST combination would cause an SLC, given the similarities that exist between them.
- 1.3 The PR indicates that the CMA has not yet properly reconsidered its approach to market definition. The artificial Retail/Non-Retail distinction remains strongly influenced by downstream differences, rather than Platform Solutions Suppliers' functionality, and any consideration of how customers and competitors would react to a price (or equivalent quality) change is still missing: a major omission. There also continues to be no rational basis on which to exclude from the market 'Sensitivity-Only' (formerly known as 'Borderline') platforms, which are acknowledged to have both '*Retail and Non-retail elements*' (para. 6.66).
- 1.4 While the definition may remain broadly the same, the picture of the competitive landscape within that market is strikingly different. The Final Report depicted the Transaction as a merger of numbers one and three in a four-player market, accounting for nearly half of the supply of Retail platforms between them. The PR paints the Transaction as a combination of the third and fourth largest suppliers, with a combined share of [3<] in a market that has five main players and a number of other substantial competitors.
- 1.5 With a number of the key planks supporting the original SLC finding having been stripped away, the case against the Transaction now leans heavily on the closeness of competition that allegedly exists between the Parties. But the objective evidence – in particular the tender data – shows that FNZ and GBST are in fact by no means close competitors, and that the merged entity will face strong constraint from other key players, including SS&C and TCS BaNCS – not to mention the significant range of other credible players which compete for and win Retail contracts. FNZ urges the CMA to take the opportunity to look afresh at this evidence before concluding the remittal process.

2. Counterfactual

- 2.1 The PR accepts that, absent the Transaction, it is likely that GBST would have been acquired by SS&C (para. 5.49). This represents a significant departure from the Final Report, which merely acknowledged this as one of a number of plausible scenarios,

before concluding that *‘the likely counterfactual is the conditions of competition prevailing prior to the contemplation of the Merger’* (para. 5.25). But the PR says this change does not matter, because a world in which SS&C and GBST had merged *‘would not have been materially different, and in particular certainly no less competitive, from the pre-Merger conditions of competition’* (para. 5.40).

- 2.2 The PR’s approach to the counterfactual is flawed, including because it is irrational to conclude, on the one hand, that an SS&C/GBST combination would have such a negligible impact on competition that it does not even warrant consideration as an alternative counterfactual but, on the other, that an FNZ/GBST combination would be so injurious that it gives rise to an SLC.¹ In fact, there are striking similarities between the two combinations, with much of the CMA’s reasoning for dismissing concerns regarding the former applying equally to the latter.
- 2.3 Following significant corrections to the market share figures on remittal, SS&C and GBST would have a material combined share of supply at [redacted] - very similar to FNZ/GBST at [redacted]. The PR dismisses SS&C/GBST’s [redacted] share of supply as merely *‘notional’* (para. 5.44) and yet places weight on the fact FNZ/GBST would be *‘larger than any other provider’* (para. 8.10). On a structural basis, there is no material difference between the combinations: FNZ/GBST does not remove a competitor or cause a material increment in share relative to the correct counterfactual. Even within the CMA’s narrow Retail market, the Transaction does not represent a ‘4-to-3’ or worse but a ‘4-to-4’ or better.
- 2.4 The PR suggests that SS&C, notwithstanding its significant market share, has a limited presence in the Retail market and exerts only a limited competitive constraint on the Parties (para. 5.41). FNZ disagrees.
- (i) SS&C is dismissed as a ‘one hit wonder’ with only one main Retail client, St James’ Place – despite the fact that St James’ Place is by some distance the largest UK wealth management platform and that it recently renewed and extended its contract with SS&C until 2034.
 - (ii) The significant implications of SS&C’s recent win [redacted] of Brooks MacDonald are not addressed, as this platform has been reclassified as Non-Retail (from ‘Borderline’). This is the *only* platform to have been reclassified since the Final Report.² [redacted] FNZ cannot see why Brooks MacDonald is not classified as a Retail platform, given its homogenous offering (including mainstream tax and pension wrappers) to investors which is indistinguishable from platforms in the ‘Retail’ category like St James’s Place.³
 - (iii) The tender data shows SS&C is recognisably a Retail competitor: it [redacted]⁴.

¹ See further paras 5.12 – 5.15 of FNZ’s Initial Remittal Submission and paras 2.7 – 2.13.

² PR, Appendix I, para 25.

³ See, e.g., slide 11 of FNZ’s Oral Representations presentation dated 2 March 2021. In addition, [redacted].

⁴ This is despite the CMA’s claim in footnote 6 of the unredacted Appendix H disclosed on 19 April 2021 that [redacted].

