

# Completed acquisition by FNZ of GBST

Final report on the case remitted to the CMA  
by the Competition Appeal Tribunal  
on 21 January 2021

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The Competition and Markets Authority has excluded from this published version of the final report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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## Glossary

# Summary

## Introduction

1. The Competition and Markets Authority (CMA) has found that the completed acquisition 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) (the Merger) has resulted, or may be expected to result, in a substantial lessening of competition (SLC), as a result of horizontal unilateral effects, in the supply of Retail Platform Solutions in the UK.

## Background

### *The remittal*

2. On 5 November 2020, the CMA announced its decision that the completed acquisition by FNZ of GBST (the Merger) has resulted or may be expected to result in a SLC, as a result of horizontal unilateral effects, in the supply of Retail Platform Solutions in the UK (Phase 2 Report).<sup>1</sup>
3. On 2 December 2020, FNZ submitted a Notice of Application (NoA) challenging certain of the CMA's findings in the CMA's Phase 2 Report to the Competition Appeal Tribunal (CAT). Following receipt of the NoA, the CMA identified certain potential errors in its market share calculations. In light of the nature of these errors, the CMA requested the remittal of the Phase 2 Report for reconsideration. On 21 January 2021, the CAT ordered the remittal of the Phase 2 Report to the CMA in respect of the finding of an SLC and the final decision as to remedy.
4. In exercise of its duty under section 35(1) of the Act, in the Remittal Inquiry, the CMA must decide:
  - (a) Whether a relevant merger situation has been created; and
  - (b) If so, whether the creation of that situation has resulted, or may be expected to result, in a SLC within any market or markets in the United Kingdom for goods or services.

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<sup>1</sup> Completed acquisition by FNZ of GBST, Final report, 5 November 2020.

### ***The Parties and the transaction***

5. FNZ is a global wealth management technology and investment administration services firm, set up in 2003 and headquartered in the UK since 2005.
6. FNZ is active in the supply of technology solutions in the UK, including software to support pension and investment administration; software to support trade settlement and clearing services; transaction processing; and custody services. These solutions enable its customers to provide investment management platforms, either directly to consumers or to financial advisers and employers.
7. GBST is a financial technology company which provides software to support pension administration, investment management and stockbroking. GBST is headquartered in Australia and was listed on the Australian Stock Exchange before being acquired by FNZ.
8. GBST has two main activities in the UK:
  - (a) A wealth management business that provides software to Investment Platforms to support the provision of pensions administration and investment management services to consumers; and
  - (b) A capital markets business that provides software to stockbroking firms to enable the settlement and clearing of trades in listed securities and margin lending.
9. On 5 November 2019, FNZ acquired the whole issued share capital of GBST via a scheme of arrangement in which all GBST shares were transferred to FNZ. In this document and in this inquiry, the CMA will refer to FNZ and GBST collectively as the Parties and the post-Merger business as the Merged Entity.
10. Prior to its acquisition by FNZ, GBST had been engaging in negotiations with two other parties regarding its potential acquisition and it had received bids from Bravura Solutions (Bravura) and SS&C Technologies (SS&C).

### ***Industry background***

11. The Parties are both active in the UK in the supply of Platform Solutions to Investment Platforms in the investment management sector.
12. Investment Platforms enable investors and their advisers to invest in a range of financial products. They provide services such as financial and investment



advice, asset management, accounting, tax services, and retirement planning to manage a customer's investments. Products available on these Platforms include tax-efficient investments (known as tax wrappers) such as Individual Savings Accounts (ISAs) and Self Invested Personal Pensions (SIPPs). Investment Platform providers include UK and global banks, insurers, asset managers and wealth managers.

13. Platform Solutions are the software and services which enable the operations of Investment Platforms.
14. Investment Platforms source Platform Solutions using a range of delivery models, including:
  - (a) Software-only Platform Solutions sourced from a third party which the customer combines with in-house servicing or servicing from another third party;
  - (b) Integrated software and servicing Platform Solutions from a single third party provider or a partnership of third party suppliers (known as Combined Platform Solutions); or
  - (c) Software and servicing provided in-house (an in-house solution).

## **CMA Findings**

### ***Relevant merger situation***

15. We found that the Merger has resulted in the creation of a relevant merger situation because it resulted in the Parties' enterprises ceasing to be distinct, and as a result, having a combined share of supply of at least 25% in the supply of Retail Platform Solutions in the UK.
16. In accordance with section 35(1) of the Act, we considered whether the creation of that situation has resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods or services.

### ***The counterfactual***

17. The counterfactual is an analytical tool used to help answer the question of whether a merger may be expected to result in an SLC. It does this by providing the basis for a comparison of the competitive situation in the market with the merger against the most likely future competitive situation absent the merger.

18. Prior to its acquisition by FNZ, GBST had been engaged in negotiations with, and had received bids from, two other parties: Bravura and SS&C.
19. We found that it is likely, on balance, that GBST would have been acquired by an alternative purchaser, SS&C, but that the conditions of competition under this alternative counterfactual would not be materially different from the pre-Merger conditions of competition. In this regard, we note that SS&C exerts a limited competitive constraint in the relevant market and is not a close competitor to GBST. This evidence indicates that any reduction in competition for the supply of Retail Platform Solutions resulting from an acquisition of GBST by SS&C (if any) would not be material. Furthermore, for completeness, we have seen no evidence that SS&C had planned to materially change the way GBST operates. We therefore find that, under the ownership of SS&C, GBST would have continued to exert broadly the same constraint as it did pre-Merger.
20. We also found that, based on the available evidence, particularly in relation to GBST's pre-Merger financial performance and its competitive strength, GBST's competitive presence absent the Merger would not be materially different to its pre-Merger performance.
21. Accordingly, we conclude that the most likely counterfactual for the purpose of our competitive assessment is the conditions of competition prevailing prior to the contemplation of the Merger.

### ***Market definition***

22. Market definition provides a framework for assessing the competitive effects of the Merger and is a starting point for our analysis. The evidence shows that the supply of Retail Platform Solutions is a differentiated service: (i) Investment Platforms have differing needs, depending on their user-base and preferences; and (ii) there is a range of different types of Platform Solutions providers. Accordingly, our competitive assessment has focused on evidence of closeness of competition between the Parties, taking account of constraints both from within and outside the market.

### ***Product market***

23. In line with the CMA's Merger Assessment Guidelines, we started our assessment of the product market with the overlapping products of the Parties – the supply of Retail Platform Solutions in the UK – and then assessed whether it should be widened based on a range of sources of evidence, including: (i) evidence on customers' actual preferences as to who to invite to tender and their subsequent purchasing decisions in tenders; (ii) evidence

from customers and their consultants, as well as from tenders, on which suppliers they see as alternatives to the existing supplier of their Investment Platform; and (iii) evidence from suppliers on how easy it would be for suppliers of Non-Retail Platform Solutions to adapt their Platform Solutions to enable them to compete for Retail Platforms.

24. Taken together this evidence has allowed us to identify the extent of substitutability between (i) Retail Platform Solutions and other types of Platform Solutions; (ii) different delivery models; and (iii) in-house and outsourced Platform Solutions.

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

25. We first considered whether Retail Platforms can be treated as a distinct product category. To do this we assessed whether there is a clear boundary between Retail Platforms and other types of Investment Platform.
26. Retail Platforms typically serve high volumes of customers and are primarily focused on the mass affluent part of the market. They are likely to offer a more restricted range of investment products than other platform types and tend to be focused on providing tax wrapper products such as ISAs and SIPPs. They are built to be highly automated so that they can efficiently manage a very large number of accounts. This contrasts with Non-Retail Platforms, which tend to deal with more bespoke wealth planning with a focus on managing money across a broader set of investments to meet the complex needs of a smaller number of higher net worth end-investors. Non-Retail Platforms are built to provide a more customised service for investors (in the case of PCIM and private banking platforms) or trade financial instruments on behalf of consumers through advisors or allow the consumer the ability to 'Do-It-Yourself' (in the case of retail stockbroking platforms).
27. Although there has been some convergence between different types of Investment Platforms, and some Non-Retail Platforms provide similar core functionality and can serve similar types of investors, there remain key differences between Retail Platforms and Non-Retail Platforms (as described above).
28. While some Investment Platforms are clearly Retail Platforms and others are clearly Non-Retail Platforms, there are some Investment Platforms which are more difficult to categorise. This is to be expected given the degree of product differentiation within the sector (which also drives the nature of the Platform Solutions specifically sought by each Investment Platform).

29. To determine whether our candidate market should be widened to include providers of Non-Retail Platform Solutions, we considered: (i) the propensity of Retail Platform customers to substitute to Non-Retail Platform Solutions providers (demand-side substitution); and (ii) whether providers of Non-Retail Platform Solutions would have the ability and incentive to quickly adapt their offering and switch capacity to supply Retail Platform Solutions (supply-side substitution).
30. From a demand-side substitution perspective, the evidence we gathered indicates that Retail Platforms would generally be unwilling to substitute to providers of Non-Retail Platform Solutions. In particular:
- (a) Retail Platforms do not see suppliers of Non-Retail Platform Solutions as credible alternatives because, contrary to FNZ's submissions, these solutions generally lack certain functionalities that Retail Platforms require (eg Non-Retail Platforms are less automated and pensions capabilities are either not required or are significantly less important to these platforms). Even where Non-Retail Platform Solutions providers could provide similar functionalities as Retail Platform Solutions providers, they lack the experience and track record in serving Retail Platforms that Retail Platform Solutions providers have, which is seen as important by Retail Platforms. Evidence from customers indicates that they will take account of a wider set of criteria including the quality and track record of the provider in being able to provide Retail Platform Solutions.
  - (b) Competitors, consultants and customers also consider that there is a distinction between the capabilities of Retail Platform Solutions providers and Non-Retail Platform Solutions providers which would make it difficult for Retail Platforms to switch to providers of Non-Retail Platform Solutions.
  - (c) Whilst some suppliers of Non-Retail Platform Solutions compete in some Retail Platform tenders, their participation is materially less common than that of Retail Platform Solutions providers, both at early and late stages. This indicates that providers of Non-Retail Platform Solutions are less credible alternatives than Retail Platform Solutions to Retail Platforms. This in turn indicates limited demand-side substitution.
  - (d) The Parties' internal documents show that the Parties recognise that requirements of Investment Platforms vary, and that, as such, different providers of Investment Platform Solution are focused on different Investment Platform types.

31. Evidence from competitors and tender data also indicated that supply-side substitution is likely to be limited. For instance, competitors told us that it would generally take time and would be costly to invest in providing the specific functionalities required to compete effectively in offering Retail Platform Solutions. This means that supply-side substitution is unlikely to be sufficient or timely enough to prevent the merged entity from profitably worsening its offer.
32. On the basis of this evidence, we found that the market should not be widened to include Non-Retail Platforms.
33. FNZ has suggested that our approach to the distinction between Retail and Non-Retail Platforms results in the exclusion from the relevant market of a number of Investment Platforms that, in its view, should be classified as Retail Platforms. We do not agree that this is the case but nevertheless we have considered whether our conclusions would be different in the event that a wider set of Investment Platforms were considered to be Retail Platforms, and accordingly, the Platform Solutions providers to those additional Investment Platforms were competitors in the product market. This has allowed us to test whether our assessment would be affected by including a wider set of Investment Platforms and their Platform Solutions providers in the product market. We identified this wider set using third party information, as well as FNZ's and GBST's views.

*Platform Solutions for the management of active and legacy products*

34. While there is some distinction in the provision of Retail Platform Solutions to Investment Platforms managing legacy products (ie products that are no longer open for new investments) and those managing active products, Platform Solutions for legacy products can be provided alongside Platform Solutions for active products. We found, on a cautious basis, that the supply of Retail Platform Solutions to both active products and legacy products are part of the same relevant market. We have taken account of the differentiation between Platform Solutions providers serving legacy products and those serving active products in our assessment of closeness of competition.

*Delivery model*

35. FNZ and GBST have different delivery models: FNZ offers a Combined Platform Solution and GBST a Software-only Solution. FNZ submitted the main consideration for an Investment Platform when it chooses its Platforms Solutions supplier is whether to choose a Combined Platform Solution or a Software-only Solution. It submitted that these delivery models offer very different solutions for platform customers.

36. We considered whether it is appropriate, within the supply of Retail Platform Solutions, to distinguish between different delivery models and define narrower markets on the basis of the delivery model (Software-only and Combined Platform Solutions). We found that providers are part of the same product market for the following reasons:
- (a) A material number of customers consider Software-only Solutions (either alone or in partnership with servicing suppliers) and Combined Platform Solutions by a single supplier as credible alternatives;
  - (b) Software-only suppliers and Combined Platform Solutions suppliers compete with each other in a significant number of tenders to provide Solutions to Retail Platforms, even up to the final stage of the tender; and
  - (c) Internal documents of the Parties identified both Software-only and Combined Platform Solutions suppliers as competitors of FNZ and GBST.
37. The evidence also consistently shows that Bravura – a Software-only supplier – is a close alternative (on its own or in partnership with servicing suppliers) to FNZ, a Combined Platform Solutions supplier, which supports our view that both delivery models should be part of the same product market.
38. We found that some Investment Platforms prefer one delivery model over another, but this would not protect other customers that would suffer more from any reduction of competition between FNZ and GBST given that suppliers can tailor their terms by customer.

#### *In-house provision of Platform Solutions*

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

#### *Conclusion on the product market*

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

### *Geographic market*

41. We found that suppliers of Retail Platform Solutions must ensure that their products meet specific and complex tax and regulatory requirements in the UK and in other countries. As a result of needing to understand and adapt to these complex and specific requirements and the importance the evidence shows that customers place on experience and reputation in serving customers in a particular jurisdiction, Retail Platform Solutions providers cannot easily and quickly enter into a new country.
42. Accordingly, we concluded that the relevant geographic market for the supply of Retail Platform Solutions is the UK.

### *Conclusion on market definition*

43. Based on the findings set out above, we concluded that the relevant market for examining the effects of this Merger is the supply of Retail Platform Solutions in the UK excluding the in-house supply of software (Retail Platform Solutions in the UK).
44. However, we do not consider that market definition is a determinative part of our competitive assessment and we took into account in our competition assessment differences in delivery models and out-of-market constraints including from Non-Retail Platform Solutions suppliers and in-house software.
45. In response to FNZ's argument that we should consider a wider set of platforms in our analysis, we also considered whether our competition assessment, particularly with regard to shares of supply and tender analysis, would be affected in the event a wider set of Investment Platforms were considered to be Retail Platforms and, as such, as a sensitivity, these Investment Platforms and their suppliers of Platform Solutions were included as if they were part of the relevant market.

### *The nature of competition*

46. We assessed how competition operates in the supply of Retail Platform Solutions in the UK in terms of:
  - (a) The degree and ease of switching by customers;
  - (b) The main parameters of competition; and
  - (c) The procurement processes and contractual mechanisms employed by customers.

47. We found that switching costs are high for Retail Platforms. Switching to a new supplier of Platform Solutions involves a complex, risky, lengthy and expensive migration from one system to another. Recent failures of such migrations have highlighted the risks for both customers and suppliers.
48. As Platform Solutions are critical to enable a Retail Platform to effectively serve customers and satisfy regulatory obligations, Investment Platforms require a high degree of confidence in the capability of their chosen provider of Platform Solutions. Established suppliers with good track records therefore have a significant competitive advantage over others.
49. Whilst customers only switch Platform Solutions providers infrequently, they use lengthy procurement processes, and the prospect of such processes, to maintain competitive tension and extract the best possible terms from incumbent or potential suppliers.
50. Good track record, commitment to product development, product fit to the customer requirements and price are important parameters of competition in this market.

### ***Competitive assessment***

51. We have assessed whether the Merger would lead to a significant reduction in horizontal competition between the Parties in the supply of Retail Platform Solutions by removing a competitor which previously provided a significant competitive constraint. This could result in Retail Platforms facing higher costs or a lower quality of service in future. Ultimately, these higher costs and deterioration in quality can adversely impact UK consumers that rely on Retail Platforms using Retail Platform Solutions.
52. In differentiated markets, horizontal unilateral effects are more likely where the merger parties are close competitors or where their products or services are close substitutes. The more closely the merger parties competed pre-merger, the greater the likelihood of unilateral effects.
53. Given the significant degree of differentiation in the provision of Retail Platform Solutions, we have particularly focused on assessing evidence of closeness of competition between the Parties and the extent to which there may be other remaining close competitors after the Merger who could continue to provide a competitive constraint on the Merged Entity.



### *Shares of supply*

54. In differentiated bidding markets, such as the market for the supply of Retail Platform Solutions in the UK, shares of supply do not fully capture the closeness of competition between firms. Accordingly shares of supply have been given only limited weight in our competitive assessment.
55. We have estimated the Parties' shares of supply within the relevant market.<sup>2</sup> We have addressed the errors in the Phase 2 Report shares of supply estimates that led to the CMA's remittal request and considered additional FNZ submissions and third party evidence.
56. The shares of supply data shows that FNZ is currently the third largest and GBST the fourth largest provider of Retail Platform Solutions in the UK. The Merged Entity would be the second largest provider, after TCS BaNCS (a highly differentiated supplier), followed by Bravura. Our sensitivity analysis (including a wider set of Investment Platforms, and their suppliers) shows broadly similar results (although the Merged Entity would be the largest supplier according to these estimates).
57. We found that TCS BaNCS' share of supply is not a good indicator of the competitive constraint it places on FNZ or GBST, because it is more focused on providing services for legacy or more limited active products, and its offering is therefore differentiated from those of the Parties.

### *Closeness of competition*

58. As explained in paragraph 54, we have relied to a greater extent in our assessment on whether the Parties are close competitors than on shares of supply.
59. In order to assess the closeness of competition between the Parties, we considered evidence from third parties, recent tenders, and the Parties' internal documents. All this evidence points in the direction that the Parties are currently close competitors in the supply of Retail Platform Solutions.

### *Third parties*

60. Most third parties considered FNZ and GBST to be close competitors to each other. In general, only Bravura was seen by third parties to be as close a competitor to each of the Parties as they are to each other. This was evident in scores provided by third parties to indicate the closeness of certain

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<sup>2</sup> On the basis of assets under administration.

suppliers' offerings, and in qualitative evidence provided by third parties on the closeness of the Parties' offering.

### *Tenders*

61. We looked at tender data over five years and considered the analysis over the full period to be probative of closeness of competition because tendering is infrequent and contract awards are long-term, and there is no evidence of material changes to competitive conditions over this period.
62. In tenders to provide Retail Platform Solutions since 2016, FNZ (or JHC, which is now part of FNZ) and GBST have overlapped in a material number of the tenders in which they have participated, and a material proportion of these overlaps were at a late stage. This was a materially more frequent rate of overlap than with any other competitor, except Bravura.
63. We found that there have been significant competitive interactions between the Parties in more recent years, in particular if we assess the tender analysis in the context of evidence from third parties and internal documents indicating that GBST may have been adversely impacted by the Merger.
64. Our sensitivity analysis (including tenders for the wider set of Investment Platforms) shows broadly similar tender results.

### *Internal documents*

65. We have assessed internal documents from each Party, and found, overall, that, to the extent that they provide insight into competitive conditions, they characterise FNZ and GBST as two of a limited number of significant suppliers of Retail Platform Solutions.
66. GBST's internal documents also show that competition from FNZ is a key driver of its product development. While we did not find similar internal documentary evidence relating to GBST having influence on FNZ's product development, we found that product development is driven by customer requirements and the loss of GBST as an alternative supplier would result in a reduction in competitive tension.

### *Competitive constraints from other suppliers*

67. Having found that the Parties are close competitors, we assessed the competitive constraint from other suppliers of Platform Solutions that would remain post-Merger, including suppliers of Non-Retail Platform Solutions as possible out of market constraints.

68. Bravura was identified as the closest alternative to each of the Parties across all our sources of evidence. Third parties told us that Bravura is a close competitor to FNZ and, in particular, GBST, and our tender analysis also shows that Bravura is a close competitor to each of the Parties. This indicates that Bravura is likely to remain a close competitor to the Parties post-Merger.
69. We found, based on evidence from third parties, tender data and internal documents, that the other competitors to FNZ and GBST (including suppliers of Retail Platform Solutions and Non-Retail Platform Solutions) would not (individually or collectively) impose a significant competitive constraint on the Merged Entity:
- (a) SS&C has a restricted offering and it has gaps in its product capability. Its only material platform administration relationship is with St. James's Place, which it supplies with a specific (closed architecture) solution. FNZ submitted that SS&C is a strong competitor and 'on the up'. Whilst SS&C [REDACTED].
  - (b) SEI was also viewed by third parties as having a restricted offering, using older technology than the Parties and with limited scale in the UK. While [REDACTED].
  - (c) TCS BaNCS has a high share of supply, but the third-party and tender evidence consistently indicate that it is not a close competitor to either FNZ or GBST given the differentiated nature of its offering. TCS BaNCS did not [REDACTED] and was mentioned (unprompted) as a potential competitor to the Parties by only two out of 30 customers. [REDACTED] is mentioned less often than other suppliers in the Parties' internal documents.
  - (d) Although there is a long tail of providers who overlapped at least once with the Parties in tenders, both the tender data, internal documents and third party evidence consistently indicate that these competitors individually or collectively would not create a significant constraint on the Merged Entity at least for those customers for whom the Parties are currently close competitors.
70. As the Merger will remove the rivalry between GBST and FNZ, we consider that it is likely to result in negative outcomes for Retail Platforms in terms of price and quality of service. Any customers of Retail Platform Solutions (including potentially future customers who would regard the Parties as close alternatives, such as those that currently use in-house supply) are likely to be adversely affected by the Merger. Retail Platforms that consider the Parties to be close alternatives are more likely to be affected. However, even GBST customers with a strong preference for GBST's Software-only model are likely

to be affected by the Merger because of the loss of competition between FNZ and GBST in relation to product development.