- 2.5 The PR concludes that SS&C and GBST are not close competitors, but the analysis supports a similar finding in respect of FNZ and GBST:
- (i) The PR highlights the fact that SS&C's success has predominantly been with a PaaS delivery model (even though it does in fact offer a software-only solution) (para. 5.42). Indeed, the PR goes further and suggests SS&C's and GBST's 'complementary' offering could enhance competition (para. 5.45). But FNZ is *at least* as differentiated by delivery model from GBST; the difference in treatment is irrational.⁵
 - (ii) The PR points to tender data to evidence a lack of closeness of competition between SS&C and GBST due to a limited number of tender overlaps (para. 5.42; and Appendix G, para. 6). But the difference in the number of overlaps between SS&C and GBST, on the one hand, and FNZ and GBST, on the other, is not statistically significant.⁶ In addition, the [redacted].
- 2.6 The PR is inconsistent in the way that it assesses the harm that could arise from an SS&C/GBST merger and the Transaction:
- (i) The PR indicates that not all customers need be affected for an SLC to arise, with the adverse impact most likely for customers that consider the relevant players to compete closely (para. 8.61(a)). However, the PR does not assess whether the customer set that would be affected by the Transaction is materially larger than the customer set that would be affected by an SS&C/GBST merger. The evidence in the PR does suggest that some customers view SS&C and GBST as suitable providers, although the extensive redactions make the reasoning difficult to understand (see, e.g., paras 8.173, 8.214).
 - (ii) The PR claims that '*Given that millions of people make investments through such platforms, even if the total number of platforms affected is smaller than the overall number of platforms available, this could still have a significant effect on many end investors*' (para. 8.261). The CMA's share of supply analysis captures the assets under administration (**AuA**) affected by the Transaction. Since the shares of supply are very similar for SS&C/GBST and FNZ/GBST, a similar number of end investors would be affected by both combinations. Indeed, the evidence that GBST constrains FNZ is very weak. That is, to the extent that there is any loss of competition, it would be more likely to have an impact on GBST's customers than those of FNZ.

3. Market definition

- 3.1 The PR's approach to market definition remains misconceived. The PR suggests that the CMA has not yet properly reconsidered whether the 'Retail' platform distinction is an

⁵ As explained in Table 5.1 of FNZ's Initial Remittal Submission, although GBST and JHC offer software-only, they are differentiated. Also, GBST's share is [redacted] in Retail whilst JHC's share is [redacted] in Sensitivity-Only.

⁶ As explained in footnote 28 below, [redacted]. Fisher's Exact Test, which can be applied to small samples such as this, finds that an overlap of [redacted] is not statistically different from an overlap of [redacted]. That is, there is no statistical difference between the number of times that GBST faced each of SS&C and FNZ [redacted].

appropriate starting point or gathered additional evidence required for this purpose. The narrow approach to market definition has significant consequences for the rest of the PR. Further, the limited sensitivity testing evident in the PR does not allay concerns that the market definition is too narrow: a proper consideration of ‘Sensitivity-Only’ platforms undermines the market definition and subsequent SLC finding.

- 3.2 First, the Retail/Non-Retail distinction remains strongly influenced by downstream differences rather than Platform Solutions Suppliers’ functionality (paras 6.98-6.99). Whether some platforms are better suited than others to serve certain types of investors is not germane to defining the market for the supply of solutions to platforms; what matters is whether the functionality those suppliers can deliver is substitutable.⁷ The PR accepts FNZ’s submission that Retail and Non-Retail platforms have similar core functionalities (paras 6.34 and 6.48). This means that both Retail and Non-Retail suppliers are in fact able to deliver the same functionality and are accordingly substitutes. This holds even more for ‘Sensitivity-Only’ platforms.
- 3.3 Second, the PR does not include any evidence of, and the CMA does not appear to have asked, how customers and competitors would react to a price (or equivalent quality) change. This is a major omission.⁸
- (i) The PR’s evidence on demand-side substitution only captures customer preferences based on *current* prices (paras 6.55-6.70). For example, it claims that the provision of tax wrappers such as pensions is a more important element of Retail platforms. However, the PR does not assess the willingness of customers to combine the investment accounting software (**IAS**) of a Non-Retail (or Sensitivity-Only) provider with the pensions administration software (**PAS**) of another provider in response to a price (or equivalent quality) change. Understanding how customers would respond to a price increase (or quality decrease) is essential to assessing demand-side substitution.⁹ For instance, there are many specialist PAS providers which customers can, and do, engage to the extent that their IAS supplier does not offer PAS.¹⁰
- (ii) The PR’s evidence on supply-side substitution does not assess the cost of developing any new functionality (e.g. pensions) against the potential benefits (profits) that could arise from supplying Retail platforms if the price (and profitability) of Retail Platform Solutions increased. For example:
- (a) Avaloq claims that it would need to develop pensions functionality to compete for Retail platforms (para. 6.59(b)). However, it is unclear if the

⁷ See: FNZ Remittal Submission dated 9 March 2021, paras 3.29-3.31.

⁸ See: FNZ Initial Remittal Submission, paras 3.12 – 3.17.

⁹ PR, paras 6.10 and 6.11 note that ‘*According to the MAGs, the CMA will use the Hypothetical Monopolist Test as a tool to check that the relevant product market is not defined too narrowly... The CMA can apply the Hypothetical Monopolist Test by asking customers how they would respond to a small but significant price increase over a non-transitory period of time (ie a ‘SSNIP’).*’

¹⁰ See: FNZ Initial Remittal Submission, footnote 30 and FNZ Initial Phase 2 Submission, paras 4.14 – 4.28.

CMA asked Avaloq if it would develop such functionality if there was a price increase for Retail Platform Solutions.

- (b) SS&C claims that the work needed to accommodate Retail platforms '*does not appear to hold great appeal*' because the market is '*stubbornly unprofitable*' (para. 9.32). However, the CMA does not appear to have asked if the investment would be undertaken if prices (and hence profitability) for Retail Platform Solutions increased.
- (c) The PR asserts that '*there are some differences between Platform Solution suppliers that affect the extent to which they can compete effectively to supply to different types of Investment Platforms*' (para. 6.78). Such differences are evaluated at current prices. The CMA does not appear to have asked competitors if they would invest in eliminating such differences in the event of a price increase of Retail Platform Solutions.

3.4 Third, the PR appears to highlight two functional distinctions between Retail and Non-Retail platforms: the relative importance of automation and pension wrappers (para 6.98). However, this approach is vague and inadequately substantiated.

- (i) The PR does not include evidence on the scale at which automation would be required by platforms. Platforms with more than 10,000 accounts require scalability and hence automation.¹¹ Automation does not provide a basis for distinguishing between Retail and Non-Retail platforms.
- (ii) The PR does not explain precisely what pension functionality is required by Retail platforms. Moreover, as explained above, the PR does not gauge the cost that Non-Retail (or Sensitivity-Only) suppliers would need to incur to plug the alleged gap in their pension functionality or the possibility for the customer and/or a supplier to work with a specialist pension provider.

3.5 Fourth, the lack of clarity on market definition results in inconsistent classifications. For example, [§<].¹²

3.6 Fifth, there is no basis to exclude so-called 'Sensitivity-Only' platforms which have both 'Retail and Non-Retail elements' from the relevant market, and the PR has not adequately, if at all, undertaken an assessment of demand and supply-side constraints in respect of the solutions for these platforms. FNZ has provided robust evidence demonstrating that Retail platforms and Sensitivity-Only platforms with both 'Retail and Non-Retail elements' do not have the distinguishing features that the PR claims.¹³ Indeed, the PR acknowledges that '*many of the core functionalities across these platforms are similar and that there is not a 'bright line' distinction between different platform types*' (para. 6.48).

¹¹ See e.g., slide 20 of FNZ Oral Representations Meeting presentation.

¹² See: slides 14 and 17 of FNZ Oral Representations Meeting presentation.

¹³ FNZ Remittal Submission dated 9 March 2021, paras 3.18-3.31 and Annex 2. This further demonstrates that Non-Retail functionality does not differ from Retail and Sensitivity-Only functionality.

The PR's relabelling of platforms as 'Sensitivity-Only' does not change the fact that many suppliers compete for (i.e., reach the late stage of tenders for and/or currently supply) both Retail and Sensitivity-Only platforms. These suppliers include [§<]. [§<] should also be included as it supplies both Retail and Non-Retail platforms. Moreover, Sensitivity-Only platforms have Retail components, which means that their suppliers are able to establish the reputation and track record the PR claims is needed to supply Retail platforms (para. 6.100(d)). In short, solutions providers for Sensitivity-Only platforms should not be excluded from the relevant market. The hard evidence on this point is compelling.

- 3.7 Finally, it is notable that legacy products were neither excluded from the relevant market in the Final Report¹⁴, nor identified by the CMA as requiring different functionality from active products. The PR now seeks to row back from this position and downplay the implication of the significant changes to the shares of supply that result from the inclusion of legacy products. The PR's claim that legacy products are highly differentiated from active products is not substantiated. FNZ disagrees that providing services for legacy products is '*differentiated from the Parties' product offering*' (para. 8.30). Platforms with legacy products have the same technology and administration requirements as those with active products.¹⁵ The PR's dismissal of TCS BaNCS as '*highly differentiated*' (para. 8.10) also does not address the fact that TCS BaNCS is a Retail player which supplies platforms with active products (see further below).

4. Competitive assessment

- 4.1 The picture of the competitive landscape that emerges from the PR is in certain respects strikingly different to that in the Final Report.
- 4.2 In particular, shares of supply have changed dramatically: in the narrow Retail market there are now five major players, with a large number of other credible suppliers; the Transaction involves a combination of the third and fourth largest players and an aggregate market share of [§<] below 40% (more than [§<] lower than in the Final Report). It is striking that, in this context, the PR downplays the relevance of shares of supply to the competitive assessment (para. 56). This marks a shift in the emphasis which the CMA placed on its shares of supply analysis during Phase 2, where shares of supply were previously described as follows:

*'Shares of supply may not fully capture the closeness of competition between the Parties and other suppliers because the relevant market is a bidding market. However, alongside other evidence, we consider that shares provide a useful indicator of the relative size of each Party and other suppliers in the market, based on their current customer base and success in having won these customers through competitive tenders [emphasis added].'*¹⁶

¹⁴ CMA's response to FNZ's disclosure request, disclosed on 23 April 2021.