71. End consumers using the Retail Platforms affected by the Merger can also experience a degradation in the terms of the offering they receive from their Retail Platforms, either in terms of the price, service or quality of the Platform Solutions supplied.

#### *Findings on SLC*

72. We concluded that, subject to our findings on countervailing factors, the Merger has resulted, or may be expected to result, in an SLC in the market for the supply of Retail Platform Solutions in the UK.
73. For the reasons set out above and more fully in the Report, Retail Platforms are likely to be adversely affected in terms of price and quality of service by the loss of competition brought about by the Merger. End consumers using the Retail Platforms affected by the Merger can also experience a degradation in the terms of the offering they receive from these Retail Platforms.

#### ***Countervailing factors***

74. We concluded that there are no countervailing factors that would mitigate the adverse effects of the Merger on competition.

#### *Entry and expansion*

75. We found that potential entry from suppliers of Non-Retail Platform Solutions is unlikely to occur, in a sufficiently timely manner, based on evidence from those suppliers. We found some evidence of expansion by smaller firms in recent years. However, this expansion has been limited in nature and would not, either individually or collectively, be of sufficient scale to constrain the Merged Entity and protect customers from the SLC. We, therefore, concluded that entry or expansion would not be timely, likely and sufficient to outweigh the SLC.

#### *Buyer power*

76. We found that customers can generate competitive tension through their tender processes and that larger customers may have more bargaining power than smaller customers. However, we found this does not equate to countervailing buyer power over the Merged Entity for the following reasons:

- (a) Retail Platform customers face a limited choice of credible providers of Retail Platform Solutions. After the Merger, such customers will have lost one of the few major providers who could credibly provide an alternative to FNZ and other providers of Retail Platform Solutions, and consequently will have reduced negotiating leverage with their suppliers.
  - (b) The risks and costs involved in switching providers of Retail Platform Solutions puts customers in a weak bargaining position.
  - (c) Any leverage that some customers may have (eg due to their size) would not protect other customers because commercial terms vary with each customer.
77. Therefore, we consider that the Merged Entity is unlikely to be prevented from worsening their offer by their customers' negotiating strength, post-Merger.

### **Conclusion**

78. For the reasons summarised below and considering all the evidence in the round, we found that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in the supply of Retail Platform Solutions in the UK.

### **Remedies**

79. Having found that the Merger has resulted, or may be expected to result, in an SLC, we are required by the Act to decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effect resulting from the SLC.
80. In the Phase 2 Report, we found that requiring FNZ to sell the entire GBST business was the only action that would properly address the SLC that we expected to result from the Merger.
81. Following the Remittal Inquiry, in light of GBST's and FNZ's more detailed representations on this remedy, in particular, on how it could be effectively implemented, we found that: (i) the full divestiture of GBST is an effective remedy; and (ii) the full divestiture of GBST but with a right for FNZ to buy-back certain assets of GBST's Capital Market business (divestiture with the right to buy-back certain assets) is also an effective remedy, subject to certain safeguards (see the paragraph below) built into the design of the remedy and sales process.
82. As set out in more detail in Chapter 11, a divestiture with the right to buy-back certain assets includes sufficient safeguards to mitigate any adverse impact

on the competitiveness of the GBST Wealth Management business. These safeguards relate mainly to:

- (a) The assets, in principle, that FNZ may be entitled to buy-back;
  - (b) The transaction structure (a full divestiture with the right to buy certain specified assets), which will give the purchaser (and not FNZ) control over the implementation of the carve-out, with FNZ taking any residual risk associated with any interdependency between the Wealth Management and Capital Markets businesses;
  - (c) Ensuring that GBST is provided with the necessary support during the implementation of the separation and limit the support that GBST will be required to provide to implement the buy-back; and
  - (d) Ensuring that FNZ does not have access to sensitive or confidential information of the GBST Wealth Management business.
83. Furthermore, the CMA and the Monitoring Trustee, with the support of an external consultant contracted by FNZ to assist with the separation process, will: (i) actively oversee FNZ's negotiations with purchasers and (ii) ensure potential purchasers have sufficient access to information relating to and staff from the GBST business. Both the purchaser and all the transaction agreements will be subject to CMA's approval.
84. A divestiture with the right of FNZ to buy-back certain assets of the Capital Markets business is, overall, less onerous from FNZ's perspective than the full divestment of GBST, and is, accordingly, a more proportionate remedy.
85. Therefore, we have concluded that a divestiture with the right to buy-back certain assets of the Capital Markets business would be an effective and proportionate remedy to the SLC and its adverse effects.
86. 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. The CMA will publicly consult on the draft undertakings or order.

# Findings

## 1. The remittal

- 1.1 On 8 April 2020, the CMA, in exercise of its duty under section 22(1) of the Act referred the completed acquisition by 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) (the Merger) for further investigation and report by a group of CMA panel members (Phase 2 Inquiry).
- 1.2 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 horizontal unilateral effects, in the supply of Retail Platform Solutions in the UK (Phase 2 Report).<sup>3</sup>
- 1.3 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).
- 1.4 On 21 January 2021, the CAT, following the CMA's request, ordered the remittal of the CMA's Phase 2 Decision to the CMA in respect of the finding of a SLC (paragraph 10.2 of the CMA's Phase 2 Report) and the decision as to remedy (paragraph 11.379 of the CMA's Phase 2 Report).
- 1.5 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).
- 1.6 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 the NoA, alongside submissions and evidence from the Parties and third parties on other relevant issues for its decision in the remittal (Remittal Inquiry).
- 1.7 In exercise of its duty under section 35(1) of the Act, the CMA must decide in the remittal:
  - (a) Whether a relevant merger situation has been created; and

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<sup>3</sup> Completed acquisition by FNZ of GBST, Phase 2 Report, 5 November 2020.

(b) If so, whether the creation of that situation has resulted, or may be expected to result, in a SLC within any market or markets in the United Kingdom for goods or services.

1.8 Appendix A sets out the CMA's approach to the conduct of the remittal process, particularly with regard to scope of the remittal, information-gathering and consultation.

1.9 Further information can be found on our [webpage](#).

## **2. The Parties, the Merger and its rationale**

2.1 This Chapter sets out the background to the completed acquisition by FNZ of GBST, including details of the transaction and the rationale for the Merger.

2.2 The CMA has not received further evidence in relation to the matters covered in this Chapter during the remittal and no material changes have been made to the equivalent Chapter in the Phase 2 Report.

### **FNZ**

#### ***Background***

2.3 FNZ is a global wealth management technology and investment administration services firm, established in 2003 and headquartered in the UK since 2005.<sup>4,5</sup>

2.4 The FNZ group is made up of a number of wholly owned subsidiaries. One of these, FNZ (Australia) Bidco Pty Ltd, acquired GBST. FNZ (UK) Limited is a wholly owned subsidiary of Kiwi UK Holdco 2 Limited. The ultimate parent company is Falcon Newco Limited,<sup>6</sup> with the ultimate controlling party being Kiwi Holdco CayCo. These latter three entities are all exempted limited companies formed under the laws of the Cayman Islands.<sup>7</sup>

2.5 FNZ is active in the supply of technology solutions in the UK, including software to support pension and investment administration and software to support trade settlement and clearing services, as well as transaction processing and custody services. These solutions enable its customers to

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<sup>4</sup> FNZ submitted that each of Caisse de dépôt et placement du Québec (CDPQ) and Generation Investment Management LLP (GIM) [REDACTED]. Neither CDQP nor GIM have any overlapping activities with GBST in the UK (except via FNZ).

<sup>5</sup> [REDACTED].

<sup>6</sup> [REDACTED].

<sup>7</sup> FNZ (UK) Ltd Financial statements 2019, at Companies House.



provide investment management platforms, either directly to consumers or via financial advisers and employers.

- 2.6 FNZ provides Platform Solutions using a Combined Platform Solutions model, under which it combines servicing and software. Under this model, FNZ takes responsibility for delivery of services to the customer's internal and external-facing functions.
- 2.7 FNZ offers a number of products and its 'core service proposition to its customers is outsourced retail investment transaction and asset custody (ie supporting investment products that can be provided to retail investors as defined by the FCA's Conduct of Business rules), with technology being a necessary component of this service'. In the UK, FNZ's core PaaS deployments for each customer will typically involve an installation of a customer specific instance of FNZ One<sup>8</sup> and the FNZ X-Hub.<sup>9</sup>
- 2.8 In August 2019, FNZ acquired JHC Systems Limited (JHC), a technology supplier offering software solutions to wealth managers and platform providers, principally in the UK.<sup>10</sup> One of JHC's products is JHC Figaro: a wealth management technology for account administration, trading, regulatory compliance and resource optimisation.

### **Financial information**

- 2.9 In the financial year ending 31 December 2019, FNZ had UK turnover of £172 million.<sup>11</sup> In 2018, [X] % of its revenue was generated in the UK.
- 2.10 FNZ profits increased by 150% to £28 million in 2019. FNZ did not attribute this increase to any specific factor, but noted its efforts to continue to 'invest in enhancing automation of the control and operations (asset servicing) environment to further mitigate operating risks as the Company continues to add scale'.<sup>12</sup>
- 2.11 Table 2.1 below shows FNZ's UK revenue and profits from 2014 to 2019.

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<sup>8</sup> FNZ One is a retail client, investment account and portfolio management service for a range of asset types including funds, equities, bonds, and cash.

<sup>9</sup> FNZ X-Hub is a discretionary investment management service that optimises managed investment solutions to the specific and individual requirements of UK consumers.

<sup>10</sup> JHC's established software solutions include JHC Figaro, JHC Neon, JHC Xenon and JHC Digitize (a consultancy service).

<sup>11</sup> FNZ (UK) Ltd Financial Statements 2019, at Companies House.

<sup>12</sup> FNZ (UK) Ltd Financial Statements 2019, page 3, Strategic Report for the year ended 31 December 2019.

**Table 2.1: FNZ UK<sup>13</sup>: revenue and profits 2014 to 2019<sup>14</sup>**

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

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

2.12 JHC's revenue in the financial year ended in 31 December 2019 was £22.7 million.<sup>15</sup>

## **GBST**

### ***Background***

2.13 GBST Holdings Limited (GBST), is a company headquartered in Australia which was listed on the Australian Stock Exchange (ASX) before being acquired by FNZ. GBST is a financial technology company which provides software to support pension administration, wealth management and stockbroking.

2.14 In the UK, GBST operates through four entities, GBST Ltd, GBST Hosting Ltd, GBST Wealth Management Ltd and GBST UK Holdings Limited. GBST UK Holdings Limited is the immediate parent company of GBST Wealth Management Ltd and GBST Hosting Ltd. GBST Holdings Ltd (an Australian entity) is the immediate parent company of GBST Ltd. GBST also has subsidiaries in Australia, Hong Kong, Singapore and the United States of America.<sup>16</sup>

2.15 In the UK, GBST is active in the supply of software to investment management platforms to support pension and investment administration, and of software to support trade settlement and clearing services.

2.16 GBST does not provide Combined Platform Solutions but formed a partnership with services provider Equiniti in 2018 in order to provide Combined Platform Solutions to Retail Platforms. At the time of the Merger, [✂].

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<sup>13</sup> No audited accounts for the financial year ended 31 December 2020 have been submitted to Companies House at the date of publication of the Provisional Report.

<sup>14</sup> FNZ UK accounts in the table do not integrate JHC revenues and profits. JHC was acquired in August 2019.

<sup>15</sup> FNZ (UK) Ltd Financial statements 2019, at Companies House.

<sup>16</sup> GBST 2019 Annual Report.

## **Financial information**

2.17 In the year ending 30 June 2019,<sup>17</sup> GBST had worldwide turnover of £52.1 million, of which £[X] million ([X]%) was generated in the UK. The GBST 2019 full year accounts show a growth in revenue of 7%, a marginal increase in EBITDA,<sup>18</sup> before a major strategic R&D programme.<sup>19</sup>

## **The rationale for the Merger**

### **FNZ rationale**

2.18 FNZ submitted that the main strategic rationale for the Merger is to grow [X].

2.19 FNZ also submitted that, in the UK, the Merger will give GBST's customers the opportunity to substantially lower their cost structure by transitioning from an on-site software model to a Combined Platform Solutions model.

2.20 FNZ submitted that, while it intends to retain and invest in GBST's core Composer software, the offer to transfer from software to outsourced services (Combined Platform Solutions) would be made available to all of GBST's current customers. FNZ stated that it will invest 'AUD\$[X] into genuine R&D that will lead to enhanced functionality and better outcomes for customers'.<sup>20</sup> FNZ stated this was [X].<sup>21</sup>

2.21 FNZ went on to specify that the AUD\$[X] budget would be used to:<sup>22</sup>

- (a) Integrate complementary FNZ functionality into GBST's existing Composer platform, so that customer's benefit from a wider range of functionality;
- (b) Add enhanced functionality to GBST's existing Composer platform to meet customer requirements;
- (c) Enable the optional transition from on-premise software to software as a service (SaaS), which has widespread support from a number of GBST's UK customers; and

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<sup>17</sup> No audited accounts for the financial year ended 30 June 2020 have been submitted to Companies House at the date of publication of the Provisional Report.

<sup>18</sup> EBITDA is earnings before interest, tax, depreciation and amortisation

<sup>19</sup> GBST 2019 Annual Report.

<sup>20</sup> FNZ Initial phase 2 Submission, 29 April 2020, paragraph 8.1.

<sup>21</sup> FNZ Initial phase 2 Submission, 29 April 2020, paragraph 8.2.

<sup>22</sup> FNZ Initial phase 2 Submission, 29 April 2020, paragraph 8.3.

- (d) Complete [REDACTED], as contemplated in the Evolve programme, albeit more incrementally than proposed by GBST, so as to [REDACTED].
- 2.22 FNZ internal documents broadly support the rationale which FNZ submitted to us:
- (a) FNZ documents noted that (GBST's) [REDACTED]. It also noted that [REDACTED].
- (b) FNZ stated that there would be a [REDACTED] and said: [REDACTED].
- 2.23 FNZ documents also set out expected cost synergies, noting [REDACTED] and [REDACTED] as the main contributors to this.
- 2.24 In our view, this evidence indicates that FNZ intended to [REDACTED]. We discuss the impact of FNZ's plans for investment in GBST [REDACTED] further in Chapter 8.

### ***GBST rationale***

- 2.25 GBST had not been contemplating the sale of the business before it received an unsolicited bid from Bravura in April 2019. This started a bidding process, including bids from SS&C and FNZ, which ultimately resulted in FNZ's acquisition of GBST.

### **The transaction**

- 2.26 On 5 November 2019, FNZ acquired, via its indirectly wholly owned subsidiary, FNZ (Australia) Bidco Pty Ltd, the whole issued share capital of GBST.
- 2.27 The Merger was structured via a scheme of arrangement (the 'Scheme') in which all GBST shares were transferred to FNZ Australia (Bidco) Pty Ltd. The binding Scheme Implementation Deed between GBST and Kiwi HoldCo CayCo, Ltd was entered into on the 29 July 2019. Implementation was subject to conditions including obtaining votes from a majority of GBST shareholders in favour and court approval. The Scheme was approved by GBST shareholders on 14 October 2019 and by the Supreme Court of New South Wales on 18 October 2019.
- 2.28 The consideration paid for the share capital of GBST was agreed as 'approximately AUD\$268.1 million, reflecting a price of AUD\$3.85 per share, of which AUD\$0.35 per share took the form of a special dividend paid by GBST'.

- 2.29 Prior to FNZ’s acquisition, GBST had been engaging in negotiations with two other parties regarding its potential sale. GBST received bids from Bravura Solutions (‘Bravura’) and SS&C Technologies (‘SS&C’).
- 2.30 In April 2019, Bravura made an initial, unsolicited bid for GBST, after which SS&C and FNZ entered the bidding process. Figure 2.1 below shows a timeline of the bids received by GBST from Bravura, SS&C and FNZ, resulting in the final, binding, offer from FNZ on 29 July 2019.

**Figure 2.1: Timeline of proposals for GBST, 2019**

Initial Bravura offer: A\$2.5	Updated Bravura offer: A\$2.72	Bravura final offer: A\$3	SS&C offer: A\$3.25	SS&C updated offer: A\$3.60	Updated FNZ offer: A\$4	Updated FNZ offer: A\$3.90	AUD\$			
12 April >	19 June >	27 June >	28 June >	1 July >	2 July >	5 July >	24 July >	25 July >	26 July >	29 July
			FNZ initial offer: A\$3.15	Updated FNZ offer: A\$3.50	Updated FNZ offer: A\$3.65	Updated FNZ offer: A\$3.95				FNZ entered into binding offer: A\$3.85

Source: CMA analysis.

### **Evidence from FNZ**

- 2.31 FNZ has submitted that the following were the main events leading up to its final offer for GBST:
- Following Bravura’s updated offer on 19 June 2019, the GBST Board and its advisers agreed to conduct a confidential tender process and invited selected parties to submit non-binding indicative proposals.
  - On 26 June 2019, GBST communicated a range of key criteria for proposals to interested parties in the GBST tender process (the ‘GBST Tender Process Participants’). Those parties were invited to submit non-binding indicative proposals by 3 July 2019.
  - Following Bravura’s offer on 27 June 2019, parties were contacted and encouraged to submit proposals by 28 June.
  - On 28 June 2019, both SS&C and FNZ expressed a confidential and non-binding interest in acquiring GBST.
  - Following receipt of both proposals, GBST announced on 28 June 2019 that the Board had decided not to enter into further discussions with Bravura given the other offers received were higher than Bravura’s.

- (f) On 1 July 2019, GBST announced that SS&C had secured exclusive due diligence in connection with its proposal. FNZ then submitted its second bid.
- (g) On 2 July 2019, SS&C submitted an updated indicative proposal.
- (h) On 5 July 2019, during the period that SS&C had secured exclusive due diligence with GBST, FNZ submitted its third indicative proposal.
- (i) Between 24 and 29 July 2019 FNZ submitted four further proposals, of decreasing value.
- (j) On 29 July GBST announced that GBST and FNZ had entered into a binding Scheme Implementation Deed for 100% of the shares in GBST. The Scheme was not subject to financing or due diligence.

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

2.33 Internal documents show that FNZ valued GBST [REDACTED].<sup>23</sup>

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

(b) [REDACTED].

(c) [REDACTED].

2.34 [REDACTED]

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

### **GBST valuations**

2.36 A valuation of GBST [REDACTED].

2.37 We note that this is [REDACTED].

2.38 A separate, sum-of-the-parts valuation<sup>24</sup> [REDACTED]. [REDACTED] the final offer price of AUD\$3.85.

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<sup>23</sup> [REDACTED].

<sup>24</sup> The sum-of-the-parts valuation is a process of valuing a company by determining what its aggregate divisions would be worth if they were spun off or acquired by another company. They are the summed to arrive at a single total enterprise value. Finally, the equity value is derived by adjusting for the company's net debt and other non-operating assets and expenses.

### 3. Relevant merger situation

- 3.1 In accordance with section 35 of the Act and pursuant to our terms of reference (see Appendix A), we are required to investigate and report on two statutory questions:
- (a) Whether a relevant merger situation (RMS) has been created; and
  - (b) If so, whether the creation of that situation may be expected to result in an SLC in any market or markets in the UK for goods or services.
- 3.2 We address the first of the statutory questions in this chapter.
- 3.3 The CMA has not received further evidence in relation to the matters covered in this Chapter during the remittal and no material changes have been made to the equivalent chapter in the Phase 2 Report.

#### Enterprises ceasing to be distinct

- 3.4 An RMS will be created if, as a result of the Merger, two or more enterprises cease to be distinct within the statutory period for reference and the turnover test and/or the share of supply test is satisfied.<sup>25</sup>
- 3.5 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’.<sup>26</sup> A ‘business’ is defined as including ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.<sup>27</sup>
- 3.6 Both FNZ and GBST are active in the supply of software and/or servicing to Investment Platforms with a mainstream retail proposition in the UK (Retail Platform Solutions). We are satisfied that FNZ and GBST is each a ‘business’ within the meaning of the Act and their activities are ‘enterprises’ for the purposes of the Act.
- 3.7 The Act provides that enterprises cease to be distinct if they are brought under common ownership or common control.<sup>28</sup> FNZ, through a wholly owned subsidiary, acquired the entire issued share capital of GBST. Both enterprises are under the common ownership and control of FNZ. We are therefore

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<sup>25</sup> Section 23 of the Act.

<sup>26</sup> Section 129(1) of the Act.

<sup>27</sup> Sections 129(1) and (3) of the Act.

<sup>28</sup> Section 26 of the Act.

satisfied the enterprises carried on by FNZ and GBST have ‘ceased to be distinct’ for the purposes of the Act.

- 3.8 The enterprises must have ceased to be distinct within either not more than four months before the date on which the reference is made or, where the merger took place without having been made public and without the CMA being informed of it, four months from the earlier of the time that material facts are made public or the time the CMA is told of material facts.<sup>29</sup> The four-month period may be extended under section 25 of the Act.
- 3.9 The Merger completed on 5 November 2019 and was made public on the same date. Following two extensions, the statutory deadline was 14 April 2020.<sup>30</sup> The reference was made on 8 April 2020. We are satisfied that the enterprises ceased to be distinct within the four-month period allowed by the Act.
- 3.10 The second element of the RMS test seeks to establish a sufficient nexus within the UK on a turnover and/or share of supply basis.
- 3.11 The turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million. The turnover of GBST in the UK in its last financial year prior to the Merger was £[20–30] million, so the turnover test is not met.
- 3.12 The share of supply test is satisfied where, as a result of enterprises ceasing to be distinct, a share of supply of goods or services in the UK, or a substantial part of the UK, of at least 25% is created or enhanced.<sup>31</sup>
- 3.13 The Parties overlap in the supply of Retail Platform Solutions in the UK namely, software and/or servicing to Investment Platforms with a mainstream retail proposition. This broad description encompasses the services offered by the Parties.
- 3.14 FNZ disputed this characterisation of the market, preferring a broad description of wealth management Platform Solutions which included a broader range of customers. We discuss this further in Chapter 6, Market Definition. For the purposes of establishing jurisdiction, the Act provides us with a wide discretion in describing the relevant goods or services. We are not required to undertake a substantive economic assessment but are required to

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<sup>29</sup> Section 24 of the Act.