¹⁵ FNZ Response to RFI dated 8 March 2021, para. 1.6. See also para. 3.2(i) of FNZ Response to AIS and WPs.

¹⁶ Phase 2 PFs, para. 39 (see also similar wording at para. 7.14); FR, para. 8.7.

'Shares of supply provide an indication of the Parties' and their competitors' position in the market, but do not necessarily indicate the level of closeness of competition between the Parties and with their competitors [emphasis added].'¹⁷

- 4.3 With a number of the key planks supporting the original SLC finding having been stripped away, the PR's case against the Transaction now rests almost entirely on the closeness of competition that allegedly exists between the Parties. The PR also continues to understate the degree of competition from third parties.

Closeness of competition

- 4.4 The PR's finding that the Parties are close competitors relies largely on the tender analysis and third-party evidence. This evidence does not support an SLC finding.

Tender analysis

- 4.5 The PR [§] overstates the extent that the tender data supports a finding of closeness of competition. For example, the PR states that *'In tenders to provide Retail Platform Solutions since 2016, FNZ (or JHC, which is now part of FNZ) and GBST have overlapped in a significant number of the tenders in which they have participated, and a material proportion of these overlaps were at a late stage. This was a significantly more frequent rate of overlap than with any other competitor, except Bravura'*. But the PR's analysis does not appropriately take into account: [§]. In addition, the PR ignores the presence of other credible suppliers because it does not take into account the number of suppliers [§].
- 4.6 Substantive competition only takes place at the late stage of tenders.¹⁸ The CMA's disclosed tender dataset¹⁹ shows that the Parties have faced one another at the late stage in [§]. If Retail and Sensitivity-Only tenders are considered, the Parties have only overlapped at the late stage [§].²⁰ The Parties have only competed against each other substantively in [§] tenders and [§].
- 4.7 Further, the [§] number of overlaps between the Parties, [§], need to be understood in the context of the CMA's approach to its tender analysis. This starts from a base which excludes tenders that neither FNZ nor GBST competed in (para. 8.81). This approach is problematic because:

¹⁷ FR, para. 44.

¹⁸ See for example Annex of FNZ Remittal Submission dated 9 March 2021, FNZ Response to CMA updated competition analysis dated 6 October 2020.

¹⁹ '7.1 Combined Tender Dataset.xlsx' disclosed on 15 April 2021.

²⁰ As explained, [§]: See for example Section 2.1 of Annex of FNZ Remittal Submission dated 9 March 2021 and Section 2.2 of FNZ Response to CMA updated competition analysis. Notably, [§]. The PR is wrong to disregard whether or not a tender proceeded when evaluating overlaps between the Parties (para. 8.91). The fact that a tender did not proceed may well indicate the customer was unsure whether to outsource at all, even at the late stage.

- (i) It *necessarily overstates* the extent to which the Parties overlap as a percentage of all tenders.
- (ii) The small number of Retail tenders in the CMA’s tender dataset (an average of [X] in each year²¹) limits the probative value of its analysis. Identifying other Retail tenders would increase the sample size, providing for a more robust analysis.
- (iii) A fuller set of Retail tenders would have provided a better basis to understand whether or not there is a clear market-wide distinction between providers competing for Retail versus other (‘Non-Retail’ and ‘Sensitivity-Only’) contracts. Despite its tender dataset capturing only a portion of tenders in the Retail market over the relevant period, the PR asserts that *‘there is limited competition in tenders for Retail Platforms from suppliers that focus on serving Non-Retail Platforms’* (para. 6.100(b)).
- (iv) The PR asserts that harm could arise to platforms which are not customers of the Parties (paras 70, 8.260). The CMA should therefore have sought to understand which solutions providers reached the late stages of Retail tenders that did not involve the Parties.

4.8 In a change from the Final Report, the PR asserts that there would be more recent tender overlaps but for the pandemic and the impact on GBST from the merger. This appears to have been based on [X] because the pandemic has [X] (para. 8.78). But the objective data does not support the assertion that absent the pandemic FNZ and GBST would have overlapped more.

4.9 The data [X]. Table 4.1 below presents (a) the overall number of tenders, and (b) the number of tenders in which GBST participated for each year between 2016 and 2020. The table shows that:

- (i) The number of Retail tenders in 2020 is [X]. Indeed, there were [X]. Similarly, the number of Sensitivity-Only tenders in 2020 is [X].
- (ii) The annual number of Retail tenders (and Sensitivity-Only tenders) in which GBST participated in 2020 is [X].

**Table 4.1
Number of tenders in each year, 2016-2020**

	2016	2017	2018	2019	2020
Retail tenders					
<i>Total number of tenders</i>	[X]	[X]	[X]	[X]	[X]
<i>No. of tenders GBST participated in</i>	[X]	[X]	[X]	[X]	[X]
Sensitivity-Only tenders					

²¹ The CMA’s tender dataset contains [X].

Total number of tenders	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
No. of tenders GBST participated in	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: [REDACTED].

- 4.10 While the [REDACTED].
- 4.11 Even if, absent the pandemic, more tenders would have arisen or GBST would have participated in more tenders, there is no evidence that such tenders would have involved late stage overlaps between the Parties. Indeed, the opposite might be inferred given the absence of [REDACTED].
- 4.12 Finally, the PR claims that *'While FNZ submitted that FNZ and GBST last met at commercial negotiation stage of a tender [...], this fact must be put in context: The tender data shows that there have been significant competitive interactions between the Parties in more recent years. FNZ and GBST have met at RFI stage more recently, and they both progressed beyond RFI (although not overlapping at commercial negotiation stage) [...].'* (para. 8.106). FNZ refutes the use of evidence from stages prior to commercial negotiations to substantiate closeness of competition, and the data are not supportive of the PR's claim:
- (i) substantive competition only takes place at the late stage, and so overlaps at the RFI and RFP stage are not informative of competitive effects;
 - (ii) there was [REDACTED] between the Parties at the RFP stage; and
 - (iii) overlaps at the RFI stage do not indicate material competition between the Parties when properly assessed in the context of the [REDACTED], as previous submissions have substantiated.²²

Third-party evidence – closeness scores

- 4.13 The PR continues to place significant weight on 'closeness' scores derived from third-party responses to Phase 2 questionnaires (e.g., paras 6.60, 8.47, and 8.172). These scores are not a reliable basis for assessing the closeness of the Parties and their competitors.²³ Notably:
- (i) The evidence is tainted by significant flaws in the questionnaire design. For example, initial surveys prompted respondents with the names of only six suppliers in addition to the Parties. Later versions expanded this list to nineteen, but continued to exclude key players, including TCS BaNCS, which now emerges

²² See for example Section 2.2 of Annex of FNZ Remittal Submission dated 9 March 2021, Section 2.1 of FNZ Response to CMA updated competition analysis dated 6 October 2020.

²³ See further: FNZ Initial Remittal Submission, dated 12 February 2021 at para. 6.2-6.3; Remittal Submission dated 9 March 2021, paras 3.4 – 3.17; FNZ comments on Third Party Evidence WP, paras 7 and 26; FNZ response to the Phase 2 Provisional Findings, paras 4.13(ii), 4.8.

as the largest supplier in the CMA's corrected market share figures. This likely skewed responses towards prompted suppliers.

- (ii) The scores depend on respondents' interpretations of supposed distinctions between, e.g., 'a somewhat close alternative' (score = 2) and 'a moderately close alternative' (score = 3). It is unclear what significance should be assigned to the difference between a score of 2 and 3, for example. Further, any differences may not be statistically significant given the small sample sizes. Indeed, comparing the results in Chapter 8 and Appendix L indicates that the average score is not stable. The CMA has refused access (even on an anonymised basis) to the underlying data. As such, it is impossible for FNZ or its advisers to gauge even a gist of the weight that should be given to these differences.
- (iii) The PR appears to be irrationally selective as regards which version of closeness scores to present, and the approach to sampling seems arbitrary. For example:
 - (a) The Phase 2 Provisional Findings (**PFs**) present average closeness scores given by competitors and consultants. Whilst customers that *'had not completed a tender in the last three years'* were asked to provide a score, these were excluded from the chart presented in the main PFs report because the CMA has *'given less weight to the view of customers that have not tendered recently'*.²⁴ By contrast, the Final Report and the PR present average closeness scores based on responses from competitors, consultants, and customers that had undertaken a tender since 2016 (Final Report para 8.41; PR figure 8.1), noting additional evidence was sought from customers whose contracts were no more than two years old (para. 8.55).
 - (b) The PR relegates other results which paint a notably different picture (based on a larger sample of respondents) to Appendix L. This presents average closeness scores based on responses from all third parties (paras 3-5). For example, in respect of GBST FNZ has a score of between 3.5 and 4 in Appendix L, as compared to a score of between 4 and 4.5 in Chapter 8 of the PR. Pershing and Temenos have scores of between 2 and 2.5 in Appendix L compared to a score of between 1.5 and 2.5 in the PR (paras 8.50-8.51).

4.14 Compared to the tender analysis, the evidential value of these closeness scores is very limited. While sample sizes are small in both cases, tenders are far more relevant because they capture real-life decisions customers have made when choosing a supplier. In contrast, the closeness scores are based on an aggregation of subjective views relying on an unclear market definition, as interpreted by third parties who may not be well-informed or who have strategic considerations which could bias their responses.

Third-party evidence - qualitative comments

²⁴ Phase 2 PFs, para. 7.46 and Appendix D of Phase 2 PFs, para. 7.