<sup>30</sup> There were two extensions in the Phase 1 Inquiry. On 14 January 2020 the four-month period was extended to 2 April 2020 and on 10 February 2020 the four-month period was extended to 14 April 2020.

<sup>31</sup> Sections 23(2), (3) and (4) of the Act.



have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met.<sup>32</sup>

- 3.15 The description of goods or services identified for the purposes of the share of supply test does not have to correspond with the economic market definition adopted for the purposes of determining the SLC question. We will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met. Importantly however, the Parties must together supply or acquire the same category of goods or services.

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

- 3.16 FNZ submitted that the share of supply test, based on ‘the narrowest plausible product market of wealth management platform solutions in the UK on the basis of recurring revenue,’ was not met but was met on an estimated combined share of supply of wealth management platform solutions for advised platforms in the UK on an assets under administration (AUA) basis. FNZ also submitted that the test was met on a combined share of supply of Platform Solutions to customers excluding private banks in the UK on an AUA-basis.
- 3.17 FNZ submitted that estimating shares of supply on an AUA-basis would lead to the shares of software-only suppliers being likely to be ‘overstated as a result of double counting’. FNZ submitted that estimated shares of recurring revenue would provide a more reliable indicator of shares of supply. However, it provided its own estimates based on available AUA.
- 3.18 FNZ made no further submissions on shares of supply in relation to the RMS.

### ***Our assessment***

- 3.19 The Act provides us with wide discretion in describing the relevant goods or services for the purposes of determining share of supply. We are not required to undertake a substantive economic assessment but are required to have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met.
- 3.20 Both Parties are active in the supply of Platform Solutions to Retail Platforms, namely, software and/or servicing to Investment Platforms with a mainstream retail proposition. We considered that, for the purposes of establishing jurisdiction, it is reasonable to adopt the description of Retail Platform

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<sup>32</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), December 2020, paragraphs 4.62-4.70.

Solutions as the basis on which to determine share of supply as this is a broad description which encompasses the services offered by the Parties.

- 3.21 We considered the supply of Retail Platform Solutions on an AUA basis as a reasonable and appropriate measure for the purposes of the RMS test. We did not receive any submissions contesting AUA as a reasonable basis on which to calculate share of supply for determining if an RMS has been created.
- 3.22 The Parties overlap in the supply of Retail Platform Solutions to Retail Platforms in the UK. We found that, as a result of the Merger, the combined share of the supply of the Parties, on the basis of AUA is [30–40%], with the Merger accounting for an increment of [10–20%] and that the share of supply test in section 23 of the Act is met.

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

- 3.23 In the light of the above, we consider that the Merger has resulted in the creation of an RMS. As a result, we must consider whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.

## **4. Industry background**

- 4.1 In this Chapter, we briefly provide some background information about the industry.
- 4.2 The CMA has not received further evidence in relation to the matters covered in this Chapter during the remittal and no material changes have been made to the equivalent Chapter in the Phase 2 Report.
- 4.3 The Parties are both active in the UK in the supply of Platform Solutions to Investment Platforms.
- 4.4 Investment Platforms enable consumers and their advisers to invest in a range of financial products, including tax wrappers such as Individual Savings Accounts (ISAs) and Self Invested Personal Pensions (SIPPs).<sup>33</sup>
- 4.5 Platforms are used to invest money in a range of products, including funds, shares, bonds, structured products and other securities, from different asset managers and hold them together in one account. They typically offer a range

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<sup>33</sup> A tax wrapper is a tax treatment that an investor can 'wrap' around their investment.

of services, which enable the investor or intermediary to see and analyse an overall portfolio of investments.

- 4.6 Providers of Investment Platforms include banks, insurers, asset managers and wealth managers.
- 4.7 All Investment Platform operators need to combine the two components of a Platform Solution – software and servicing. The Parties submitted that platform software and investment transaction and custody services are two of the elements of a Platform Solution that may be outsourced by Investment Platform operators.
- 4.8 Platform Solutions usually serve both front and back office: front office services are customer-facing, such as websites and reporting; back office services are non-customer facing.
- 4.9 Platform Solutions may have a range of delivery models, including:
- (a) A software-only Platform Solution sourced from a third party which the customer combines with in-house servicing or servicing from another third party;
  - (b) A Combined Platform Solution: integrated software and servicing Platform Solutions from a single third party provider or a partnership of third party suppliers; or
  - (c) Software and servicing provided in-house (an in-house solution).
- 4.10 Some Platform Solutions providers, such as those offering custody services, are regulated in the UK by the Financial Conduct Authority (FCA). FNZ offers a Combined Platform Solution which includes transaction processing and asset custody which require it to be regulated by the FCA. The solutions provided by GBST do not require it to be regulated.
- 4.11 As explained in more detail in Chapters 7 and 8, the supply of Retail Platform Solutions to Retail Platforms is a differentiated bidding market characterised by infrequent switching:
- (a) Switching costs are high and switching supplier involves a complex, risky, lengthy and expensive migration;
  - (b) Customers use lengthy procurement processes, which occur relatively infrequently; and

- (c) Investment Platforms require a high degree of confidence in the capability of their chosen supplier, which generally confers a material competitive advantage to established suppliers with good track-records.

## 5. The counterfactual

### Introduction

- 5.1 The counterfactual is an analytical tool used to help answer the question whether a merger has resulted or may be expected to result in an SLC.<sup>34</sup> It does this by providing the basis for a comparison of the competitive situation in the market with the merger against the likely future competitive situation in the market absent the merger.<sup>35</sup>
- 5.2 The choice of counterfactual requires a judgement on the likely situation in the absence of the merger. We may examine several possible scenarios, one of which may be the continuation of the pre-merger situation. Where there is more than one possible alternative scenario, we will select the situation most likely to have existed absent the merger.<sup>36</sup>
- 5.3 When we consider that the choice between two or more scenarios will make a material difference to the competitive assessment, we will carry out additional detailed investigation before reaching a conclusion on the appropriate counterfactual.<sup>37</sup>
- 5.4 We incorporate into the counterfactual only those aspects of scenarios that appear likely based on the facts available to us and the extent of our ability to foresee future developments. The foreseeable period can sometimes be relatively short. However, even if an event or its consequences are not sufficiently certain to be included in the counterfactual, we may consider it in the context of the competitive assessment. We seek to avoid importing into the assessment of the appropriate counterfactual any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary to make finely balanced judgements about what is and what is not included in the counterfactual.<sup>38</sup>
- 5.5 Depending on the evidence, the choice of the counterfactual could be a situation which is either more or less competitive than the competitive

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<sup>34</sup> CMA's Merger Assessment Guidelines, September 2010 (MAGs), paragraph 4.3.1.

<sup>35</sup> MAGs, paragraphs 4.3.1 and 4.3.6.

<sup>36</sup> MAGs, paragraph 4.3.6.

<sup>37</sup> MAGs, paragraph 4.3.6.

<sup>38</sup> MAGs, paragraphs 4.3.2 and 4.3.6.

conditions prevailing at the time the merger occurred. Therefore, the selection of the appropriate counterfactual may increase or decrease the prospect of finding an SLC.<sup>39</sup>

- 5.6 In reaching our view on the appropriate counterfactual, we consider what future developments we foresee arising absent the merger based on the totality of the facts available to us. Insofar as future events or circumstances are not certain or foreseeable enough to include in the counterfactual, we analyse such events in the assessment of competitive effects.<sup>40</sup>

## **Our assessment**

- 5.7 Prior to its acquisition by FNZ, GBST had been engaged in negotiations with two other parties regarding a potential sale and had received bids from Bravura and SS&C:
- (a) In April 2019, Bravura made an initial, unsolicited bid for the acquisition of GBST, after which SS&C and FNZ entered the bidding process.
  - (b) On 29 July 2019, GBST announced that GBST and FNZ had entered into a binding Scheme Implementation Deed for 100% of the shares in GBST.<sup>41</sup>
- 5.8 In assessing the counterfactual, we examined several possible scenarios in order to assess the most likely situation absent the Merger. We considered whether, taking account of the available evidence relating to the circumstances leading up to the Merger, GBST's competitive strength would have materially changed absent the Merger, whether an alternative purchaser would have acquired GBST, and the impact an alternative acquisition would have on our competitive assessment.

### *FNZ submissions*

- 5.9 We note that FNZ and GBST hold different views on various matters relevant to our assessment of the Merger, including in relation to the appropriate counterfactual, the competitive assessment and the remedies that would be

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<sup>39</sup> MAGs, paragraph 4.3.4.

<sup>40</sup> MAGs, paragraph 4.3.2, footnote 39. The MAGs at footnote 39 give one such example of where this may happen, which states that: 'the OFT, in its competitive effects analysis, ... might have regard to facts that are insufficient for it to adopt a counterfactual other than the pre-merger conditions (for example, by taking account of the reduced competitive impact of a firm in financial difficulties even though the conditions of the exiting firm scenario are not met)'.

<sup>41</sup> More detail about the bidding process is set out in Chapter 2, The Transaction.

effective and proportionate to address competition concerns. FNZ has told us that [REDACTED].

- 5.10 We recognise that submissions from both Parties and from third parties may be influenced by commercial and other incentives. However, we consider that the submissions from both Parties are informed by senior executives with considerable industry experience, so they should be taken into account in our assessment.
- 5.11 More broadly, in the conduct of our inquiry we seek to corroborate all submissions and the weighting we give submissions is determined by the extent to which we are able to corroborate them. We considered carefully, and with due scepticism, the extent to which the evidence contained within each Party's submissions, and from third parties, supports their views and, where appropriate, we sought further evidence to enable us to form our own view. We reminded both Parties, as well as all third parties, that it is a criminal offence to knowingly or recklessly mislead the CMA.
- 5.12 FNZ considers that, in the Phase 2 Report, the CMA reached an unreasonable determination of the counterfactual by (i) concluding that an SS&C acquisition of GBST was materially the same as the continued independence of GBST; (ii) not selecting an SS&C merger as the most likely counterfactual, and (iii) not addressing the likelihood and importance of a Bravura/GBST merger.<sup>42</sup> FNZ submitted that 'GBST had been engaging in negotiations with a number of other parties regarding a potential sale to one of them' and 'had received expressions of interest from a range of parties over an extended period of time,' including from both Bravura and SS&C. FNZ considers that 'there is no reasonable basis on which to conclude that, on the balance of probabilities, GBST would have remained independent';<sup>43</sup> and that the CMA failed to 'consider whether GBST would have continued to compete to the same extent, including as regards the extent of its investments in developing technologies and gaining new customers', if it had been acquired by SS&C.<sup>44</sup>
- 5.13 FNZ considers that the most likely counterfactual is that SS&C would have acquired GBST<sup>45</sup> absent the transaction, because (quoting the CMA) 'SS&C

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<sup>42</sup> NoA, paragraph 22.

<sup>43</sup> FNZ Remittal Submission, 9 March 2021, paragraph 2.2.

<sup>44</sup> NoA, paragraph 34.

<sup>45</sup> FNZ notes that a scenario in which there were competing bids for the target business is cited as one of 'the most notable examples of situations where the Authorities may use a counterfactual different from the prevailing conditions of competition' in the CMA's MAGs (see NoA, paragraph 38).

would have sought to conclude the acquisition of GBST<sup>46</sup> and in FNZ's view 'there was a clear desire on both sides to proceed with the deal (in the case of GBST, in the absence of a superior offer)'.<sup>47</sup> FNZ submitted that 'any 'residual uncertainty' around the completion of the acquisition should not be sufficient to displace the most likely counterfactual.<sup>48</sup>

5.14 Assuming that SS&C's acquisition of GBST was likely, FNZ further submitted that:

(a) On the one hand, '[t]here is clear evidence to suggest that any lessening of competition by an SS&C acquisition would in fact be comparable to an FNZ acquisition', in particular on the basis of shares of supply, overlaps at late stage in tenders, number of times SS&C was mentioned as a alternative supplier to FNZ compared to GBST,<sup>49, 50</sup> 'it would be irrational to conclude that SS&C's constraint on GBST is so insignificant that it makes no difference to the competitive assessment but that an FNZ/GBST merger is liable to give rise to an SLC.'<sup>51, 52</sup> '[E]ven if the CMA considers that the constraint posed by SS&C is not strong, the evidence is clear that it is not *de minimis* such that the merger of SS&C and GBST would have had no impact in the market or be equivalent to GBST operating under independent ownership.'<sup>53</sup>

(b) On the other hand, an SS&C/GBST merger would not result in a SLC because 'a large number of alternative providers would continue to supply the Retail and Borderline platforms (or both)<sup>54</sup> and 'like FNZ and GBST, SS&C and GBST are highly differentiated'.<sup>55</sup> SS&C and GBST are not close competitors.

5.15 FNZ submitted that 'an SS&C/GBST merger would produce a materially different market structure compared to the pre-merger conditions of competition<sup>56, 57</sup> and that 'if a SS&C/GBST merger would have resulted in a reduction in competition between these two firms (and, as a result, a reduction

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<sup>46</sup> FNZ further submitted that 'SS&C was well advanced in the purchase process' and 'ASX announcements noted that the GBST board was going to recommend SS&C proposal unanimously to its shareholders, in absence of a superior offer, see FNZ response to the phase 2 Provisional Findings, paragraph 2.1 (iv).

<sup>47</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 5.7.

<sup>48</sup> FNZ response to the phase 2 Provisional Findings, paragraph 2.1 (iv).

<sup>49</sup> NoA, paragraph 37.

<sup>50</sup> FNZ response to the Provisional Report, 30 April 2021, paragraphs 2.2 and 2.5.

<sup>51</sup> FNZ Remittal Submission, 9 March 2021, paragraph 2.6.

<sup>52</sup> FNZ response to the Provisional Report, 30 April 2021, paragraphs 2.2 and 2.4.

<sup>53</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 5.10.

<sup>54</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 5.12.

<sup>55</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 5.13.

<sup>56</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 5.12.

<sup>57</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 2.2.

in competition in the market), that reduction in competition is critical to a determination of whether the FNZ/GBST merger would lead to an SLC'.<sup>58</sup>

5.16 In addition to reiterating the above points, in response to the Provisional Report in the Remittal Inquiry, FNZ also submitted that:

- (a) Based on the share of supply estimates in the Provisional Report 'SS&C and GBST would have a material combined share of supply of [20-30]% [✂] - very similar to FNZ/GBST at [30-40]%. The PR [Provisional Report] dismisses SS&C/GBST's [20-30]% share of supply as merely '*notional*' [...] and yet places weight on the fact FNZ/GBST would be '*larger than any other provider*'.<sup>59</sup>
- (b) The Provisional Report '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 [...]. 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'.<sup>60</sup>
- (c) Both FNZ and SS&C have a PaaS delivery model, unlike GBST that has a software-only delivery model. However, the Provisional Report 'suggests SS&C's and GBST's '*complementary*' offering could enhance competition. But FNZ is at least as differentiated by delivery model from GBST; the difference in treatment is irrational'.<sup>61</sup>

5.17 FNZ, therefore, considers that the FNZ/GBST transaction should be assessed by reference to its 'incremental competitive impact' relative to an SS&C/GBST merger<sup>62</sup> and that using the pre-Merger conditions of competition as the counterfactual therefore 'underestimates the existing competitive strength of SS&C'.

5.18 As an alternative, FNZ has also submitted that Bravura was a plausible alternative purchaser for GBST and that 'the possibility that Bravura might have acquired GBST should have been considered in the FR as a potential counterfactual.'<sup>63</sup> FNZ has not specified what the implications of this counterfactual would be.

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<sup>58</sup> NoA, paragraph 35.

<sup>59</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 2.3. See paragraph 8.11 where we set out our treatment of evidence from shares of supply.

<sup>60</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 2.5(ii). See our response to this point in paragraph 8.127 and 8.128

<sup>61</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 2.5(i).

<sup>62</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 5.14.

<sup>63</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 5.16.



5.19 As another alternative counterfactual, FNZ submitted that [REDACTED]<sup>64</sup> and that ‘using pre-Merger conditions of competition as the counterfactual, critically, [REDACTED]. In particular, FNZ submitted that a ‘plausible alternative counterfactual is that [REDACTED] the GBST [REDACTED]’<sup>65</sup> FNZ further noted that: (i) GBST’s [REDACTED]; (ii) ‘GBST [REDACTED];<sup>66</sup> and (iii) GBST’s [REDACTED]’.

#### *GBST submissions*

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

- (a) GBST was in a strong and improving financial position in April 2019 when the bidding process commenced and there was no threat to its viability as an independent market participant;
- (b) Absent an acquisition (whether by FNZ or another bidder), the competitive strength of GBST in the UK market would not have reduced and, in reality, would be likely to have increased [...]; and
- (c) If GBST had been acquired by SS&C, an integrated GBST/SS&C offering would have posed a strong competitive constraint on FNZ in the UK, allowing SS&C to offer clients both software-only/SaaS and PaaS models.

5.21 GBST further told us that:

- (a) ‘The bidding process for GBST was a very rocky road spanning close to four months which effectively created a very public bidding war between three of GBST’s close competitors.’ It noted that ‘this competitive tension resulted in the best outcome for GBST’s shareholders’.
- (b) ‘Given that FNZ’s offer represented a significant premium to the undisturbed share price prior to the first bid and had a high level of certainty of completion, the Board recommended that the shareholders vote in favour’.
- (c) ‘At the time that FNZ made binding offers for GBST, SS&C had only made non-binding indicative bids and had not committed to proceeding with a binding offer. [...] This is in contrast to the binding offer at a superior price from FNZ, which provided certainty for shareholders and was therefore recommended by the Board.’

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<sup>64</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 5.18

<sup>65</sup> FNZ submitted that more recent evidence [REDACTED] (see FNZ Initial Remittal Submission, paragraph 5.18).

<sup>66</sup> FNZ Initial phase 2 Submission, paragraph 7.1.

5.22 GBST's internal documents indicate that GBST had a strategy for growth and was planning significant investment in its technology, absent the Merger, in order to remain competitive. We found no evidence in GBST's internal documents indicating that it considered its viability as an independent market participant was uncertain.

### *Third party evidence*

5.23 In order to assess whether an alternative purchaser would have acquired GBST absent the Merger, we sought evidence from Bravura and SS&C.

5.24 Bravura told us that its bid was prompted by GBST's falling share price on the Australian Stock Exchange. GBST's undisturbed share price<sup>67</sup> was AUD\$1.97, and Bravura considered that the low share price made a potential acquisition attractive.

5.25 Bravura told us that it did not get feedback on its April 2019 offer and pulled out early in the bidding process because it was not prepared to pay more than its initial offer (a 20-30% premium on the share price). Further, Bravura told us that 'if FNZ and SS&C had not placed bids, then it thought that its bid would have been accepted'.

5.26 SS&C made two offers to acquire GBST. It told us that it was 'surprised and disappointed not to win the acquisition'.

5.27 SS&C told us that 'the valuation of GBST's business needed to reflect the need for a sustained modernisation of Composer' and that its indicative bid of AUD\$3.65 per share incorporated this investment requirement. It told us that a 'focus during the time that SS&C was preferred bidder (with access to the data-room) was justifying this indicative bid price in the context of the investment spend necessary to make Composer fully competitive with Bravura's Sonata system'.

5.28 SS&C's internal documents show that the rationale for acquiring GBST was [redacted] and, [redacted].

### *GBST's performance as an independent competitor*

5.29 We considered FNZ's submission that, absent the Merger, GBST [redacted]. In doing so, we have, consistent with the CMA's guidance, sought to avoid

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<sup>67</sup> The share price prior to any announcement.

importing into our assessment any ‘spurious claims to accurate prediction or foresight’.<sup>68</sup>

- 5.30 We note that GBST’s publicly available results to 30 June 2019 (ie shortly prior to the Parties entering into a binding scheme implementation deed on 29 July 2019) show that: year-on-year revenues were up (7% on the previous year<sup>69</sup>); operating EBITDA was up (53% on the previous year); cashflow from operations was up (135% on the previous year); R&D was progressing to plan; and that GBST had a ‘strong’ balance sheet that was debt-free.<sup>70</sup> We have seen no evidence in [REDACTED].
- 5.31 FNZ submitted that GBST’s recent [REDACTED] show that its competitive position would have [REDACTED] absent the merger.<sup>71</sup> However, for the purposes of establishing the counterfactual, it is not appropriate to consider events that occurred as a result of the Merger. This is because, even with interim measures in place, the performance of the acquired business may have been affected by the uncertainty and disruption associated with the Merger and ongoing investigation. Further, we have seen no evidence that GBST would have been unable to [REDACTED] absent the Merger.
- 5.32 We therefore consider that the available evidence in relation to GBST’s pre-merger financial performance and the evidence considered as part of our competitive assessment does not support the conclusion that GBST’s competitive presence absent the Merger would be sufficiently different to its pre-Merger performance to make a material difference to our competitive assessment.

#### *The potential acquisition of GBST by an alternative purchaser absent the Merger*

- 5.33 Prior to the acquisition of GBST by FNZ, two other parties were engaged in the bidding process: Bravura and SS&C.

#### *Likelihood of an alternative acquisition by Bravura*

- 5.34 We do not consider an acquisition of GBST by Bravura to be a sufficiently likely scenario to be selected as the counterfactual on the basis that, when compared to other bids, its bid did not proceed beyond an early stage in the bidding process, and that it was not prepared to pay more than its initial offer. Further, the evidence available to us shows that Bravura is the closest

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<sup>68</sup> MAGs, paragraph 4.3.6.

<sup>69</sup> Contemporaneous evidence at the time of the acquisition is the most relevant to our assessment of the counterfactual.

<sup>70</sup> GBST ASX Announcement, FY19 Results, page 1.

<sup>71</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 5.18.

competitor to GBST,<sup>72</sup> and such an acquisition would be likely to raise competition concerns which would have led to a significant risk of the transaction being referred to an in-depth phase 2 investigation. Accordingly, in line with the CMA's practice not to consider possible counterfactual scenarios that are likely to result in a reference to a phase 2 investigation,<sup>73</sup> an acquisition of GBST by Bravura should not be used as a counterfactual scenario for the purposes of our investigation of the Merger.

*Likelihood of an alternative acquisition by SS&C*

- 5.35 Following the receipt of proposals from SS&C and FNZ on 28 June 2019, GBST announced, also on 28 June, that it had decided not to enter into further discussions with Bravura given the other offers received were higher than that submitted by Bravura. GBST's responses to the bids from SS&C and FNZ were made in public announcements to the ASX:
- (a) On 28 June 2019, the GBST Board, having reviewed the first proposals made by both SS&C and FNZ, 'determined that the proposal received from SS&C was superior to that of FNZ having regard to a range of factors';
  - (b) On 1 July 2019, GBST announced that SS&C had secured exclusive due diligence in connection with its proposal;
  - (c) On 1 July 2019, FNZ made a second non-binding indicative proposal on an unsolicited basis;
  - (d) On 2 July 2019, following an updated indicative proposal from SS&C of AUD\$3.60 per share, with an offer of expedited due diligence, GBST announced that it 'remained in the best interests of shareholders to allow SS&C to undertake due diligence and to engage further with SS&C in order to determine if a transaction capable of Board recommendation could be developed and put to shareholders';
  - (e) On 5 July 2019, GBST received a third non-binding indicative proposal from FNZ, on an unsolicited basis, for AUD\$3.65 per share;
  - (f) Following the third offer from FNZ, GBST concluded that SS&C's proposal was still superior due to the scope of its due diligence and other matters,

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<sup>72</sup> See Chapter 8.

<sup>73</sup> See, for example, the CMA's phase 2 Final Report, 12 March 2020, paragraphs 21 and 6.83 in relation to the [completed acquisitions by Bauer Media Group's of certain businesses of Celador Entertainment Limited, Lincs FM Group Limited, Wireless Group Limited, and the entire business of UKRD Group Limited](#); and CMA's phase 2 Final Report, 12 June 2019, paragraph 7.37 in relation to the [completed acquisition by PayPal Holdings, Inc. of iZettle AB](#).

including uncertainty as to whether FNZ's non-binding offer would translate into a binding offer. The GBST Board noted, on [redacted] 2019 that it 'intends to unanimously recommend the Updated Indicative Proposal from SS&C to shareholders in the absence of a superior proposal';<sup>74</sup> and

(g) Following four further proposals submitted by FNZ between 24 July and 29 July 2019, GBST announced, on 29 July 2019, that GBST and FNZ had entered into a binding Scheme Implementation Deed for 100% of the shares in GBST. The Scheme was not subject to financing or due diligence.

5.36 Based on the evidence summarised above, and in particular the progress made with SS&C prior to receiving FNZ's third offer on 5 July 2019, we consider, on balance, that the most likely alternative scenario was that, absent the competing offer from FNZ, GBST would have sought to conclude the acquisition by SS&C. Moreover, although it is possible that SS&C's offer might have fallen away during due diligence, and the evidence indicates that GBST would have been able to continue independently if this had happened, we consider the most likely alternative scenario to the Merger is that SS&C would have continued with its bid and would have succeeded in acquiring GBST. We therefore consider whether an acquisition by SS&C of GBST would have made a material difference to our competitive assessment relative to the pre-merger conditions of competition.

#### *Impact of an alternative acquisition by SS&C on our competitive assessment*

5.37 In order to assess the impact that this alternative transaction would have on our competitive assessment, we have considered whether the conditions of competition if GBST were under SS&C ownership would have been materially different from the pre-Merger conditions of competition, ie whether they would have clearly been either more or less competitive. In doing so, we have, consistent with the CMA's guidance, sought to avoid importing into our assessment any 'spurious claims to accurate prediction or foresight'.<sup>75</sup>

5.38 FNZ submits that the acquisition of GBST by SS&C would produce a materially different structure to the pre-Merger conditions of competition<sup>76</sup> and so the CMA 'need properly to analyse' this possibility because of SS&C's existing presence in the market (as evidenced by its market shares and presence in tenders) and the frequency with which SS&C was identified as an

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<sup>74</sup> GBST ASX Announcement on 8 July 2019 included as Annex 11.1 to Merger Notice, page 4.

<sup>75</sup> MAGs, paragraph 4.3.6, [underlined for emphasis not in the original].

<sup>76</sup> FNZ Remittal Submission, 9 March 2021, paragraph 2.14.

alternative supplier to FNZ in responses to the CMA's questionnaires.<sup>77</sup> FNZ also suggests that, SS&C's acquisition of GBST, would give rise to a 'meaningfully different market structure'<sup>78</sup> compared to a scenario where GBST remained independent (as there would be one fewer competitor bidding for tenders) but 'it would not result in an SLC'<sup>79</sup> (FNZ appears to recognise that a transaction that gives rise to an SLC would not be a relevant counterfactual).<sup>80</sup> FNZ also submitted that adopting such a counterfactual would not require the CMA to 'calculate the precise level of reduction in competition' resulting from an acquisition of GBST by SS&C'.

- 5.39 GBST and SS&C appear to suggest that the acquisition of GBST by SS&C could have been more competitive than the pre-Merger conditions of competition because it would have enabled SS&C to offer clients both software-only/SaaS and PaaS models. SS&C also told us that it would have continued to offer GBST's products and intended to complete GBST's planned upgrade of the Composer software.
- 5.40 FNZ's position appears to assume a reduction in competition which is material enough to affect the competitive effects assessment of the Merger but not material enough to be likely to result in an in-depth phase 2 investigation<sup>81</sup>. This would require us to make predictions about the likely impact of two different transactions in a way that would be spuriously accurate and therefore inconsistent with the CMA's usual approach to the counterfactual.<sup>82</sup> However, for the reasons discussed in paragraphs 5.43 and 5.44 below, a detailed assessment is not needed in this case in any event.
- 5.41 Furthermore, if, as FNZ submits, 'there are striking similarities'<sup>83</sup> between an SS&C/GBST counterfactual and the FNZ/GBST merger (which we do not consider to be the case for the reasons set out below), it would follow that SS&C's acquisition of GBST would be likely to result in a reference to a phase 2 investigation and, as such, it would not be appropriate to consider it as an alternative counterfactual.
- 5.42 Taking all the evidence in the round, we consider that, if SS&C had acquired GBST, the conditions of competition would not have been materially different,

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<sup>77</sup> NoA, paragraph 34.

<sup>78</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraphs 5.9 and 5.12.

<sup>79</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 5.12.

<sup>80</sup> SS&C's acquisition of GBST would result in a reduction of competition because of its 'incremental competitive impact' but that lessening of competition would not be substantial enough to amount to an SLC. See, FNZ Initial Remittal Submission, 12 February 2021, paragraphs 5.14 and 5.15.

<sup>81</sup> See paragraph 5.15.

<sup>82</sup> MAGs, paragraph 4.3.6.

<sup>83</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 2.2.

and in particular no less competitive, from the pre-Merger conditions of competition.

5.43 First, the evidence considered in more detail in the Chapter 8 (Competitive Assessment) shows that SS&C exerts a weak constraint on the Parties. It has a restricted offering and there are gaps in its product capability. It has a limited presence on the relevant market, with only one main customer (St James's Place)<sup>84</sup> for which it uses a closed architecture, which currently limits its ability to service other Retail Platform customers.<sup>85</sup> It has [REDACTED], but these were either for Non-Retail Platforms ([REDACTED]) or where SS&C already had some form of incumbent position and AuA was relatively low [REDACTED].<sup>86</sup> Third parties, including SS&C, also provided evidence that SS&C is a weaker competitor than GBST, FNZ and Bravura, in particular because of limitations with SS&C's software and the adverse impact on its reputation of a high-profile [REDACTED].<sup>87</sup> Moreover, qualitative evidence from customers' tender evaluations indicates that SS&C does not have a good reputation in the relevant market and that its Platform Solution is not suitable for most Retail Platforms.<sup>88</sup>

5.44 Second, not only is SS&C a weak competitor, but also all the evidence assessed in Chapter 8 consistently shows that GBST and SS&C are not close competitors:

- (a) Customers' views indicate that SS&C is a materially less close competitor to GBST than FNZ is and is a materially weaker competitor than FNZ, GBST and Bravura. As set out in Chapter 8, SS&C's average score for closeness to either Party is lower than the closeness of the Parties to each other.<sup>89</sup> This indicates that customers would be unlikely to be materially negatively affected from SS&C no longer being a competitor in a SS&C/GBST counterfactual;
- (b) GBST internal documents show that FNZ is a key driver of its product development and whilst some GBST internal documents [REDACTED];<sup>90</sup>
- (c) Our analysis of the tender data set out in Chapter 8 shows that SS&C and GBST have overlapped very rarely in tenders and have generally competed against FNZ in separate tenders from one another. SS&C met GBST in only [REDACTED] Retail tender(s) during the last five years and both

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<sup>84</sup> Chapter 8, paragraph 8.31.

<sup>85</sup> Chapter 8, paragraph 8.31.

<sup>86</sup> Chapter 8, paragraph 8.242(d)(iv).

<sup>87</sup> Chapter 8, paragraph 8.194(b)(ii).

<sup>88</sup> Appendix J, paragraph 14.

<sup>89</sup> Chapter 8, paragraphs 8.53 to 8.66. This also reflects a smaller number of respondents giving SS&C the highest scores for closeness to GBST than gave the highest scores for closeness of FNZ to GBST.

<sup>90</sup> Chapter 8, paragraphs 8.254 and 8.263.

made it to the final stage of the tender(s).<sup>91</sup> For the reasons set out in Chapter 8, we do not agree with FNZ's submission that we cannot place weight on the difference between the number of overlaps between SS&C and GBST on the one hand and FNZ and GBST on the other,<sup>92,93</sup>

- (d) As set out in paragraph 5.43, SS&C provides a specific (closed architecture) solution, which differs to the software solution provided by GBST; and
- (e) SS&C itself told the CMA that it is primarily focusing on its Non-Retail offer (see paragraph 9.32). While an SS&C/GBST entity would have a share in the supply of Retail Platforms Solutions in the UK of around [20-30]%,<sup>94</sup> and would thus be one of the suppliers with the highest shares of supply, we note that, in differentiated bidding markets, such as the relevant market in this case, shares of supply do not fully capture the closeness of competition between firms and accordingly shares of supply have been given lower weight for our competitive effects assessment (see paragraph 8.34).

5.45 Overall, the evidence showing that SS&C is a weak competitor and not a close competitor to GBST indicates that any reduction in competition for the supply of Retail Platform Solutions resulting from an acquisition of GBST by SS&C (if any) would not be material. We note that it is, in fact, possible that the combination of two smaller players, with differentiated offers,<sup>95</sup> could create more competitive conditions of competition, by creating a stronger constraint on the main players (FNZ and Bravura) in the relevant market.

5.46 Finally, for completeness, we note that, while the evidence that is available on SS&C's plans for GBST's business is limited, we have seen no evidence that SS&C had planned to materially change the way GBST operates. FNZ stated that there was 'no indication that CMA sought further evidence on how SS&C might have run GBST, even though limited evidence was flagged at the Working Paper stage'.<sup>96</sup> We note that, on 6 February 2020, the CMA asked SS&C to produce documents<sup>97</sup> sent to the board, board meeting minutes or valuation models in relation to SS&C's expected approach to the investment in GBST's Composer technology and SS&C's plans with regard to GBST's

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<sup>91</sup> Chapter 8, paragraph 8.232(c).

<sup>92</sup> Chapter 8, paragraphs 8.128, 8.232 and 8.246.

<sup>93</sup> See Chapter 8, paragraph 8.43(b) about FNZ submission that the difference between the number of tenders in which FNZ and GBST overlapped and the number of overlaps between each of the Parties and other competitors is not statistically significant.

<sup>94</sup> Chapter 8, paragraph 279.

<sup>95</sup> Chapter 8, Competitive Assessment.

<sup>96</sup> NoA, paragraph 34.

<sup>97</sup> These documents were (i) an internal assessment paper titled '[REDACTED]', 17 June 2019, prepared using publicly available information; (ii) a proposal summary paper prepared for SS&C's CEO, titled "[REDACTED]", 28 June 2019.



current customers, should it have been successful in its bid. On 14 February 2020, SS&C produced two documents and explained that ‘queries and responses during the due diligence process were deleted by SS&C following the conclusion of the sale process’. [REDACTED].<sup>98</sup>

- 5.47 Taking into account all of the evidence in the round, we consider that, if SS&C had acquired GBST, the conditions of competition would not be materially different from the pre-Merger conditions of competition, and under the ownership of SS&C, GBST would have continued to exert broadly the same constraint as it did pre-Merger.

### ***Our conclusion on the counterfactual***

- 5.48 We do not believe that the available evidence supports the position that GBST’s position as an independent competitor would have [REDACTED] absent the merger, so as to make a material difference to our competitive assessment.
- 5.49 We found that it is likely, on balance, that GBST would have been acquired by an alternative purchaser, SS&C, but that the conditions of competition under this alternative counterfactual would not be materially different from the pre-Merger conditions of competition. In this regard, we note that SS&C exerts a limited competitive constraint in the relevant market and is not a close competitor to GBST. This evidence indicates that any reduction in competition for the supply of Retail Platform Solutions resulting from an acquisition of GBST by SS&C (if any) would not be material. Furthermore, for completeness, we have seen no evidence that SS&C had planned to materially change the way GBST operates. We therefore consider that, under the ownership of SS&C, GBST would have continued to exert broadly the same constraint as it did pre-Merger. Further detailed evidence supporting this conclusion is provided in Chapter 8.
- 5.50 Accordingly, on the basis of the reasons and evidence set out above and the evidence set out in more detail in Chapter 8, we conclude that the most likely counterfactual for the purpose of our competitive assessment is the conditions of competition prevailing prior to the contemplation of the Merger

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<sup>98</sup> The document titled ‘[REDACTED]’, 28 June 2019 states that: [REDACTED].

## 6. Market definition

### Overview

- 6.1 Market definition provides a framework for the analysis of the competitive effects of a merger. Market definition is a useful analytical tool, but not an end in itself, and identifying the relevant market involves an element of judgement.<sup>99</sup>
- 6.2 The boundaries of the market do not determine the outcome of our analysis of the competitive effects of a merger in any mechanistic way. In assessing whether a merger may be expected to give rise to an SLC, we may take into account constraints from outside the relevant market, segmentation within the relevant market, or ways in which some constraints are more important than others.<sup>100</sup> This is particularly relevant in a differentiated sector where: (i) customers have differing needs, depending on their user-base and preferences; (ii) and there is a range of different types of products. We take these factors into account in our competitive assessment.
- 6.3 In practice, the analysis underpinning the identification of the market or markets and the assessment of the competitive effects of a merger overlap, with many of the factors affecting market definition being relevant to the assessment of competitive effects and vice versa.<sup>101</sup> We do not consider that market definition is a determinative part of our competitive assessment.
- 6.4 We assessed the relevant product market and the relevant geographic market in which the effects of the Merger should be assessed.

### Product market

- 6.5 The relevant product market will include the most significant competitive alternatives available to customers of the Parties.
- 6.6 We started our assessment of the product market with the overlapping products of the Parties– ie the supply of Retail Platform Solutions.<sup>102</sup> We then assessed whether it should be widened on the basis of demand- or supply-side considerations.<sup>103</sup>

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<sup>99</sup> MAGs, paragraphs 5.2.1–5.2.2.

<sup>100</sup> MAGs, paragraph 5.2.2.

<sup>101</sup> MAGs, paragraph 5.1.1.

<sup>102</sup> MAGs, paragraph 5.2.11.

<sup>103</sup> MAGs, section 5.2.

- 6.7 In particular, we considered whether it is appropriate, within the supply of Platform Solutions, to distinguish between:
- (a) Retail Platform Solutions and other types of Investment Platform Solutions;
  - (b) Different types of Retail Platforms, eg between platforms managing ‘active’ products and those managing ‘legacy’ products;
  - (c) The supply of Software-only Solutions and Combined Platform Solutions (the delivery model used); and
  - (d) In-house provision of software and/or servicing and third party provision.

### ***Our approach to the assessment***

- 6.8 In making this assessment, we focused on the closeness of substitution between different types of Platform Solutions and different delivery models. We consider that this is the most appropriate way of capturing the most significant competitive alternatives available to the customers of the Parties and the sources of competition to the Parties that are the immediate determinants of the effects of the Merger. We have taken into account constraints from outside the relevant market, as well as those within that market, in our competitive assessment in Chapter 8.
- 6.9 FNZ submitted that, during the Phase 2 investigation, the CMA failed to apply the Hypothetical Monopolist Test,<sup>104</sup> as ‘it has not asked customers and rival suppliers how they might respond to a SSNIP’<sup>105</sup> and did not carry out ‘any other analysis capable of robustly defining the relevant market’<sup>106</sup>. FNZ considered that, as a result, the CMA could not ‘reach a determination on the profitability of a SSNIP because it had failed to gather the relevant evidence’ and ‘has not quantified a SSNIP, even approximately’<sup>107</sup> to assess the impacts of a SSNIP.<sup>108</sup>
- 6.10 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.<sup>109</sup> The Hypothetical Monopolist Test in this case has involved assessing whether a hypothetical monopolist of Retail Platform Solutions would find it profitable

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<sup>104</sup> NoA, paragraph 47 (a). See also FNZ response to the Provisional Report, 30 April 2021, paragraph 3.3.

<sup>105</sup> A small but significant and non-transitory increase in price.

<sup>106</sup> NoA, paragraph 47(a); FNZ Initial Remittal Submission, paragraph 4.24.

<sup>107</sup> NoA, paragraph 48(a).

<sup>108</sup> FNZ Initial Remittal Submission, paragraph 4.24 and FNZ Remittal Submission, 9 March 2021, paragraphs 3.12-3.17.

<sup>109</sup> [MAGs](#), paragraph 5.2.8.

to raise prices above the competitive level. The underlying concern of the Hypothetical Monopolist Test is to identify the extent of the competitive constraint exerted on the plausible candidate product market (in this case, Retail Platform Solutions) by other products (in this case, Non-Retail Platform Solutions).<sup>110</sup>

- 6.11 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').<sup>111</sup> In some cases, such evidence may be gathered by asking customers how they would respond in the face of a SSNIP. However, asking the SSNIP question is not the only way to apply the Hypothetical Monopolist Test, and other types of evidence may be more probative for assessing the strength of constraints and substitutability.
- 6.12 In this case, we considered it was not appropriate or necessary to ask customers how they would respond in the face of a SSNIP on Retail Platform Solutions. The reasons for this are:
- (a) The supply of Platform Solutions to Investment Platforms is a highly differentiated bidding sector, in which prices are negotiated individually with each customer for each product through a lengthy bidding process. In addition, each customer has slightly different requirements<sup>112</sup> and suppliers can tailor their offers to meet these, depending on the requirements and preferences of the customer. This process typically results in long-term contracts with limited ability for customers to switch supplier. As a result, customers may not typically have good information on how different suppliers could meet their needs and the price they would pay for this unless they are going through a current tender, and their responses to a hypothetical SSNIP question are unlikely to be informative.
  - (b) Furthermore, as set out in our competitive assessment<sup>113</sup>, price is only one of the main parameters upon which suppliers compete, with the available evidence also highlighting the importance of reputation and track record as well as product development (including R&D). While in some cases a SSNIP question can be used as a proxy for small changes in quality as well as price, in practice a small change in product development and R&D would not be easy to measure.

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<sup>110</sup> Similar considerations apply in considering constraints between different delivery models and in-house provision.

<sup>111</sup> [MAGs](#), paragraphs 5.2.10 and 5.2.11.

<sup>112</sup> See Chapter 7.

<sup>113</sup> See Chapter 7.

(c) As set out further below, we had alternative sources of data which provide good evidence of customers' revealed preferences (ie how they actually choose between alternative suppliers in practice). We believe that, in this case, this is likely to be more probative than responses to a SSNIP question, which convey stated preferences by reference to a hypothetical scenario.

6.13 We therefore consider that a SSNIP question by reference solely to price<sup>114</sup> in a differentiated bidding sector, with long-term contracts and in which customers face high barriers to switching would fail to adequately capture all the nuances in the pricing models of market participants and customer preferences in this case.

6.14 Instead, we used a range of other sources of evidence in assessing the Hypothetical Monopolist Test, ie to assess to what extent Non-Retail Platform Solutions are an effective alternative to Retail Platform Solutions. In terms of demand-side substitutability, those sources of evidence included:

(a) Customers' actual preferences as to who to invite to tenders and their subsequent purchasing decisions in tenders. Tender evidence in this case is particularly informative for the purposes of assessing the Hypothetical Monopolist Test;<sup>115</sup> and

(b) Evidence from customers on which suppliers they see as alternatives to the existing supplier of their Investment Platform.<sup>116</sup>

6.15 We also gathered information on supply-side substitution, including evidence from suppliers of Platform Solutions on how easy it would be for suppliers to Non-Retail Platforms to adapt their Platform Solutions to enable them to compete to supply Retail Platforms.<sup>117</sup>

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<sup>114</sup> The diversion questions in the customers questionnaire (see footnotes 123 and 124) were asked by reference to the products offered by FNZ and GBST to each customer and not by reference to price increase.