- 4.15 The PR positions third-party comments on competitive dynamics as a *'highly relevant'* source of evidence on closeness of competition (para. 8.42). But the evidence in the PR appears to support a conclusion that the Parties are not close competitors.
- (i) Only a minority of customers (seven) consider FNZ and GBST to be close alternatives (para. 8.61(a)).²⁵ The PR also fails to compare this against the number of customers that considered SS&C and GBST to be close alternatives.
 - (ii) Only a minority of customers (eight of 34 customers who responded) consider that the GBST/Equiniti partnership is a meaningful competitor to FNZ. In fact, the vast majority of customers (26 of 34) were either unable to comment or considered that such a partnership would not be meaningful. Indeed, the majority of competitors who responded *'considered that the partnership was untested at scale and may need significant investment to develop and win clients'* (para. 8.65). A widespread lack of recognition of this partnership amongst customers three years after it was formed strongly suggests it is not a credible alternative. More importantly, the tender data shows that partnerships overall have [X]. This real-world evidence is of much greater significance than hypothetical views from a small subset of customers.
 - (iii) It is not compelling that [X].

Constraint from third parties

- 4.16 The PR significantly understates the constraint imposed by other competitors. The PR suggests that: [X] have interacted with either one of the Parties at the late stage of a Retail or Sensitivity-Only tender (this compares to [X] when considering only Retail tenders).²⁶ But [X] of competitors in this sort of bidding market; the PR wrongly dismisses their individual and cumulative competitive constraint.
- 4.17 In particular, the PR suggests that the tender evidence indicates that competitors other than Bravura are a weak constraint because *'the Parties overlap less frequently'* with these competitors *'than each other and Bravura'* (paras 8.213, 8.163). [X].²⁷ However, the small sample size means that [X] overlaps at the late stage is not statistically different from [X] at the late stage. It is inappropriate for the PR to conclude that the Parties pose stronger constraints on each other than other competitors based on the number of late-stage overlaps in the tender data. Rather, the only reliable conclusion is that there are [X] competitors which have reached the late stage of a Retail or Sensitivity-Only tender and can credibly supply Retail platforms.

²⁵ The CMA has declined to provide the identity of these customers to FNZ. It is unclear from the PR if the seven customers were seven of FNZ and GBST's 23 'Retail' customers, or seven customers from the pool of 40 platform customers that responded to the CMA's questionnaires in Phase 1 and Phase 2 (Appendix B, para 43). Regardless, only a minority of customers consider that a GBST/Equiniti partnership is a meaningful competitor to GSBT.

²⁶ Appendix J disclosed on 15 April 2021, para. 22.

²⁷ According to the unredacted Chapter 8 disclosed on 15 April 2021, para. 8.29 and Table 8.5, [X]. Para. 8.19 and Table 8.4 of the unredacted Chapter 8 disclosed on 15 April 2021 show that [X]. See further footnote 6 above.

4.18 Further, it is inappropriate and irrational for the PR only to consider competitors that have interacted with either one of the Parties at the late stage of a Retail or Sensitivity-Only tender. The PR's competitive assessment rests heavily on tender data yet the centrepiece of its analysis excludes two important types of credible competitors.

(i) First, the PR has not gathered evidence from tenders which did not involve the Parties, despite these being relevant as explained in paragraph 4.7 above. At the very least, the PR should have looked at all competitors that reached the late stage regardless of whether one of the Parties was present. In this regard, Figure 4.1 below shows the competitors that reached the late stage of a Retail or Sensitivity-Only tender.

(a) [REDACTED].²⁸

(b) [REDACTED].

(ii) Second, the PR excludes [REDACTED] competitors, shown in blue in Figure 4.1, that currently supply Retail or Sensitivity-Only platforms in the CMA's disclosed Shares of Supply dataset but do not appear at the late stage of any Retail or Sensitivity-Only tender. The PR claims that these do not give 'a reliable indication of constraints on the Parties' because 'suppliers who appear in our share of supply estimates may have reached the final stage of a tender at some point in the past but those tenders are not in our dataset because they may have occurred before 2016 and/or not involved the Parties. Some of these suppliers' shares may also be based on their historic supply of a legacy platform' (para, 8.184). This is irrational: these rivals must be included because they have a track-record of supplying Retail platforms or platforms with Retail components. The CMA has provided no evidence (and apparently not sought to check) whether they relate to legacy products (and they are unlikely to do so because FNZ conservatively excluded platforms that supply legacy products when putting together its share of supply estimates).

4.19 When these corrections are made, it becomes apparent that the PR has omitted [REDACTED] for Retail tenders, and [REDACTED] for Sensitivity-Only tenders, including notable players such as [REDACTED].²⁹

²⁸ [REDACTED] show the suppliers which overlapped with FNZ/JHC and/or GBST at the late stage of Retail and Sensitivity-Only tenders. The tables show [REDACTED] overlapped with either of the Parties at the late stage of Retail tenders. When Sensitivity-Only tenders are considered, [REDACTED] are added. The inclusion of [REDACTED] is erroneous because [REDACTED].

²⁹ Figure 4.1 shows [REDACTED].