<sup>115</sup> While the SSNIP question conveys stated preferences by reference to a hypothetical scenario, the tender data that is available in this case provides good evidence of customers' revealed preferences (ie how they actually choose between alternative suppliers in practice) and can be used as probative of customers behaviour instead of customers' stated preferences in response to a SSNIP question.

<sup>116</sup> We asked customers the following questions: a) '[w]hich suppliers do you consider suitable for your platform(s)? In your response please explain whether you would consider FNZ and GBST, and if yes, explain the benefits and drawbacks of the solutions of (i) FNZ, (ii) GBST and (iii) other suppliers' and b) 'To what extent would you consider (i) FNZ and (ii) GBST and (iii) any other suppliers of Platform Solutions to be close alternatives for your needs in the UK if your current supplier could no longer provide the services after the contract ends', asking them to rank them 1-5'.

<sup>117</sup> We asked competitors: 'Please explain how easy it would be for you to adapt your Platform Solutions to enable you to compete for Retail Platform customers. Do you have any plans to do so in the next 2 years? c) Please explain how easy it would be for (other) Platform Solution suppliers to Non-Retail Platforms to adapt their Platform Solutions to enable them to compete for Retail Platform customers'.

- 6.16 Taken together, this evidence has allowed us to identify the extent of the substitutability between Retail Platform Solutions and Non-Retail Platform Solutions, and which services exert the main competitive constraints on providers of Retail Platform Solutions. Accordingly, we consider that this provides a sufficient and the strongest evidential basis for assessing the Hypothetical Monopolist Test.
- 6.17 In our assessment, we considered whether it is appropriate, within the supply of Platform Solutions, to distinguish between:
- (a) Retail Platform Solutions and other types of Investment Platform Solutions;
  - (b) The supply of Software-only Solutions and Combined Platform Solutions (the delivery model used); and
  - (c) In-house provision of software and/or servicing and third party provision.

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

- 6.18 We first considered whether our candidate product market – the supply of Retail Platform Solutions – should be expanded to include the supply of solutions to a wider set of Investment Platforms. This section sets out:
- (a) The Parties’ submissions on this question;
  - (b) The evidence which we used to distinguish different platform types;
  - (c) Our findings on demand-side and supply-side substitution between Retail Platforms and Non-Retail Platforms; and
  - (d) Our views on the distinction between Retail Platforms serving legacy<sup>118</sup> and active products.

### ***FNZ submissions***

- 6.19 In the Phase 2 Inquiry, FNZ submitted that:
- (a) The relevant market should be the supply of Platform Solutions for all wealth management platforms for individual end investors.<sup>119</sup> It said that distinctions, such as between Retail, stockbrokers, private client

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<sup>118</sup> Legacy products are closed for new investments and only require the administration of investments concluded before the product was closed to active investments.

<sup>119</sup> FNZ Initial phase 2 Submission, paragraph 1.2 (iii). This commented on the CMA phase 1 Decision frame of reference of Retail Platform Solutions.

investment managers (PCIMs) and private banks existed historically but have now disappeared due to regulatory and technology changes over the past 15 years. It said that types of Investment Platforms have converged and ‘overlap substantially in terms of the customer base they serve and the services they offer, and so require the same solutions from their Solutions Providers’;<sup>120</sup>

- (b) While there may still be some differences between Retail Platforms and private banks and stockbrokers, PCIM Platforms should be considered as Retail Platforms<sup>121</sup> and, to the extent there is a case to exclude any Investment Platform from the definition of Retail Platforms, this is limited to a handful of private banks that cater for ultra-high net worth individuals;<sup>122</sup>
- (c) Retail Platforms and Non-Retail Platforms both serve mass affluent customers; provide the same or similar investment assets, including a wide range of ‘tax wrappers’; can cater for high-volume, commoditised demand; offer similar front end functionality to investors; and cannot be distinguished according to whether they have ‘open’ or ‘closed’ architecture;<sup>123</sup>
- (d) Retail Platforms also serve high net worth individuals and, therefore, have solutions in place to cater for the needs of this investor group;<sup>124</sup>
- (e) Differentiation between delivery models far exceeds any modest differences between Investment Platforms’ requirements cited by the CMA in justification of its Retail/Non-Retail distinction,<sup>125</sup> and the CMA should assess whether a customer that wanted a Combined Platform Solution would be more willing to consider a Combined Platform Solutions supplier with limited Retail experience than a Software-only supplier with greater Retail experience;<sup>126</sup>
- (f) Most Investment Platforms (Retail and Non-Retail) offer stocks and shares and so stockbrokers should not be a separate category for the purpose of market definition;<sup>127</sup>

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<sup>120</sup> FNZ Initial phase 2 Submission, paragraph 1.2 (ii).

<sup>121</sup> See [redacted].

<sup>122</sup> FNZ Initial phase 2 Submission, paragraph 1.2 (iii).

<sup>123</sup> FNZ Initial phase 2 Submission, sections 3 and 4; FNZ response to the phase 2 Provisional Findings, paragraph 3.10; and FNZ response to the phase 2 Provisional Findings, Annex 2, section 7, page 13.

<sup>124</sup> FNZ response to the phase 2 Provisional Findings, Annex 2, section 3, page 4.

<sup>125</sup> FNZ response to the phase 2 Provisional Findings, paragraph 3.14.

<sup>126</sup> FNZ response to the phase 2 Provisional Findings, paragraph 3.18.

<sup>127</sup> FNZ response to the phase 2 Provisional Findings, Annex 2, section 4, page 5.

- (g) Any differences in supplier focus do not mean that demand-side substitution is limited. Even if there were differences between the suppliers of Platform Solutions, it would be straightforward for Non-Retail Platform Solutions suppliers to serve Retail Platforms because the needs of Non-Retail Platforms encompass those of Retail Platforms. The out-of-market constraint exerted by Non-Retail Platform Solutions suppliers would be almost as powerful as if they were in the market;<sup>128</sup>
- (h) The CMA needs to assess whether Non-Retail Platform Solutions suppliers would expand into Retail Platform Solutions if prices rose by 5-10%;<sup>129</sup> and
- (i) Suppliers of Retail Platform Solutions overlap with suppliers of Non-Retail Platform Solutions in tenders, therefore it cannot be the case that suppliers of Non-Retail Platform Solutions lack the expertise to supply Retail Platforms and that there are distinct competitor sets in Retail and Non-Retail tenders.

6.20 In the Remittal Inquiry, FNZ reiterated its view that the market definition adopted in the Phase 2 Report is 'artificial, refuted by empirical evidence, and inconsistent with the CMA's guidelines'.<sup>130</sup> In particular, it submitted that:

- (a) There is no basis for defining separate markets for solutions to Retail Platforms and Non-Retail Platforms because:
  - (i) Platforms defined by the CMA as Retail, 'Borderline', and Non-Retail have similar characteristics and offer end-investors broadly the same range of products and services.<sup>131</sup> This is because in FNZ's view investors require access to the same mainstream assets so as to ensure efficient asset allocation. The argument that Retail Platforms require different solutions to Non-Retail Platforms to efficiently manage a larger number of accounts is misconceived.<sup>132</sup> Solutions providers that can credibly supply Borderline (according to the classification in the Phase 2 Report) or Non-Retail Platforms can also supply Retail Platforms;<sup>133</sup>

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<sup>128</sup> FNZ Initial phase 2 Submission, paragraphs 4.5-4.6 and FNZ response to the phase 2 Provisional Findings, paragraphs 3.16 and 3.20.

<sup>129</sup> FNZ response to the phase 2 Provisional Findings, paragraph 3.18.

<sup>130</sup> FNZ Initial Remittal Submission, section 4.

<sup>131</sup> FNZ Initial Remittal Submission, paragraph 4.17

<sup>132</sup> FNZ Initial Remittal Submission, paragraph 4.12.

<sup>133</sup> FNZ Initial Remittal Submission, paragraph 4.18.



- (ii) The CMA does not explicitly identify the different groups of investors which Retail Platforms and Non-Retail Platforms serve<sup>134</sup> and there is material overlap in the investor types served by Retail Platforms, ‘borderline platforms’ and Non-Retail Platforms.<sup>135</sup> Any differences in investor groups targeted by platforms are overstated and, in any event, do not imply differences in functionality required;<sup>136</sup> and
  - (iii) The evidence suggests that, the main demand-side consideration for a platform is whether to choose a PaaS or a Software-only Solution. These delivery models offer very different solutions for platform customers.<sup>137</sup>
- (b) There were significant flaws in the CMA’s approach and evidence-gathering in the Phase 2 Report, including:
- (i) The CMA did not follow its guidance on applying the SSNIP test – it did not consider demand- or supply-side responses to a SSNIP (or a commensurate reduction in quality).<sup>138</sup> Specifically, the CMA’s questionnaires did not provide a basis for an assessment of how customers and potential suppliers would be likely to respond to a SSNIP;<sup>139</sup>
  - (ii) The questionnaires that the CMA used to gather evidence from customers and competitors were flawed because: (i) the definition of Retail used was inconsistent with that used in the Phase 2 Report; and (ii) third parties were led by the framing of the questions to draw a distinction between Retail and Non-Retail Platforms;<sup>140</sup> and
  - (iii) The large number of Borderline platforms relative to Retail Platforms and Non-Retail Platforms in the Phase 2 Report reflects the absence of a clear basis for distinguishing between them. A solutions provider for a Borderline platform must be able to serve a Retail Platform, because the provider must have retail functionality to serve the retail components of a Borderline platform.<sup>141</sup>

6.21 FNZ also submitted that:

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<sup>134</sup> FNZ Initial Remittal Submission, paragraph 4.5.

<sup>135</sup> FNZ Initial Remittal Submission, paragraph 4.6.

<sup>136</sup> FNZ Remittal Submission, 9 March 2021, paragraph 3.29.

<sup>137</sup> FNZ Initial Remittal Submission, paragraph 4.21.

<sup>138</sup> FNZ Initial Remittal Submission, paragraph 4.24.

<sup>139</sup> FNZ Remittal Submission, 9 March 2021, paragraph 3.14.

<sup>140</sup> FNZ Remittal Submission, 9 March 2021, paragraph 3.3.

<sup>141</sup> FNZ Initial Remittal Submission, paragraph 4.15.

- (a) We have not used a clear, coherent definition of Retail Platform Solutions, stating that the features of Retail Platforms (set out in paragraph 6.32 are described in comparative terms and therefore do not provide a clear demarcation between Retail Platforms and Non-Retail Platforms,<sup>142</sup> and that these descriptions have changed over the course of the investigation;<sup>143</sup>
- (b) The lack of clarity of the definition of Retail Platform Solutions compromised the inquiries made of third parties during the course of the investigation, as they would have been unclear as to whether a given platform was Retail or Non-Retail, may have answered on different bases at different points in the inquiry and responses may have been subject to framing bias;<sup>144</sup> and
- (c) The CMA's analysis ignores the fact that, even on its own definitional basis, there are three categories of customer not two: 'Retail, Non-Retail and Borderline (mixed retail/non-retail)'.<sup>145</sup>

6.22 Appendix B sets out more detail on our view in relation to FNZ's submissions on the third party questionnaires and the slight changes in the definition of Retail Platforms used by the CMA throughout the investigation and our views on how we do not consider it appropriate to reduce the weight we place on customer responses as a result of the framing of particular questions.

6.23 FNZ's main submissions on market definition in its response to the Provisional Report were that:

- (a) '[T]he Retail/Non-Retail distinction remains strongly influenced by downstream differences rather than Platform Solutions Suppliers' functionality';<sup>146</sup>
- (b) The Provisional Report 'does not include any evidence of [...] how customers and competitors would react to a price (or equivalent quality)

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<sup>142</sup> NoA, paragraph 54.

<sup>143</sup> NoA, paragraph 58(d). We note that it is not unusual for the CMA to refine and even change the way it describes or define the services offered by the merging parties as its investigations progress and the CMA's understanding of the merging parties' businesses develops. We consider that there is no indication that the refinement of the definitions used by the CMA gave rise to any confusion on the part of third parties that could have impacted on the views and evidence that they provided to the CMA. Furthermore, during the Remittal Inquiry, we have clarified any aspect of third party responses that was unclear. We also note that while FNZ supplies both Retail Platform and Non-Retail Platform solutions, it primarily supplies platform solutions to Retail Platforms. Therefore, the CMA's classification of the Investment Platform Solutions offered by the Parties did not change between the CMA's phase 1 Decision and Phase 2 Report (see more detail in Appendix B).

<sup>144</sup> NoA, paragraph 58.

<sup>145</sup> NoA, paragraph 23(b) and 47(b).

<sup>146</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 3.2. See paragraph 6.73.

change’;<sup>147</sup> In particular, the Provisional Report ‘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’;<sup>148</sup>

- (c) The Provisional Report ‘appears to highlight two functional distinctions between Retail and Non-Retail platforms: the relative importance of automation and pension wrappers’, but ‘this approach is vague and inadequately substantiated’;<sup>149</sup>
- (d) The supply-side substitution analysis in the Provisional Report fails to ‘assess the cost of developing any new functionality (pensions) against the potential benefits (profits) that could arise from supplying Retail platforms if the price (and profitability) of Retail Platform Solutions’;<sup>150</sup> and
- (e) “The lack of clarity on market definition results in inconsistent classifications”. For example, [redacted].<sup>151</sup>

### *GBST submissions*

6.24 GBST gave a different view. It submitted that:

- (a) Different types of Investment Platforms focus on different consumer groups. For example, PCIM Platforms target customers who need a wider range of services, a broader range of asset classes and tax planning, so these platforms require a more bespoke solution;
- (b) Technology for the private bank and PCIM categories is often not built to support the number of customers and trading volumes required by Retail Platforms;<sup>152</sup>
- (c) Suppliers serve different parts of the market, despite all being able to support the same tax wrappers and investments. For example, some

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<sup>147</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 3.3. See paragraphs 6.13 and 6.14 above in relation to this submission.

<sup>148</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 3.3(i). See paragraph 6.76. in relation to this submission.

<sup>149</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 3.4. In particular, FNZ notes that the Provisional Report: (i) does not include evidence on the scale at which automation would be required by Investment Platforms; and (ii) does not explain precisely what pension functionality is required by Retail Platforms. See paragraphs 6.35 to 6.38 and paragraph 6.58 in relation to these submissions.

<sup>150</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 3.3(ii). See paragraph 6.93 in relation to this submission,

<sup>151</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 3.5. See footnote 204 in relation to this submission.

<sup>152</sup> GBST response to the FNZ Initial phase 2 Submission, page 14.

focus on private wealth or banking; others on workplace or advised Retail Platforms, rather than all suppliers targeting all types of platform. It said that '[t]he nuances of each segment cannot be underestimated'. GBST pointed to data it had seen on tenders and the competitors it faces in each market segment'; and<sup>153</sup>

- (d) It would be difficult, and require significant investment, for suppliers serving Non-Retail Platforms to develop the underlying technology required to serve Retail Platforms, mainly due to the complexity of tax treatments and rules that apply to different tax wrappers.<sup>154</sup>

### *Investment Platform type*

- 6.25 We first considered whether Retail Platforms can be treated as a distinct product category and whether there is a clear boundary between Retail Platforms and other types of wealth management platform.
- 6.26 The requirements and preferences of Investment Platforms can influence the suppliers that they consider to be suitable alternatives for the supply of Platform Solutions. We therefore considered whether it was appropriate to differentiate Retail Platforms from other Investment Platforms based on their characteristics and how they are used by end investors.
- 6.27 There are a variety of ways in which Investment Platforms can be differentiated. Industry participants and regulators such as the FCA use different approaches to categorise platforms. Based on evidence gathered through the course of the Phase 1 and Phase 2 Inquiry, we identified the following main types of Investment Platform which have differing Platform Solution requirements:
- (a) Retail Platforms;
  - (b) Stockbroker platforms;
  - (c) PCIM platforms; and
  - (d) Platforms operated by private banks.
- 6.28 For the purposes of our analysis, we describe Investment Platform types in (b), (c), and (d) together as 'Non-Retail Platforms'.

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<sup>153</sup> GBST response to the FNZ Initial phase 2 Submission, page 9.

<sup>154</sup> GBST response to the FNZ Initial phase 2 Submission, page 13.

- 6.29 Most Investment Platforms can be defined as Retail or Non-Retail Platforms. However, we note that these Investment Platform types are not formally defined and there is some variation in the terminology used by market participants and in the Parties' internal documents to describe them.<sup>155</sup>
- 6.30 We next consider whether our starting point for assessing market definition (the focal product) should be only Retail Platforms, or if the differences between platform types are sufficiently limited that our starting point should be to consider all Investment Platforms. We consider below the similarities and differences between the different types of Investment Platforms in terms of functionality and end-customers as a first step to understanding whether the supply of Platform Solutions should be expanded to include a wider set of Investment Platforms.
- 6.31 To inform this, we have considered:
- (a) The role of functionality of different platform types in our assessment;
  - (b) The role of end-customer characteristics in our assessment; and
  - (c) Convergence between Investment Platforms and their requirements;
- 6.32 As explained in more detail below, we found that:
- (a) The term Retail Platform is widely understood and used by suppliers, customers and consultants, and third parties provided similar descriptions for each Investment Platform type:
    - (i) **Retail Platforms** typically serve high volumes of customers and are primarily focused in the mass affluent part of the market. They are more likely to offer a more restricted range of assets than other platform types (although this is not always the case and they are increasingly using an open architecture that widens the investment product range) but tend to be focused on providing tax wrappers such as individual savings accounts (ISAs) and self-invested personal pensions (SIPPs).<sup>156</sup> The platforms are built to be highly automated so that a very large number of accounts can be managed efficiently.
    - (ii) **Private client investment managers and private banks** tend to deal with more bespoke wealth planning with a focus on managing money across a broader set of investments to meet the complex

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<sup>155</sup> For example, making distinctions between 'retail' and 'wealth management' Investment Platforms, or between 'mass affluent' and 'high net worth' Investment Platforms. See also Appendix B about CMA's approach to third party evidence.

<sup>156</sup> We also consider suppliers of workplace pensions to be Retail Platforms.

needs of a smaller number of higher net worth end-investors.<sup>157</sup> These Investment Platforms are built to provide a more customised service for their end-investors.

(iii) **Retail stockbrokers** either trade financial instruments on behalf of consumers (through advisors) or allow the consumer the ability to ‘Do-It-Yourself’. They are available to all investor types.

(b) Although there has been some convergence between different types of Investment Platforms, and some Non-Retail Platforms provide similar core functionality, there remain key differences between Retail Platforms and other Investment Platforms (as described above). Similarly, even though Retail Platforms and other Investment Platforms can both serve similar types of investors, the products can be distinguished. We have taken account of these points in considering whether the product market should be widened to include other types of Investment Platform based on the ability of customers and providers to substitute between Retail and Non-Retail Platform Solutions.

6.33 As noted below, we are aware that there are differences in the preferences and requirements of Investment Platforms within those categorised as Retail Platforms or Non-Retail Platforms. We also acknowledge there is some ambiguity at the boundary over whether certain Investment Platforms should be defined as Retail Platforms (as discussed at paragraphs 6.46 to 6.49 and 6.109 to 6.110): some Investment Platforms do not neatly fit into only one category<sup>158</sup> and the specific requirements and preferences of Retail Platforms may vary (eg certain Retail Platforms were set up to be used by independent financial advisers, whereas others are intended to be used only by that Retail Platform’s in-house financial advisers).

6.34 The evidence in paragraphs 6.35 to 6.49 below is also relevant to our later assessment of demand- and supply-side substitutability.

*The role of functionality of different Investment Platforms in our assessment*

6.35 FNZ submitted that we placed too much weight on customer, competitor and consultants’ qualitative evidence which is unlikely to provide a sound basis for assessment of market definition due to questionnaire flaws. In contrast, the Phase 2 Report did not accord sufficient weight to objective evidence

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<sup>157</sup> We have seen a range of terms used by third parties and within the Parties’ internal documents to refer to the Private-client segment of the market including ‘wealth’, ‘wealth management’, ‘private wealth management’, ‘higher end’, ‘high net worth’, ‘discretionary fund management’ and other variation on these terms.

<sup>158</sup> See chart in Appendix D, paragraph 2 which illustrates this overlap across segments. We set out how we took into account these considerations when collecting and interpreting evidence from third parties in Appendix B.

suggesting that there were no clear differences in either the functionality provided by different types of platforms or the ultimate investors served. In particular, FNZ stated that we did not give due consideration to specific platform functionalities and that our outline of the differences and similarities between Retail Platforms and Non-Retail Platforms was vague.<sup>159</sup> FNZ submitted that ‘Retail, Borderline and Non-Retail Platforms (as categorised by the CMA) have similar characteristics and offer end-investors broadly the same range of products and services’.<sup>160</sup>

- 6.36 We carefully considered FNZ’s evidence suggesting that Retail and Non-Retail Platforms offer similar functionality.<sup>161</sup> <sup>162</sup> We agree that many of the core functionalities across these platforms are similar and that there is not a ‘bright line’ distinction between different platform types.
- 6.37 Our third party evidence (see paragraphs 6.58 to 6.63) shows that customers value how well a given provider can support functions which are particularly important for its product, as well as taking account of a provider’s reputation and track record. This evidence shows that customers’ needs go beyond the mere functionality of the platform solutions they require. Furthermore, the specific requirements and preferences of Retail Platforms may vary.<sup>163</sup>
- 6.38 As such, the fact that platforms perform similar functions does not necessarily mean that customers would be willing to substitute between them or that suppliers would have the ability and incentive to quickly switch capacity to supply solutions to Retail Platforms in response to a SSNIP (which we assess in paragraphs 6.46 to 6.93). We have therefore placed more weight on third party evidence, tender analysis and internal documentary evidence as indicators of substitutability than on a functional analysis of different platform providers.