Figure 4.1

[REDACTED]

- 4.20 The PR dismisses SS&C as a Retail competitor (paras 8.237, 8.239) and, in a change from the Final Report, suggests that SS&C is a Non-Retail (and not Retail-focussed) supplier (para. 9.32).³⁰ This is despite SS&C having [REDACTED].
- 4.21 TCS BaNCS was barely mentioned in the competitive assessment in the Final Report.³¹ Now that the shares of supply have been corrected, it emerges in the PR as by some distance the largest player. But it is dismissed as irrelevant because a large portion of its share is attributed to legacy products. However, the PR is wrong to dismiss TCS BaNCS:
- (i) A material portion of TCS BaNCS's supply ([REDACTED] by AuA) is in fact to platforms that supply active products.³² This demonstrates that TCS BaNCS has the functionality to supply Retail platforms which offer active products and is therefore able to compete using its PaaS offering with FNZ.
 - (ii) [REDACTED], which shows that TCS BaNCS can and does supply the same customers as FNZ.³³
 - (iii) In addition to TCS BaNCS's sizeable presence and its track record and experience in supplying Retail platforms with active products, TCS BaNCS has made clear that *'it wants to expand its UK business'* (para. 9.38(b)). The PR claims that *'it takes a significant period of time to expand in this market'* (para 9.39) but it is irrational to dismiss share of supply data (which is based on size) and at the same time identify size (gained via expansion) as a pre-requisite for a competitive constraint. It is plain that the size of a supplier does not affect its ability to credibly compete at the late stage of Retail tenders or win Retail contracts, as [REDACTED] confirms.
 - (iv) The PR suggests that tenders where [REDACTED] are out of scope. But these tenders are important as they demonstrate that both offer similar functionality.
 - (a) The PR claims that *'Based upon Nest's description of their requirements, their needs were materially different from other tenders for investment platforms and so it would not be relevant to include this tender in our analysis'*.³⁴ However, this tender was [REDACTED]. In particular, publicly available information notes that *'Nest's scheme administrator manages a range of services including enrolling members, collecting contributions, managing accounts and accessing savings, employer participation, and*

³⁰ See footnotes 4 and 6 of unredacted Appendix H disclosed on 19 April 2021.

³¹ Just one sentence: *'TCS also appears to offer only a limited competitive constraint on each of the Parties based on third-party evidence'* (para. 8.178).

³² [REDACTED]. It appears that the CMA's disclosed Shares of Supply dataset does not [REDACTED].

³³ Para. 3.6(i)(b) of FNZ Response to Notice dated 28 January 2021.

³⁴ Para. 10(b) of Appendix J.

passing funds to the fund administrator.³⁵ Serving as a scheme administrator does not imply a need to cater for different functionality from a platform. This is functionality that [X] also needs to offer to its Workplace platform customers such as [X]. In other words, the Nest tender involved the same functionality requirements as Retail platforms in the share of supply dataset. Further, Atos will supply Nest using its *'state-of-the-art technology and cloud hosting platform'* to *'provide a scalable, agile and low-carbon solution for all processing and administrative IT'*.³⁶ In other words, Atos is supplying Platform Services to Nest. There is no sound basis for excluding the Nest tender.

It is notable that before the complete switch to Atos which will take place in 2023, TCS BaNCS remains the incumbent scheme administrator for Nest which only offers active products. This again shows that TCS BaNCS competes for and supplies Retail platforms which offer active products. Moreover, Atos' win means that [X].

- (b) With regard to the [X] tender, the PR states [X].³⁷ While limited weight should be placed on RFI overlaps, FNZ notes that [X].³⁸ [X]. On this basis, the [X] tender – which was effectively won by its in-house supply – should be included in the CMA's analysis.

4.22 FNZ has received limited access to third-party evidence on (i) the constraint from other competitors and (ii) potential entry or expansion, so is unable to comment meaningfully on key sections of the PR. However, the evidence quoted in fact suggests the Parties are constrained by a number of strong rivals and the credible threat of entry/expansion.

- (i) FNZ has made targeted requests for evidence from key third parties: SS&C, TCS BaNCS, Pershing, Avaloq and Temenos, as regards their submissions on their ability to compete with the Parties, which have largely been declined. The PR's findings that these rivals only offer a weak constraint on FNZ simply does not reflect FNZ's experience of these players.³⁹
- (ii) Much of the evidence quoted on entry and expansion suggests TCS BaNCS, Pershing, Avaloq and Temenos could credibly expand into the Retail segment in a sufficiently timely way (e.g., paras 9.35-9.38). For example, as explained in para. 4.21 above, TCS BaNCS has a sizeable presence in the relevant market, the necessary track record and reputation and the intention to expand its UK business. Similarly, Avaloq told the CMA that it intends to *'compete more closely'* for certain Retail platform customers (para 9.36(c)), and Temenos noted that the

³⁵ See <https://uk.finance.yahoo.com/news/nest-appoints-atos-design-build-112000030.html?guccounter=1>.

³⁶ See <https://uk.finance.yahoo.com/news/nest-appoints-atos-design-build-112000030.html?guccounter=2>.

³⁷ Para. 55(d) of unredacted Appendix J disclosed on 15 April 2021.

³⁸ Document reference: [X].