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<sup>159</sup> NoA, paragraph 48c(i). See also FNZ response to the Provisional Report, 30 April 2021, paragraph 3.4 in which FNZ state the CMA’s approach to the functional distinctions between Retail and Non-Retail Platforms was ‘vague and inadequately substantiated’. We note that we have explained our approach to the functional distinction between these types of Investment Platforms in paragraphs 6.36 to 6.48 and 6.73.

<sup>160</sup> FNZ Initial Remittal Submission, paragraph 2.9 and 4.17.

<sup>161</sup> FNZ Remittal Submission, 9 March 2021, paragraph 3.20.

<sup>162</sup> In FNZ’s Initial Remittal Submission, Annex 1, for instance, FNZ submitted some evidence suggesting that Retail, Borderline, and Non-Retail Platforms offer the same set of mainstream assets’ and so have the same or similar requirements in terms of functionality’ (page 5). In FNZ’s Remittal Submission, 9 March 2021, FNZ provided the example of Brewin Dolphin - a platform classified as ‘Borderline’ that ‘advertises itself as offering a financial planning service that targets mass-affluent customers’ – to exemplify that ‘borderline’ platforms can fulfil all the requirements of Retail Platforms’ (paragraph 3.25). See also slide presentation used in the FNZ’s Oral Representations Meeting of 2 March, in which, for instance, FNZ submitted evidence suggesting that Borderline and Non-Retail Platforms must offer a wide range of tax/pension wrappers. In the same presentation, more generally, FNZ submitted that all Borderline and Non-Retail Platforms offer mainstream Assets because all investors need these assets for efficient asset allocation.

<sup>163</sup> For example, we found that certain Retail Platforms were set up to be used by independent financial advisers, whereas others are intended to be used only by that Retail Platform’s in-house financial advisers.

### *The role of end-customer characteristics in our assessment*

- 6.39 As part of its evidence to show there are no clear differences in the ultimate investors served by different platform types, FNZ also provided data on number of accounts by size of assets for a small number of platforms at Phase 2 (based on April 2020 data)<sup>164</sup> and in the remittal (based on January 2021 data).<sup>165</sup> FNZ submitted that this showed that [REDACTED].<sup>166</sup>
- 6.40 We have considered this evidence alongside the other metrics provided by FNZ in its submissions.<sup>167</sup> We place limited weight on this evidence for the following reasons:
- (a) The data captured only a small number of platforms and, in particular, only allowed comparison against one Non-Retail Platform.<sup>168</sup>
  - (b) The two datasets submitted by FNZ relating to April 2020 and January 2021 showed significant differences in the distribution of accounts by different asset sizes for the same platforms. For example, in the original dataset, [REDACTED] had less than [REDACTED] of accounts with more than £100,000 AUA, whereas in the more recent data, [REDACTED] of accounts have AUA of more than £100,000. FNZ submitted that this is consistent with (i) customers making regular new contributions into their accounts over the course of the year and (ii) market movements which could lead to assets in an account growing over time, in particular impact from the on-going Covid-19 crisis, that led to a significant market downturn in March-April 2020, from which the market subsequently recovered in the ensuing months. Nevertheless, we have concerns as to the weight which can be attached to metrics which change to this extent and how far they reflect the characteristics of the end users of the platforms or the needs of the platforms to serve them. We therefore do not consider this data to be a reliable basis on which to draw conclusions.
  - (c) Importantly, this analysis and the other metrics provided do not reflect all likely relevant differences between different types of Investment Platform. Our view is that FNZ's analysis of the distribution of customers by size of assets for a number of different Investment Platforms supported by FNZ does not show that Non-Retail Platforms would require the same or

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<sup>164</sup> FNZ response to the phase 2 Provisional Findings, Annex 2, pages 4-5

<sup>165</sup> FNZ's Initial Remittal Submission, Annex 1, and FNZ Remittal Submission, 9 March 2021, section 3, Table 3.2. FNZ provided similar data during the Remittal Inquiry for 2018 and 2019.

<sup>166</sup> FNZ response to the phase 2 Provisional Findings, Annex 2, pages 4-5.

<sup>167</sup> As set out for example in FNZ's Initial Remittal Submission, Annex 1.

<sup>168</sup> FNZ provided data on six platforms in the Phase 2 Inquiry, and 17 platforms in the Remittal Inquiry. Of these, only [REDACTED] has been classified as a Non-Retail Platform, rather than a Retail Platform or a platform with both Retail and Non-Retail elements as described below and in Appendix G.



similar solutions to Retail Platforms, as it does not reflect important differences in the customer bases of the examples of Investment Platforms that FNZ provided. As such, and as noted above, we put more weight on third party evidence, tender analysis and internal documentary evidence as indicators of substitutability (which reflect a more holistic view of the requirements of platforms and their end users).

- 6.41 Despite the limited weight we attach to this evidence, as mentioned above, we have taken into account the lack of a clear boundary in such characteristics between platforms which are classified as only being Retail Platforms and those which have both Retail and Non-Retail elements within our analysis (see paragraph 6.50 and 6.110).

#### *Convergence of Investment Platforms and their requirements*

- 6.42 FNZ submitted that there has been convergence in the market between types of Investment Platform. We examined the extent to which differences between Investment Platforms and their Platform Solutions requirements remain. In general, greater convergence between Investment Platforms would be liable to lead to Investment Platforms and their Platform Solutions requirements becoming more similar and, consequently, to a greater likelihood of demand-side substitution.
- 6.43 Almost all of the twenty-five third parties that gave a view on convergence said that there had been some convergence, but their views were mixed as to its extent. Even respondents who said that there has been a significant movement towards convergence considered that, overall, material differences still remain between Retail and Non-Retail Platforms and their requirements.
- 6.44 For example:
- (a) An FNZ customer said that some convergence has taken place over the last three to five years whereby suppliers of Retail Platform Solutions have developed some functionalities that are typical of Non-Retail Platforms, such as the capabilities of Discretionary Fund Managers. It also said that convergence is more limited in the other direction, as there is little evidence that suppliers of Non-Retail Platform Solutions have built pension functionalities. For this reason, it believes there is a clear demarcation between Retail Platforms and Non-Retail Platforms;
  - (b) A consultant told us that the market has started to converge but indicated that this trend had started fairly recently and remained at an early stage; and

(c) Equiniti noted that '[t]hese two sectors are still largely separate with suppliers typically specialising in one or the other. However, in recent years there is increasing overlap, with retail platforms also servicing advisers who can often look after high net worth clients sometimes with increasingly complex needs; and also private wealth providers looking for more robust and scalable solutions so looking beyond their traditional suppliers who have typically struggled in this respect'.

6.45 Overall, we concluded that while there has been some convergence over time in the requirements of Retail and Non-Retail Platforms, they remain distinct product categories. We have taken account of the impact of convergence in our assessment of demand and supply-side substitution below.

*The fluid boundaries between the different types of Investment Platforms*

6.46 We noted at paragraphs 6.33 and 6.110 that there is some ambiguity at the boundary over whether certain Investment Platforms should be defined as Retail Platforms. In our view, this is to be expected given the degree of product differentiation within the sector and is not incompatible with defining the services received by a category of Retail Platforms as a focal product or for the purposes of identifying a market in which competition may be substantially lessened as a result of the merger. The CAT has acknowledged that the boundaries of a market can be fluid.<sup>169</sup>

6.47 FNZ has suggested that our approach to the distinction between Retail and Non-Retail Platforms results in the exclusion from the relevant market of a number of Investment Platforms that, in its view, should be classified as Retail Platforms. We do not agree that this is the case but nevertheless we have considered whether our findings would be different in the event that a wider set of Investment Platforms were considered to be Retail Platforms. In the Phase 2 Report we identified a set of platforms as 'borderline' platforms, which we included in our analysis as a sensitivity. We have followed this approach below in our assessment of tender evidence in informing demand-side substitution in particular. We set out our approach to taking such platforms into account in our competitive assessment in paragraph 6.110.

6.48 FNZ argued that the CMA failed to take proper account of the behaviour of 'borderline' customers and needed to consider three categories of Platform,

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<sup>169</sup> See *Tobii AB (Publ) v Competition and Market Authority* [2020] CAT 1, paragraph 336, in which CAT stated: 'it is quite possible for one product to be part of a narrowly defined market within a larger market, as well as being within what could be defined as a separate market, and that the boundaries of a market may be fluid'. In *British Telecommunications PLC v Office of Communications* [2017] CAT 25, the CAT also stated that a 'decision may not hinge on the precise boundaries of the market in question'.

not two in its market definition exercise.<sup>170</sup> We do not consider that the platforms classified as ‘borderline’ in the Phase 2 Report form a distinct category or product market in themselves, as such customers do not have a distinct set of requirements, nor a recognised set of suppliers concentrated on these customers. Platform requirements vary from platform to platform, and two platforms being regarded as ‘borderline’ does not necessarily mean they have a common set of requirements. Instead so-called ‘borderline’ platforms share some characteristics of both Retail and Non-Retail platforms (so some or all could plausibly fall into either category).<sup>171</sup> We consider these platforms as part of our assessment below of demand and supply-side substitution (for example 6.67, 6.77, and 6.92). Any constraints from suppliers of Non-Retail Platform Solutions on the Parties have been taken into account within our competitive assessment.<sup>172,173</sup>

### *Conclusion on Investment Platform types*

6.49 Overall, we found that the term Retail Platform is widely understood and used by suppliers, customers and consultants; third parties provided similar descriptions for each Investment Platform type. There has been some convergence over time in the requirements of Retail and Non-Retail Platforms and many of the core functionalities across these platforms are similar, so there is not a ‘bright line’ distinction between different platform types. However, even taking into account these factors, we consider Retail Platforms can be viewed as a separate set of customers who require Retail Platform Solutions. Similarly, the fact that the boundary of the market is not distinct does not prevent us from defining a distinct product market for Retail Platform Solutions. The CAT has acknowledged that the boundaries of a market can be fluid. The question is to what extent customers are willing to substitute to alternatives (Non-Retail Platform Solutions providers), which we evaluate below.

### *Demand- and supply-side substitution between Retail and Non-Retail Platform Solutions*

6.50 Taking as our starting point the different types of Investment Platform set out above, we consider that any similarity between the supply of Retail Platform

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<sup>170</sup> NoA, paragraph 49.

<sup>171</sup> FNZ therefore mischaracterised our use of the ‘borderline’ designation in the Phase 2 Report in stating there are three categories of customer not two. NoA, paragraphs 23 (b) and 47 (b).

<sup>172</sup> We have included analysis of suppliers of Non-Retail Investment Platform Solutions in our competition analysis, including sensitivities where so-called ‘borderline’ platforms are included alongside Retail Platforms in our analysis of tenders and shares of supply to ensure that all competitive constraints on the Parties were fully reflected.

<sup>173</sup> See Chapter 8 and Appendices H and G.

Solutions and their characteristics, and how they are used by end-customers, do not necessarily support widening the candidate product market in which the Parties overlap.

- 6.51 In addition, in order to determine whether our candidate market should be widened to include providers of Non-Retail Platform Solutions, we considered the propensity of customers to substitute to other providers in response to a SSNIP.

*Demand-side substitution*

- 6.52 From a demand-side perspective, the relevant product market is the set of products that customers see as close substitutes when they respond to a worsening offer (such as a price increase) in one product.<sup>174</sup> In bidding markets, the products which customers select towards the final stage of a tender indicate which products customers see as closely competing.
- 6.53 We assessed whether differences existed between the requirements of Retail Platforms and Non-Retail Platforms and, if so, whether those differences meant that some suppliers are better suited to serve one group of customers than another and, therefore, can be considered to be close substitutes.
- 6.54 This approach allows us to focus not only on specific capabilities, but also to take account of the roles played by brand, reputation, user experience, and track record, which the available evidence shows are key considerations for customers when selecting a Platform Solutions provider.
- 6.55 As such, in the rest of this section we look at the differentiation of customer requirements for Platform Solutions, based on evidence from third parties, tender analysis and the Parties' internal documents and FNZ's representations.
- 6.56 Overall, we found that the following evidence indicates limited demand-side substitution:
- (a) Retail Platforms do not see Non-Retail Platform Solutions suppliers as credible alternatives as these generally lack or place lower importance on certain functionalities (eg pension wrappers) and the extent of automation required by Retail Platforms. Even where they could provide similar functionalities to those required by Retail Platforms, they lack experience

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<sup>174</sup> MAGs, paragraph 5.2.5.

and track record in serving Retail Platforms, which is seen as important by customers.

- (b) Competitors and other third parties considered that there was a distinction between the capabilities of Retail Platform Solutions providers and Non-Retail Platform Solutions providers which would make it difficult for Retail Platforms to switch to providers of Non-Retail Platforms Solutions.
- (c) Whilst some suppliers of Non-Retail Platform Solutions compete in some Retail tenders, their participation is less common than that of suppliers that are focused on Retail Platform Solutions, both at early and late stages of the tender process, which indicates that these suppliers are less credible alternatives to suppliers of Retail Platform Solutions.
- (d) The Parties' internal documents show that the Parties recognise that requirements of Investment Platforms vary, and that different suppliers are focused on different platform types.

6.57 We note that greater convergence between Investment Platforms would be liable to lead to Investment Platforms and their Platform Solution requirements becoming more similar and, consequently, to a greater likelihood of demand-side substitution. In contrast, the greater the degree of differentiation between Investment Platforms and their requirements, and the Platform Solution suppliers serving them, the less likely customers will be willing to switch between them. As we explained above in paragraph 6.42 to 6.45, although there has been some convergence between different types of Investment Platforms, and some Non-Retail Platforms provide similar core functionality, there remain key differences between Retail Platforms and other Investment Platforms (as described above). Similarly, even though Retail Platforms and other Investment Platforms can both serve similar types of investors, the products can be distinguished. We have taken account of these points in considering whether the product market should be widened to include other types of Investment Platform based on the ability of customers to substitute between Retail and Non-Retail Platform Solutions and whether different suppliers of Platform Solutions can meet the requirements of both Retail Platforms and Non-Retail Platforms.

- *Third party evidence*

6.58 Evidence from third parties indicates that there are differences between Platform Solution suppliers that affect the extent to which they can compete to supply different types of Investment Platforms, and hence limits the degree to which customers of Retail Platform Solutions would substitute to Non-Retail Platform Solutions in response to a SSNIP.

6.59 Evidence from customers indicated that Retail Platform Solutions accommodate more commoditised investment products, such as pensions, and have highly automated and efficient systems for operating at scale and managing a large number of investor accounts. Conversely, Non-Retail Platform Solutions are less automated and have more manual processes in place to accommodate more complex and bespoke requirements. Pensions capabilities are either not required or are significantly less important to Non-Retail Platforms. In particular:

- (a) An FNZ customer, [REDACTED], told us that there is a relatively clear demarcation between Retail Platforms and Non-Retail Platforms and their required functionalities. It said that Retail Platforms typically automate key functionalities that must be directly accessed by both end-investors and advisers and enable Retail Platforms to operate at scale. It said that while tax wrappers, such as ISAs and General Investment Accounts, are simple to administer, pension wrappers are more complex, require skills and experience that are in short supply in the market, and are typically offered by suppliers of Retail Platform Solutions. It said that ‘advisers and [Discretionary Fund Managers (DFMs)] operating in Retail Platforms will demand more sophisticated functionalities, however this demand is limited by the need to ensure the instrument is appropriate for a retail investor’. It identified FNZ, GBST and Bravura as able to meet its needs, while for [REDACTED] it stated these companies had a banking background, and it would require further investigation to ascertain whether they would be suitable based on regional fit and functionality and gap of the evolving Digital Wealth Management Platform market.
- (b) Another customer, Lloyds Banking Group, said that Retail Platforms are characterised by large volumes of investor accounts, less complex investments, and are focused on operating at scale with low costs as margins are low. It also said that Non-Retail Platforms have wealthier investors and offer more complex and bespoke investments, which makes advice relatively more important.
- (c) Another customer, [REDACTED], said that all platforms broadly do the same thing. However, there is differentiation across them. Some platforms are more focused on keeping prices low by only providing more basic investments and services. The premium platforms have extra functionality, higher levels of support and a wider range of more sophisticated investment options. It noted that having proven capabilities to manage significant volumes, together with all the associated customer records being accurately updated is critical, and it is essential that the tax wrappers are an integral part of the platform Software solution for a Retail platform operating at scale. It stated that at the time of selecting FNZ there were

only a limited number of providers that had proven experience in the UK Retail Platform market with a sizeable, mature platform business, identifying these as Bravura, FNZ and GBST (and possibly SEI in future).

- (d) Another customer, Sanlam, said that it was difficult to find a single supplier that could handle all of its platforms in one due to the different pensions products it offers and the need to support more than the standard wrapper most providers offer.

6.60 Evidence from competitors and consultants also considered that there was a distinction between the capabilities of Retail and Non-Retail Platform Solutions providers in line with those described by customers above, limiting the ability of customers to substitute between them. In particular:

- (a) A competitor, Bravura, said that ‘Retail and Non-Retail Platforms continue to have common capabilities, but the specific requirements of each market mean that these remain separate disciplines, requiring different technology solutions.’ Bravura said that suppliers of Retail Platform Solutions, such as FNZ, Bravura and GBST, do not readily support bespoke portfolio management, while Non-Retail Platform Solution suppliers, such as JHC, Pershing and Third Financial, do.
- (b) Another supplier, Avaloq, told us that ‘technology sourcing tends to be disparate, there are limited providers that could do it all’ and that ‘the distinguishing factors between itself and FNZ and GBST is the customer base and complexity of the investment asset class.’ Avaloq also told us that it can deal with different jurisdictions and significantly more complex products than suppliers of Retail Platform Solutions. It said that it does not need to offer pensions functionality to compete for Non-Retail Platforms, whereas it would need to develop this capability to compete for Retail Platforms that require this, such as those used by Independent Financial Advisers.
- (c) Another supplier, [REDACTED].
- (d) Another supplier, Pershing, said that the ability to operate at scale and to offer pension wrappers is critical to Retail Platforms. Pershing noted that, while it can serve both Retail Platforms and Non-Retail Platforms, its ‘current customer base is more weighted towards Non-Retail Platforms with its inherent requirements’.
- (e) Another supplier, [REDACTED], said that suppliers like FNZ, GBST and Bravura have direct processes in place to deal with a wide range of assets, are scalable and able to interact with external advisors. [REDACTED] further said that

suppliers such as Avaloq have different strengths, especially banking and discretionary functionalities.

(f) A consultant, the Lang Cat, said that different segments of the financial technology market 'have different customer behaviours in terms of how they invest, how frequently they invest, changes to their portfolio and the channels which they use to distribute their funds'. It said that suppliers such as Temenos and Avaloq deliver a more bespoke experience and would need to invest in automation of processes to be able to supply to retail platforms.

(g) Another consultant, EY said that, unlike other suppliers (such as Avaloq), GBST and Bravura operate in the 'retail investment side of the market' where pension functionalities are more important. It said that FNZ operates in this market but also has wealth management capabilities.

6.61 The qualitative evidence set out above is consistent with the views that customers, suppliers, and consultants provided when we asked them to provide scores on how close alternative suppliers, including the other Party, are to FNZ and GBST. This evidence indicates that suppliers which solely or predominantly focus on Non-Retail Platform Solutions (Pershing, Avaloq and Temenos) are not as close alternatives to the Parties as other suppliers of Retail Platform Solutions.<sup>175</sup>

6.62 Evidence from third parties also indicates that suppliers are typically focused on either Retail Platforms or Non-Retail Platforms. We recognise that FNZ may be an exception to this trend, as third parties submitted that FNZ has a broad range of capabilities and has had some success in competing for Non-Retail customers in addition to its primary Retail Platform offering.<sup>176</sup>

6.63 On the basis of the evidence summarised above, we consider that there are some differences between Platform Solution suppliers that affect the extent to which they are viewed as effective competitors by different types of Investment Platform; in particular, suppliers of Non-Retail Platform Solutions tend to be focused on meeting the requirements of those Platforms and are not normally well suited to supplying to Retail Platforms. Retail Platforms therefore do not consider them as credible alternatives, suggesting that they would not switch to Non-Retail Platform Solutions in response to a SSNIP.

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<sup>175</sup> See Chapter 8, section Closeness of competition between the Parties and also Appendix J.

<sup>176</sup> We have set out third party views on which suppliers focus on Retail Platforms and Non-Retail Platforms in Appendix I and J.



- *Tender analysis*

- 6.64 We analysed tenders in order to ascertain whether there was any demand-side substitution between Retail Platform Solutions and Non-Retail Platform Solutions. If the product market were wider than Retail Platform Solutions then we would expect to see suppliers of Non-Retail Platform Solutions appearing regularly in these tenders, indicating that they are viewed as potential substitutes by customers.
- 6.65 Our analysis shows limited demand-side substitution: overall, suppliers of Non-Retail Platform Solutions do not tend to participate or win tenders for Retail Platform Solutions. Evidence from both the early and final stages of a tender shows that Non-Retail suppliers have a limited presence in tenders for Retail Platform Solutions.<sup>177</sup>
- 6.66 In addition, in tender for Retail Platform Solutions where the Parties overlapped, suppliers that specialised in serving Non-Retail Platforms did not compete significantly.<sup>178</sup>
- 6.67 We also found that some suppliers of Non-Retail Platform Solutions compete in some tenders for Retail Platform Solutions and some tenders which may involve both Retail and Non-Retail elements (ie for platforms previously referred to as 'borderline' platforms).<sup>179</sup> However, their participation is materially less common than that of suppliers focused on Retail Platform Solutions, both at early and late stages, and so indicates that these suppliers are less credible alternatives to suppliers of Retail Platform Solutions. This again shows limited demand-side substitution.
- 6.68 We consider, therefore, that the tender evidence indicates that customers do not consider suppliers of Non-Retail Platform Solutions to be close alternatives to suppliers of Retail Platform Solutions, and that customers of Retail Platform Solutions would be unlikely to switch to Non-Retail Platform Solutions in response to a SSNIP.

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<sup>177</sup> See Competitive constraint from alternatives section in Chapter 8.

<sup>178</sup> Appendix I presents the alternatives to the Parties in Non-Retail tenders, at both early and final stages, and the winners on those tenders. This assessment shows a predominantly different set of suppliers competing in tenders for Non-Retail Platforms to those competing for Retail Platforms.

<sup>179</sup> See Competitive constraint from alternatives section in Chapter 8 and Appendix I.

- *Internal documents*

6.69 We collected over 18,000 documents in total and, having filtered these, focussed our analysis on a small number of documents which were of most relevance to our assessment.

6.70 The Parties' internal documents show that the Parties recognise that requirements of Investment Platforms vary, and that different suppliers are focused on different platform types.<sup>180, 181, 182</sup>

6.71 The Parties do not routinely segment customers in their internal documents, or comment on the extent to which other suppliers are focussed on certain types of customer (such as Retail or Non-Retail). Where they do analyse different customer segments, a variety of approaches are used, such as the type of 'retail channel' employed by the platform (direct to consumer or via investment advisers), the type of end-investor being targeted, or the type of institution operating the platform.

- *FNZ submissions on demand-side substitution*

6.72 FNZ stated that:

(a) We should put less weight on qualitative questionnaire responses and more on 'objective' data which shows there is 'no credible basis on which to identify a distinct market for the supply of 'Retail Platform Solutions';<sup>183</sup>

(b) We did not give due consideration to specific platform functionalities (ie our outline of the differences and similarities between Retail Platforms and Non-Retail Platforms was vague and failed to address evidence submitted by FNZ in this respect). It stated we failed to identify what functionalities Borderline and Non-Retail Platform Solutions suppliers lack nor why those shortcomings are sufficient to prevent demand-side switching in the event of a SSNIP;<sup>184</sup>

(c) Our distinction between Retail and Non-Retail Investment Platforms remains 'strongly influenced by downstream differences rather than Platform Solutions Suppliers' functionality'<sup>185</sup> (see paragraph 6.23) the functional distinctions in the Provisional Report between Retail and Non-

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<sup>180</sup> See Appendix D, paragraph 1 for screenshot and Appendix C, paragraph 1 for more details.

<sup>181</sup> See Appendix C, paragraph 2 for more details.

<sup>182</sup> See also Appendix D, paragraph 3 for screenshots and Appendix C, paragraph 3 for more details.

<sup>183</sup> FNZ Remittal Submission, 9 March 2021, paragraph 1.3.

<sup>184</sup> NoA, paragraph 48c(i).

<sup>185</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 1.3 and 3.2.

Retail Platforms (being the relative importance of automation and pension wrappers) 'are vague and inadequately substantiated'<sup>186</sup>;

- (d) Our assessment was focussed on current market conditions and failed to assess the reactions by relevant platforms in response to a SSNIP or degradation in quality<sup>187</sup> It also submitted that the CMA has not tested the extent to which a Retail Platform would be willing to switch to a provider with less experience supplying 'Retail' customers in the UK in the event of a price rise / decrease in quality;<sup>188</sup>
- (e) We failed to assess the willingness of customers to combine the IAS of a Non-Retail (or Sensitivity-Only) provider with the PAS of another provider in response to a price (or equivalent quality) change (6.23(b));<sup>189</sup> and
- (f) Where Non-Retail Platforms contain both retail and non-retail elements, suppliers of Platform Solutions to these Platforms must be able to also provide Retail Platform Solutions and would be a substitute to providers of Retail Platform in the event of a SSNIP.<sup>190</sup>

6.73 In relation to FNZ's submissions a) to c), as explained above at paragraphs 6.35 to 6.38, similarity in functionality (either upstream or downstream) is not sufficient to demonstrate that customers of Retail Platform Solutions would switch in response to a SSNIP. In determining whether it is appropriate to widen the candidate market to include Non-Retail Platform Solutions, we have not focused only on the requirements and function of these type of Investment Platforms. We also considered customers' and suppliers' willingness to substitute based on a range of evidence, rather than just undertaking a static assessment of the conditions.<sup>191</sup>

6.74 Furthermore, we have taken into account differences between end-customers of Retail and Non-Retail Investment Platforms insofar as these influence the choices made by Investment Platforms (see evidence considered in paragraphs 6.46 to 6.71 and findings summarised in paragraph 6.105). We, therefore, found it appropriate to place more weight on third party evidence, tender analysis and internal documentary evidence as indicators of substitutability than on a functional analysis of different platform providers.

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<sup>186</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 3.4.

<sup>187</sup> NoA, paragraph 48c.

<sup>188</sup> NoA paragraph 48d(v).

<sup>189</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 3.3(i).

<sup>190</sup> NoA, paragraph 48c.

<sup>191</sup> We therefore do not agree with FNZ's submission that the CMA's analytical focus is limited to current market conditions, rather than switching behaviour in event of hypothetical price increase/quality decrease (NoA paragraph 48c(ii)).

- 6.75 We also do not agree with FNZ's submission described in 6.72(c), for the reasons set out in paragraphs 6.10 to 6.16 to above. We consider that it is not necessary to ask customers directly how they would respond to a SSNIP. Instead, the range of evidence that we have gathered on substitutability (including from our tender analysis and internal documents) allows us to assess the likelihood that customers would switch to providers of Non-Retail Platform Solutions in response to a SSNIP. The direct evidence from customers suggests that Non-Retail Platform Solutions providers offer a different service and do not compete strongly with Retail Platform Solutions providers. This is also supported by evidence from tenders, set out at paragraphs 6.64 to 6.68 above. As set out above and in Chapter 7, customers take account of a wider set of criteria including the quality and track record of the provider in the supply of Retail Platform Solutions. Furthermore, our sensitivity analysis (described below) ensures that we are taking account of the potential constraint from providers of solutions to all platforms that could plausibly fall within the Retail Platform definition.
- 6.76 In relation to FNZ's submission described in 6.72(d), we note that evidence from third parties and GBST indicates that such integration is not straightforward and that, while different assets and platforms have different requirements, to have a fully integrated Investment Platform Solution is more important for Retail Platforms, where scale and efficiency is key, compared to Non-Retail Platforms.<sup>192</sup> This evidence suggests that overall, in reaction to a SSNIP, a Retail Investment Platform would be unlikely to switch to a solution combining Non-Retail IAS with the PAS of a Retail Platform Solutions provider.
- 6.77 Finally, in relation to FNZ's submission described in 6.72(e), we note that, even where Non-Retail Platforms have some Retail elements (ie platforms previously referred to as 'borderline' platforms), this does not necessarily mean that Retail Platform customers will be willing to switch to suppliers of such platforms in response to a SSNIP. As set out above, we have considered evidence of which suppliers are competing in tenders in practice, and which suppliers are viewed by customers as being viable competitors in order to assess this question.
- 6.78 On the basis of the evidence summarised above, we consider that there are differences between Platform Solution suppliers that affect the extent to which they can compete effectively to supply different types of Investment Platforms; in particular, suppliers of Non-Retail Platform Solutions tend to be focused on

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<sup>192</sup> GBST Response to the FNZ Phase 2 Initial Submission 27 May 2020 page 11. Customer evidence indicating integration of tax wrappers including pensions as important include [REDACTED].

meeting the requirements of those Platforms and are not normally well suited to supplying Retail Platforms, and lack a track record in doing so. Retail Platforms therefore do not consider them as credible alternatives.

### *Supply-side substitution*

6.79 The boundaries of the relevant product market are generally determined by reference to demand-side substitution alone.<sup>193</sup> We also considered whether providers of Non-Retail Platform Solutions would have the ability and incentive quickly (generally within a year) to shift capacity between different Platform Solutions in response to a SSNIP.<sup>194,195</sup> We found that supply-side substitution was likely to be limited. Very few suppliers supply both Retail Platforms and Non-Retail Platforms, including those with some Retail elements (FNZ is unusual in this respect). Furthermore, competitors told us that it would generally take time and would be costly to invest in the specific functionalities required to compete effectively in offering Retail Platform Solutions, and some indicated the available returns would not make this attractive.

- *Third party evidence*

6.80 We found that customers typically ask for information on suppliers' current capabilities and whether they are able to provide a specific functionality in the early stages of tenders for Retail Platforms. As set out in Appendix E, selection criteria also typically include corporate capability and culture (including the supplier's core business and strategy aligned with the platform, financial stability, market reputation, track record, breadth and depth of expertise), regulatory, risk and compliance and migration capability, and commercial and contractual terms.

6.81 We note that the third party evidence set out in relation to demand-side substitution (paragraphs 6.60 to 6.62) also indicates that there is limited supply-side substitution because 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.

6.82 We asked suppliers of Platform Solutions and consultants to explain how easy it would be for suppliers to Non-Retail Platforms to adapt their Platform Solutions to enable them to compete for Retail Platforms. Out of the nine

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<sup>193</sup> MAGs, paragraph 5.2.17.

<sup>194</sup> MAGs, paragraph 5.2.17.

<sup>195</sup> While we have considered this issue as part of the Market Definition analysis here, we note that these issues are also relevant for our assessment of entry and expansion (see Chapter 9).

respondents that gave a view, seven considered it would be hard for suppliers to adapt their Platform Solution.

6.83 These challenges included the limited opportunities to compete and customers being likely to consider proceeding with an unproven software partner to be too risky. One competitor noted that incumbent suppliers are entrenched, and it would be difficult for a new entrant to win any business and justify the client's business case for moving platforms.<sup>196</sup>

6.84 The evidence generally indicates that the task of adapting Platform Solution capabilities is difficult and unattractive:

(a) SS&C submitted that the need to handle thousands of advisors and hundreds of thousands of underlying retail investors would require wholesale rewriting of code to change operating procedures and working processes. SS&C also submitted that 'radically adapting wealth management software to accommodate the needs of the retail investment platform market, which as a sector remains stubbornly unprofitable, does not appear to hold great appeal'.

(b) Equiniti said that having pension wrapper solutions fully integrated is a 'massive challenge' for Non-Retail Platform suppliers and that being able to support the scalability and the extent of automation required by a Retail Platform would be a major challenge.

(c) A competitor noted that there were high costs of entry and that any return on investment could only be achieved in the long term.

(d) [X] told us that the differences in the complexity of the products offered and in the costs of providing Investment Platform Solutions to Retail and Non-Retail Platforms make its expansion into the Retail segment unviable.

(e) Temenos told us that [X].

6.85 By way of exception, two respondents indicated that adapting their Platform Solution may be possible. More specifically:

(a) Fundscape submitted that Pershing could change the 'front end' part of its solution to better meet the requirements of Retail Platforms. Despite customers' perception of Pershing's services, we note that Pershing itself

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<sup>196</sup> See also Chapter 7, section on switching costs.

considers that it is already able to serve both Retail and Non-Retail Platforms; and

(b) Another consultant said that Avaloq and Temenos were good examples of firms that are likely to increase their focus and presence in Retail Platforms. However, Avaloq and Temenos told us that [§]. This position is consistent with the majority of respondents, who did not think that Non-Retail suppliers could easily adapt and pointed to a number of challenges.

- *Tender analysis*

6.86 As noted above in paragraphs 6.66, the assessment of Retail tenders where the Parties overlapped, indicates that suppliers that specialised in serving Non-Retail Platforms did not compete significantly in these tenders.<sup>197</sup> This also suggests that suppliers of Non-Retail Platform Solutions do not easily adapt their offer to compete to supply Retail Platforms, indicating limited supply-side substitution.

- *Internal documents*

6.87 We found no evidence in the Parties' internal documents that Non-Retail Platform Solutions suppliers exert a material constraint on the Parties' Retail Platform Solutions businesses or that the Parties are concerned that Non-Retail Platform Solutions suppliers would be able to adapt to compete for Retail Platform opportunities. This suggests to us that potential competition from Non-Retail Platform Solutions suppliers is not an important consideration in the Parties' commercial decision-making and consequently is not seen as a competitive threat to their Retail Platform Solutions.

6.88 On the basis of the evidence above, we found that supply-side substitution is likely to be limited.

- *FNZ submissions on supply-side substitution*

6.89 FNZ submitted that in assessing supply-side substitution the CMA had failed to assess:<sup>198</sup>

(a) The incremental functionality required for Non-Retail Platform Solutions providers to supply Retail platforms; and

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<sup>197</sup> Appendix I presents the alternatives to the Parties in Non-Retail tenders, at both early and final stages, and the winners on those tenders. This assessment shows a predominantly different set of suppliers competing in tenders for Non-Retail Platforms to those competing for Retail Platforms.

<sup>198</sup> NoA, paragraph 48(d).

(b) The extent to which Non-Retail Platform Solutions providers would modify their solutions and start supplying Retail Platforms in the event of a market-wide price rise/quality degradation in relation to Retail Platform Solutions and what would happen in terms of supply-side substitution if the prices were to increase as a result of the Merger (paragraph 6.23(c)).

- 6.90 In relation to the first point, as noted at paragraph 6.81 above, we asked suppliers and other third parties for evidence of the ease of adapting Non-Retail Platform Solutions to compete for Retail Platform Solutions, which would include taking account of the incremental functionality required. This evidence indicated that supply-side substitution was generally difficult.
- 6.91 In relation to the second point, in light of this evidence from third parties and the lack of any evidence that the Parties are concerned about suppliers of Non-Retail Platform Solutions adapting their products, our view is that it is unlikely that the suppliers of Non-Retail Platform Solutions would have the ability and incentive quickly (generally within a year) to adapt their products to compete for Retail Platforms in the event that prices of Retail Platform Solutions increased by a small but significant extent on a non-transitory basis.<sup>199</sup> We do not consider that information on the precise functionality that would be required by different providers to adapt their propositions to be able to fully serve the needs of Retail Platforms (as opposed to offering some of the capabilities required) is necessary to inform this view, given the information gathered from third parties as to their broader willingness and ability to do this.
- 6.92 We acknowledge that some suppliers that do not currently serve Retail Platforms do provide Platform Solutions to platforms with both Retail and Non-Retail elements (ie platforms previously referred to as ‘borderline’ platforms). We have seen limited evidence as to the ability of these providers to meet the needs of Retail Platforms (as set out above). However, even if such suppliers may find it easier to supply (at least some) Retail Platforms than Platform Solution suppliers which have no presence in serving platforms with some Retail and Non-Retail elements, we have taken this into account within our sensitivity analysis (as described at paragraph 6.110) and in our assessment of out of market constraints in our competitive assessment.
- 6.93 Finally, as explained in paragraph 6.12, in a highly differentiated bidding sector, suppliers’ responses to a hypothetical SSNIP question are unlikely to be informative. Furthermore, the supply of Platform Solutions to Investment Platforms is characterised by long-term contracts, in which prices are

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<sup>199</sup> See also Chapter 9 for our assessment of entry and expansion.



negotiated individually, and where there is very limited price transparency. Therefore, any reaction from suppliers to a price increase or deterioration in the quality of the Merged Entity's offer would not be timely to prevent the Merged Entity from profitably worsening its offer.

*Conclusion on demand and supply-side substitution between Retail and Non-Retail Platform Solutions*

- 6.94 The evidence above shows that Retail Platforms have specific preferences, which affect their choice of Platform Solutions provider. In line with the MAGs<sup>200</sup>, we consider that Retail Platforms are a distinct customer segment and that it is appropriate to define the relevant market by reference to that customer segment.
- 6.95 Given the evidence that (i) demand-side substitution by Retail Platforms away from suppliers of Retail Platform Solutions, and (ii) supply-side substitution by Non-Retail Platform Solutions suppliers into providing Retail Platform Solutions, are likely to be limited in response to a SSNIP, we have found that the market should not be widened to include Non-Retail Platform Solutions suppliers.

*Platform Solutions for legacy products*

- 6.96 We also considered whether we should distinguish within the supply of Retail Platform Solutions between the supply of Solutions to Retail Platforms managing active products on the one hand, and legacy products on the other.
- 6.97 FNZ stated that our claim in the Provisional Report that legacy products are highly differentiated from active products is not substantiated. FNZ disagrees that providing services for legacy products is (quoting the Provisional Report) 'differentiated from the Parties' product offering'. It submitted that platforms with legacy products have the same technology and administration requirements as those with active products.<sup>201</sup>
- 6.98 Investment Platforms can allow customers to (i) open and invest in actively marketed investment products, (ii) manage savings and investments held in products which are no longer available to new customers or actively marketed (legacy or heritage products), or (iii) a combination of both. We have considered whether conditions of competition are similar for both active and

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<sup>200</sup> MAGs, paragraphs 5.28 and 5.30.

<sup>201</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 3.7.

legacy products such that they should be considered to be in the same market.

- 6.99 On the demand side, there is some evidence that the needs of platforms serving legacy products are different to those serving active products. This leads to different providers serving the different types of platform. [X] told us that many customers will have different strategies and platforms for their own heritage products compared to their future-facing open books, and the nature of the products supported differ, and so often choose different Platform Solutions providers for each. GBST submitted that certain companies (like TCS BaNCS) operate solutions for legacy closed books of business, so offer bespoke services to lift out those operations and technologies, but do not focus on providing Investment Platforms which manage new or active investment products.
- 6.100 However, we are aware that in some cases Investment Platforms will seek to use the same platform (and the same Platform Solutions provider) to serve both its legacy and active products.<sup>202</sup> This can particularly be the case where an Investment Platform is seeking to entirely re-platform its products and streamline to using one platform in place of multiple existing platforms, although we note that these are often large and complex undertakings.
- 6.101 Given that Platform Solutions for legacy products can be provided alongside Platform Solutions for active products, on a cautious basis, we considered the supply of Retail Platform Solutions to both active products and legacy products as part of the same relevant market. We have taken account of the differentiation between Platform Solution providers serving legacy and active products as part of our assessment of closeness of competition.

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

- 6.102 We found that Retail Platform Solutions suppliers do not usually compete closely with Non-Retail Platform Solutions suppliers.
- 6.103 Our view is that Retail Platforms and Non-Retail Platforms have different propositions and serve different groups of investors. Retail Platforms offer more commoditised products, with the provision of tax wrappers such as pensions being a more important element of their offer. Retail Platforms generally have a larger number of investors than Non-Retail Platforms. Consequently, it is more important for Retail Platforms to be highly automated and have efficient systems for managing customer accounts.

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<sup>202</sup> For example, GBST will provide Platform Solutions to [X] serving both its legacy and open products.

- 6.104 Conversely, we found, based on the current evidence, that Non-Retail Platforms offer more bespoke products and have more manual processes to serve the needs of a smaller number of wealthier investors with more sophisticated requirements. Non-Retail Platforms either do not need pensions functionality, as is the case for some stockbroker platforms, or it is less important as is the case for some PCIMs and private banks.
- 6.105 The different requirements of Retail Platforms and Non-Retail Platforms have led to the suppliers of Platforms Solutions tending to specialise in serving one or the other type of platform. We found that:
- (a) While there is some (relatively recent) convergence between the two types of Investment Platforms, material differences remain between Retail Platforms and Non-Retail Platforms and between the suppliers of Platform Solutions that they regard as close alternatives;
  - (b) There is limited competition in tenders for Retail Platforms from suppliers that focus on serving Non-Retail Platforms, suggesting that Retail Platforms do not view Non-Retail Platform Solutions suppliers as close substitutes for, and as being in strong competition with, Retail Platform Solutions;
  - (c) It would be a lengthy and costly process for Non-Retail Platform Solutions suppliers to adapt their offering; and
  - (d) Even if Non-Retail Platform Solutions suppliers could adapt to provide Investment Platform Solutions to both Retail Platforms and Non-Retail Platforms, Retail Platforms do not see Non-Retail Platform Solutions suppliers as credible alternatives as they lack experience and track record in serving Retail Platforms.
- 6.106 Although Retail Platforms and Non-Retail Platforms may have some similar requirements, this does not necessarily mean that the services supplied to these Investment Platforms are part of the same relevant market. Overall, the evidence considered above indicates that there is limited demand- and supply-side substitution.
- 6.107 Product markets are not always defined by reference to bright lines. Some products within a product market may share some similar features with products in another product market. When considering the supply of Platform Solutions, while there may in principle be some customers that consider Retail Platform Solutions suppliers and Non-Retail Platform Solutions suppliers as closer alternatives (such as Investment Platforms with Retail and Non-Retail elements), any switching or threat of switching by such customers in response

to a SSNIP would not protect other customers from price rises, given that suppliers can tailor their terms for each customer.

- 6.108 We have, therefore, not included supply of Non-Retail Platform Solutions within the relevant market. However, our view is that not all Investment Platforms are clearly a Retail or Non-Retail Platform. We found this is a differentiated market and no Investment Platform is identical to another. While many Investment Platforms have a clear Retail or Non-Retail proposition, some have both elements and there may be closer competition between Retail Platform Solutions suppliers and Non-Retail Platform Solutions suppliers for platforms that do not have a clear Retail or Non-Retail proposition.
- 6.109 As the boundaries of the relevant market are fluid, for the purposes of our assessment, we considered that an Investment Platform was a Retail Platform when the customer has identified itself as a Retail Platform or where both FNZ and GBST have identified the platform in that way. Evidence from third parties shows that the concept of a Retail Platform is widely understood and used by suppliers, customers and consultants.
- 6.110 FNZ has suggested that our approach to the distinction between Retail and Non-Retail Platforms results in the exclusion from the relevant market of a number of Investment Platforms that, in its view, should be classified as Retail Platforms.<sup>203</sup> We do not agree that this is the case but nevertheless we have considered whether our findings would be different in the event that a wider set of Investment Platforms were considered to be Retail Platforms (Sensitivity-Only Platforms), and accordingly, the Platform Solutions providers to those additional Investment Platforms were competitors in the product market. This has allowed us to test whether our competition assessment, particularly with regard to shares of supply and tender analysis, would be affected by including a wider set of Investment Platforms and their Platform Solutions providers in the product market. We identified this wider set using third party information<sup>204</sup>, as well as FNZ's and GBST's views (see Appendix G).<sup>205</sup>

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<sup>203</sup> We note that FNZ's views as to the classification of an Investment Platform's classification do not always align with those of the platform itself [§<].