³⁹ See section 3 of FNZ's Response to the Phase 2 Annotated Issues Statement and Working Papers and section 4 of FNZ's Response to the Phase 2 Provisional Findings.

market is 'growing' [redacted] (the former being a reason to enter and expand, [redacted]) (para. 9.37(a)). But the PR finds neither has any ambition or intention to grow in 'Retail'. Given these suppliers already supply platforms with both Retail and Non-Retail features, they have the ability to expand. The PR does not appear to contain evidence that they would not in fact expand with the right market signal e.g., in response to a price increase (or equivalent quality reduction).

- (iii) As explained above, the PR does not consider whether these competitors could work with specialist pension suppliers to bridge any potential gaps in pensions functionality 'off-platform' (to the extent not already possessed). For example, Avaloq says it can compete for Retail platforms where they 'do not require it to offer pensions functionality' (para 8.174(c)(i)), see para. 3.3(i) above.⁴⁰

Internal documents

- 4.23 Finally, FNZ notes the PR's conclusion that '*many FNZ internal documents consider the wider Platform Solutions sector in which FNZ operates, not just the Retail Platform Solutions in the UK market which we are considering*' (para. 8.229). This is consistent with the Parties being constrained by a broad range of competitors (i.e. so-called Non-Retail and Sensitivity-Only suppliers), broader than is acknowledged in the PR's competitive assessment. In addition, internal documents provide no reasonable basis to find that FNZ and GBST are close competitors – indeed, the PR seemingly acknowledges that FNZ's internal documents only identify GBST as one competitor of many others mentioned (para. 8.166(b), 8.229). To the extent that the PR relies on internal documents, these documents represent a very small subset of the documents that were submitted. In addition, they make up a very small percentage of the evidence that the CMA must consider, and cannot be allocated any significant weight – especially in light of the economic evidence. See paras 4.15 – 4.18 of FNZ's Response to the Phase 2 PFs and para 3.19 of FNZ's Remittal Submission dated 9 March 2021.

5. Any lessening in competition is not substantial

- 5.1 It is highly relevant that only a small subset of platform customers could conceivably be affected by the Transaction (para. 8.38) and that those customers will continue to benefit from a large range of alternative solution suppliers. See further paras 5.24-5.29 of FNZ's Initial Remittal Submission.

- (i) **GBST customers that are open to a PaaS solution or a partnership offering combined software and servicing:** as the PR notes, some customers have '*a strong preference for in-house servicing as it is an important part of their customer proposition*' (para. 6.132). These platforms are far more likely to be GBST customers, as they have already chosen to use a software-only solution provider which FNZ (excluding JHC⁴¹) does not offer.

⁴⁰ See further paras 4.18 to 4.28 of FNZ's Phase 2 Initial Submission.

⁴¹ [redacted].

These customers' preference for a software-only solution is unlikely to be affected by the Transaction, as they have already made a strategic decision in favour of in-house servicing. Such customers will continue to be able to choose from a wide range of software-only providers post-Transaction, including Bravura, Dunstan Thomas, IRESS, Sapiens, Temenos, Avaloq, SS&C and TCS BaNCS.

- (ii) **FNZ customers that are open to a partnership offering combined software and servicing, including that offered by GBST/Equiniti, or a PaaS solution:** Throughout the process, the CMA has failed to provide convincing evidence that GBST constrains FNZ's PaaS offer, which is its main delivery solution. The CMA's tender data shows that: [redacted], partnerships have [redacted] and that Equiniti has [redacted] to bid for tenders with GBST, as a result of its acquisition of Aquila. In fact, Equiniti [redacted]. See paras 2.19-2.22 of FNZ's Response to the Phase 2 Issues Statement and para. 2.6 of FNZ's Initial Remittal Submission.

Customers in this group already have a large number of PaaS providers to choose from, including Avaloq, Pershing, SS&C, TCS BaNCS and SEI. Partnerships are not capable of offering a comparably integrated solution to a standalone PaaS supplier. Moreover, if a customer is open to partnerships between software and service providers, it is hard to believe that they would not also be open to the commonly used, well-established and lower risk model of mixing IAS and PAS providers. See paras 2.23-2.25 of FNZ's Response to the Phase 2 Issues Statement.

- (iii) **Customers of either Party which are open to either separate software and/or servicing (including partnerships) or a PaaS solution:** PaaS and software-only delivery models are highly differentiated. The tender dataset shows that in [redacted] of Retail (as well as Retail and 'Sensitivity-Only') tenders⁴², platforms specify whether they want a PaaS or software-only delivery model at the outset. That means that customers in [redacted] of tenders *could* plausibly be affected by the Transaction. Moreover, it must be recalled that if a customer is open to either PaaS or software-only delivery, it can choose between all provider types (i.e. at least [redacted] other than the Parties that have won Retail contracts or made it to the last stage of Retail tenders).⁴³

- 5.2 Finally, as explained in section 2 above, it is irrational for the PR to find an SLC when there is a low incremental change between the shares of supply or number of players in the market when comparing the Transaction to a counterfactual where SS&C and GBST have merged.

⁴² In the CMA's disclosed tender dataset [redacted].

⁴³ [redacted].