<sup>204</sup> In its response to the Provisional Report, 30 April 2021, paragraph 3.5, FNZ submitted that certain Investments Platforms, which provide almost identical services and require the same functionality, were classified differently which shows the 'lack of clarity' of our market definition (see paragraph 6.23(e)), we note that our classification of these Investment Platforms relied on their assessment. Furthermore, it was exactly to reflect the fact that the boundaries of the relevant market are fluid, that we have tested whether our competition assessment would be affected by including a wider set of Investment Platforms.

<sup>205</sup> FNZ's submission in paragraph 53 of the NoA that the CMA reached conclusions on the competitive assessment without reference to the supposed extra-market constraints is not an accurate representation of the approach we adopted and the factors we considered in the Competition Assessment.

## ***Delivery model***

6.111 This section considers whether different delivery models – including Software-only and Combined Platform Solutions (also known as Platform as a Service (PaaS)) – should be included within the same product market.

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

6.112 At Phase 1 of the CMA's investigation, FNZ submitted that:

- (a) The product market definition should include all delivery models including Software-only Platform Solutions and Combined Platform Solutions (which FNZ refers to as PaaS) and their variations.
- (b) The choice of delivery model does not, as a practical matter, change the totality of the Platform Solutions that must be procured. FNZ further stated that all delivery models are credible alternatives for customers and, as such, all form part of the same market.
- (c) Suppliers with different delivery models compete against each other, including in tenders. FNZ said that customers may invite suppliers operating different models to participate in the same tender process and can decide the delivery model at any stage of the procurement process, including the final selection stage.
- (d) It is not unusual that suppliers of Combined Platform Solutions lose bids to suppliers of Software-only Solutions and vice versa.
- (e) Customers frequently combine suppliers (including their own self-supply models) to achieve a complete Platform Solution.

6.113 In the Phase 2 Inquiry, FNZ said that both Software-only Solutions and Combined Platform Solutions offer a constraint to FNZ, but added that:

- (a) Different delivery models have different characteristics and, as a result, cater to customers with distinct preferences. While suppliers with different models (Software-only Solutions or Combined Platform Solutions) bid against each other, [redacted]. FNZ submitted that this demonstrates that suppliers of Software-only Solutions and Combined Platform Solutions do not compete closely.<sup>206</sup>

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<sup>206</sup> FNZ response to the phase 2 Issues Statement, paragraphs 2.4-2.6 and FNZ response to the phase 2 Findings, paragraphs 4.2-4.3.

- (b) The 'software alternative is clearly a credible alternative but we are [redacted]. It said that it lost '£[redacted] of assets to software alternatives...but [it] lost £[redacted] to PaaS'.
- (c) It typically only competes against Software-only Solutions at the early stage of tenders where substantive competition does not take place and is not successful beyond this stage in tenders where customers have decided they require a Software-only Solution
- (d) Partnerships between suppliers of Software-only Solutions and servicing suppliers are not a credible alternative to an integrated PaaS supplier;<sup>207</sup> and
- (e) 'The [redacted]'.

6.114 In the Remittal, FNZ restated its view that the main demand-side consideration for a platform is whether to choose PaaS or Software-Only Solutions. It submitted that these delivery models offer very different solutions for platform customers.<sup>208</sup>

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

- (a) Suppliers with different delivery models compete against each other when customers have not yet decided what type of model of Platform Solutions would work best for them.
- (b) Investment Platforms will often look at all the options available for the model of supply in the beginning of the process, because choosing a model and a supplier is a decision a customer makes every 15-20 years.
- (c) Investment Platforms may prefer Software-only Solutions or Combined Platform Solutions after a certain stage of the tender process, such as post-RFP.<sup>209</sup>

### *Our assessment*

6.116 We have found that all Investment Platforms need to combine software and servicing to form complete Platform Solutions in order to run their platforms.

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<sup>207</sup> FNZ Initial phase 2 Submission, paragraphs 6.7-6.14; FNZ response to the phase 2 Issues Statement, paragraphs 2.23-2.25; FNZ response to the phase 2 Provisional Findings, paragraphs 3.13 and 4.4; and [redacted].

<sup>208</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 4.21

<sup>209</sup> GBST response to the FNZ Initial phase 2 Submission, page 1.

Each component may be provided in-house or outsourced to a third party (either the same third party or two different suppliers).

6.117 There are two main delivery models for the supply of Platform Solutions when these are not provided entirely in-house:

- (a) Software-only Solutions by a third party such as GBST with servicing provided in-house; and
- (b) Combined Platform Solutions which includes both software and servicing, either provided by a single supplier or two suppliers.

6.118 We examined the extent to which Software-only Solutions suppliers (such as GBST) compete with Combined Platform Solutions offered by a single firm (such as FNZ) in order to determine whether they should be included within the same product market.

6.119 To take account of the different ways through which Software-only suppliers can constrain single suppliers of Combined Platform Solutions, we looked at the extent to which Software-only Solutions competed with Combined Platform Solutions either by offering standalone Software-only Solutions or by offering Combined Platform Solutions in conjunction with a servicing supplier, such as the partnership between GBST and Equiniti. We considered the extent to which partnerships are considered a credible alternative to Combined Platform Solutions from a single supplier. Not considering the possibility that Software-only suppliers can also offer Combined Platform Solutions through partnerships would only give a partial view of competition between a Software-only supplier such as GBST and a Combined Platform Solutions supplier such as FNZ.

6.120 As explained in more detail below, we found that some customers considered Software-only Solutions (either alone or in partnership with servicing suppliers) and Combined Platform Solutions by a single supplier as credible alternatives. We also found Software-only suppliers and Combined Platform Solutions suppliers competing in a significant number of tenders for Retail Platform Solutions. We did not find evidence to suggest that Software-Only and Combined Platform Solutions suppliers should be treated as separate markets.

#### *Third party evidence*

6.121 Third parties told us that a supplier's delivery model was important, and many explained that customers will choose between Software-only Solutions or Combined Platform Solutions based on strategic need.

6.122 We asked competitors and consultants at which stage in the tendering process customers made their choice between Software-only Solutions and Combined Platform Solutions:

- (a) Just under half (three of the eight) competitors that provided a view said that customers usually form a view on the preferred delivery model early, so that the tendering process would only consider suppliers who offered the preferred model but not both. However, just over half (five of the eight) said that some customers remain undecided for some time in the tender process and consider both.
- (b) All four consultants that gave a view told us that customers will make a decision as to whether to outsource the servicing aspect depending on the cultural fit and strategy of the Investment Platform:
  - (i) Two consultants said that customers typically consider both delivery models very early on in the procurement process, but recognised that this may vary;
  - (ii) One consultant said, [redacted], most customers will make a decision towards the middle to the end of the process, but before the commercial negotiations stage; and
  - (iii) One consultant told us that some customers will start the tender process having decided which delivery model they are seeking, while others will keep the choice as to whether to outsource the servicing aspect to the later stages of the tender process.

6.123 We found that most third parties consider that partnerships which bring together Software-only and servicing suppliers compete with Combined Platform Solutions provided by a single supplier.<sup>210</sup>

- (a) Most customers (11 out of 18 that gave a view) indicated that partnerships are a credible alternative to Combined Platform Solutions from a single firm. The remaining seven indicated that they more strongly prefer Combined Platform Solutions from a single supplier.
- (b) Three out of five consultants told us that there are challenges in dealing with two different suppliers, but partnerships can be successful and are able to compete against Combined Platform Solutions from a single supplier. One consultant told us that partnerships could provide effective

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<sup>210</sup> See Chapter 8, section Closeness of competition between the GBST/Equiniti partnership and FNZ for more details on third party evidence on the extent to which the GBST/Equiniti and FNZ are considered credible alternatives.



competition, while another told us there is little evidence of partnerships in the UK Retail Platform market.

### *Tender analysis*

6.124 Based on the evidence available, we found that Software-only suppliers, either alone or in partnership with servicing suppliers, and Combined Platform Solutions suppliers were present in the early and final stages of a significant number of Retail Platform tenders.<sup>211, 212</sup> In particular:

- (a) In at least [X] of the [X] tenders for Retail Platforms where we knew the identity of at least two bidders,<sup>213</sup> there was a mix of Software-only Solutions and Combined Platform Solutions suppliers bidding at the early stage; and
- (b) In at least [X] out of the [X] tenders for Retail Platforms where we knew the identity of at least two bidders at the final stage, both Software-only Solutions and Combined Platform Solutions suppliers were present at the final stage.

6.125 We find the same result within the sensitivity case: both Software-only suppliers, either alone or in partnership with servicing suppliers, and Combined Platform Solutions suppliers are present in the early and late stages in a significant number of tenders such that they compete.<sup>214</sup>

- (a) In at least [X] of the [X] tenders where we knew the identity of at least two bidders,<sup>215</sup> there was a mix of Software-only Solutions and Combined Platform Solutions suppliers bidding at the early stage; and

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<sup>211</sup> Not all Investment Platforms responded to our questionnaire and, therefore, the list of bidders in each tender may not be exhaustive. For this reason, there may be more tenders in the CMA data which included Combined Platform Solutions suppliers competing with Software-only Solution suppliers.

<sup>212</sup> These figures are accurate as far as we have been able to verify bidders in each tender. We consider the following suppliers to offer Software-only Solutions: GBST, JHC, Bravura, Objectway, Temenos, IRESS, Third Financial, InvestCloud, CTC, Aquila, Delta and Sapiens. Avaloq and Dunstan Thomas, who can offer both Software-only and Combined Platform Solutions, were classified as Software-only suppliers in certain tenders where they offered a Software-only solution.

<sup>213</sup> We considered tenders with at least two known bidders at each stage to make an informed comparison over the whether the customer had a preference over the type of supplier. As we may not have complete information on the set of bidders for all tenders, there may be more than eight tenders that could have involved a mix of Software-only and Combined Platform Solutions suppliers.

<sup>214</sup> Not all Investment Platforms responded to our questionnaire and, therefore, the list of bidders in each tender may not be exhaustive. For this reason, there may be more tenders in the CMA data which included Combined Platform Solutions suppliers competing with Software-only Solution suppliers.

<sup>215</sup> We considered tenders with at least two known bidders at each stage to make an informed comparison over the whether the customer had a preference over the type of supplier.

(b) In at least [X] out of the [X] tenders where we knew the identity of at least two bidders at the final stage, both Software-only Solutions and Combined Platform Solutions suppliers were present at the final stage.

6.126 We also note that all the evidence consistently shows that Bravura - a Software-only supplier - is a close alternative to FNZ (on its own or in partnership with servicing suppliers), which supports a conclusion that both delivery models should be part of the same product market.

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

6.128 Customers can also indicate which elements they intend to outsource and which will be kept in-house.<sup>216</sup> We found that Investment Platforms seeking to outsource both the software and servicing components of their Platform Solutions consider suppliers that can offer both on their own as well as suppliers that offer both via a partnership.<sup>217</sup>

#### *Internal documents*

6.129 Our analysis of the Parties' internal documents indicates that FNZ and GBST identify each other as one of their main competitors, despite the differences in their delivery models. Both Parties' internal documents also refer to other suppliers that provide both Software-only Solutions (Bravura), and Combined Platform Solutions (SS&C).<sup>218</sup>

#### *Conclusion on delivery model*

6.130 We consider that Software-only and Combined Platform Solutions Suppliers are part of the same product market. This is due to a material number of customers considering Software-only Solutions (either alone or in partnership with servicing suppliers) and Combined Platform Solutions by a single supplier as credible alternatives. This is further supported by Software-only suppliers and Combined Platform Solutions suppliers competing in a

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<sup>216</sup> Appendix D illustrates this by showing an example when [X] identified which elements they wished to retain in-house and which elements could be assessed for full or partial outsourcing in their RFP

<sup>217</sup> See Chapter 8.

<sup>218</sup> See Chapter 8, sections on Closeness of competition between the Parties and Competitive constraints from alternatives, Internal Documents subsections.

significant number of tenders for Retail Platform Solutions, even up to the final stage of the tender. These tenders reflect how the Parties' different delivery models overlap and compete more closely for some customers.

- 6.131 The evidence we gathered does not support FNZ's view that differences in the delivery model of each Party are a more significant differentiating factor than the differences between Retail and Non-Retail Platforms Solutions suppliers. In Retail Platform tenders where the Parties overlapped, suppliers that focus on Non-Retail Platforms did not compete significantly.
- 6.132 We found that some customers prefer one delivery model over another, for example some customers see partnerships between Software-only and servicing suppliers as a poor alternative to Combined Platform Solutions offered by a single supplier. These customers would not protect other customers that would suffer more from any reduction of competition between FNZ and GBST given that suppliers can tailor their terms by customer.

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

#### *FNZ submissions*

- 6.133 FNZ submitted that in-house supply provides a real and credible alternative to third party Platform Solutions, irrespective of the Investment Platform's size, level of sophistication or customer focus. FNZ submitted that:
- (a) Many Platforms self-supply some or all of the components of their Platform Solutions;
  - (b) The barriers to switching to an in-house Platform Solution are broadly similar to those applicable to switching to a third party supplier;
  - (c) Customers are able to, and in practice do, switch from in-house to third party provision and vice versa in response to a range of commercial and strategic requirements; and
  - (d) In-house supply is actively considered and wins in procurement processes.
- 6.134 FNZ submitted that there are examples of third parties that brought the supply of their software in-house after having previously outsourced it, such as [REDACTED] and [REDACTED].

## *Our assessment*

### *Third party evidence*

- 6.135 Evidence from competitors, customers and consultants indicates that Retail Platforms increasingly outsource the provision of software, for reasons related to quality, economies of scale and cost.
- 6.136 The vast majority of customers (20 out of 23) that gave a view indicated that the supply of software in-house was not an option for them because of the lack of expertise and budget required to develop and maintain in-house software.<sup>219</sup> This indicates that in-house provision of software is unlikely to be a significant constraint on the Parties.
- 6.137 In contrast, many third parties considered the supply of servicing in-house to be possible. Most customers (14 out of 19) that gave a view said that in-house servicing was a viable option, and a small number had a strong preference for in-house servicing as it is an important part of their customer proposition.<sup>220</sup>
- 6.138 Finally, FNZ provided examples of third parties that brought the supply of their software in-house after having previously outsourced it. However, we consider that these examples are confined to large global institutions<sup>221</sup> which are unusually well positioned to supply software in-house due to their scale and existing strong investment solution capabilities.<sup>222</sup>

### *Tender analysis*

- 6.139 Within tenders for Retail Platform Solutions, our tender analysis indicates that in-house supply of software and/or servicing is sometimes a viable alternative, but usually in cases where either the Platform Solutions are already supplied in-house, or the Investment Platform is new and not replacing existing Solutions.
- (a) In-house supply was identified as an option in [X] of [X] recent Retail tenders [X] were won by an in-house solution.
- (b) In-house supply was [X] as an option where the Platform Solutions requirement was already fully outsourced.<sup>223</sup>

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<sup>219</sup> See also Appendix J.

<sup>220</sup> We set out further evidence on this in Appendix J.

<sup>221</sup> [X].

<sup>222</sup> [X].

<sup>223</sup> We mostly rely on the Parties' information about in-house being considered an option alongside other suppliers, as very few customers included in-house solution in the list of bidders for their tenders.

6.140 The sensitivity analysis found similar results, with in-house supply being identified as an option in [REDACTED] of [REDACTED] tenders. [REDACTED] of these tenders were won by in-house provision of Platform Solutions.<sup>224</sup> In-house supply was [REDACTED] as an option in cases where the Platform Solutions requirement was already fully outsourced.

#### *Internal documents*

6.141 We found that in-house Platform Solutions were often mentioned in the Parties' documents [REDACTED]. However, they were [REDACTED] in these documents by either Party, [REDACTED]. The Parties' internal documents indicated that Investment Platforms are more willing to shift from in-house to outsourced Platform Solutions than vice versa.

6.142 The Parties' internal documents also indicated that:

- (a) [REDACTED];
- (b) [REDACTED];and
- (c) [REDACTED].

#### *Conclusion on in-house provision of software and/or servicing*

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

#### **Conclusion on product market**

6.144 Based on the evidence set out above, we found that the relevant product market for examining the effects of this Merger is the supply of Retail Platform Solutions, excluding the in-house supply of software.

6.145 However, we do not consider that market definition is a determinative part of our competitive assessment and we took into account differences in delivery models and out-of-market constraints including from Non-Retail Platform Solutions suppliers and in-house software in our competitive assessment.

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<sup>224</sup> We are mostly relying on the Parties' information about in-house being considered an option alongside other suppliers, as very few customers included in-house solution in the list of bidders for their tenders.

6.146 This is consistent with the position set out in the MAGs that identification of the relevant market(s) and the assessment of the competitive effects of the merger in the market(s) should not be viewed as two distinct analyses. In practice, the analysis of these two issues will overlap, with many of the factors affecting market definition being relevant to the assessment of competitive effects and vice versa.<sup>225</sup>

## Geographic market

### *FNZ and GBST submissions*

6.147 FNZ submitted that the appropriate geographic market is global in scope and certainly no narrower than UK-wide. It told us that:

- (a) Customers do not choose suppliers based on their geographic location but consider offerings from a range of capable suppliers irrespective of their location;
- (b) Suppliers can offer similar propositions in multiple jurisdictions and the steps required to adapt to regulatory conditions in a new country are not significant;
- (c) All significant Platform Solutions suppliers currently active in the UK originated abroad, and that most of the investment required to develop Platform Solutions is needed to develop the core parts of the technology, rather than to tailor the platform to local requirements; and
- (d) There has been convergence between international regulatory regimes.

6.148 FNZ submitted that GBST, [REDACTED].

6.149 This suggests that FNZ sees a difference in market characteristics between the UK and Australia and, in general, a need for suppliers to plan investments having regard to the unique features of each relevant national market.<sup>226</sup>

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

- (a) [REDACTED].
- (b) [REDACTED].

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<sup>225</sup> MAGs, paragraph 5.1.1.

<sup>226</sup> FNZ phase 2 Submission, 21 March 2020, page 13.

6.151 GBST submitted that:

- (a) In order to enter new countries, a supplier must have a local presence and speak the language, understand the dynamics of the market and the product and tax rule requirements;
- (b) The upfront investment required to 'understand and meet the operating requirements to comply with regulation and tax rules is 'significant'; and
- (c) Convincing customers to switch to a new or unknown supplier with no direct UK track record is seen as a 'very high risk to the prospective customer and potentially the supplier'.

### ***Our assessment***

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

- (a) The UK tax and regulatory regime is different to that in other jurisdictions;<sup>227</sup> and
- (b) Suppliers which provide certain Platform Solutions servicing such as asset custody services must be authorised by the Financial Conduct Authority (FCA).

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

### ***Internal documents***

6.154 The Parties' internal documents seldom discuss the deployment of Platform Solutions to new countries, but those that do show that the process involves adapting to complex country-specific regulatory requirements which may require the help of an external consultant, and customisation to the relevant local market needs in terms of language, currency and compliance.<sup>228,229,230</sup> Evidence from its internal documents shows that FNZ was required to adapt to local requirements in nine out of ten countries in which it operates.

6.155 We found that the Parties' documents focus on the UK as a distinct market, rather than as part of a wider European or global market. While some

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<sup>227</sup> [redacted] which shows that the local requirements in the UK and Australia are different.

<sup>228</sup> See Appendix C, paragraph 4 for further details.

<sup>229</sup> See Appendix C, paragraph 5 for further details.

<sup>230</sup> See Appendix C, paragraph 6 for further details.

documents also refer to other geographies, we found the UK is considered separately in the majority of the Parties' internal documents.

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

6.156 FNZ's recent acquisitions suggest that it sees the acquisition of, or partnership with, established players already active in other countries as a means to overcome regulatory hurdles that prevent the deployment of its products in new countries, and as a way of obtaining the scale and credibility required to enter those markets in a timely way.<sup>231</sup> For example:

(a) FNZ told us that it saw the acquisition of GBST as an 'opportunity to grow its presence and offering in Australia which is a key large-scale strategic savings and retirement market for FNZ'. FNZ observed that 'due to the complexity and market conditions of superannuation administration in Australia, [REDACTED]'. [REDACTED]

(b) In 2019, FNZ acquired the German investment platform company 'ebase' from Comdirect Bank. FNZ said that this: [REDACTED]. With regard to the rationale for that transaction, an FNZ internal document notes that [REDACTED].

(c) FNZ told us that it has been discussing with [REDACTED].

(d) Furthermore, FNZ has been in discussion with [REDACTED].

6.157 We consider that this evidence indicates that the deployment of Retail Platform Solutions across more than one country requires significant adaptation to country-specific requirements and that having a local footprint is a relevant factor to win customers for Retail Platform Solutions.

### *Third party evidence*

6.158 The views of third parties also indicate that the market is UK-wide due to UK-specific regulatory requirements, the need for investments to make the Platform Solutions compliant with these regulatory requirements, and the need for a significant track record in operating in accordance with the UK regulatory regime.

(a) Some third parties told us that the complexity of local geographical functional and regulatory requirements, such as pension rules, makes it challenging for suppliers to expand to different countries;

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<sup>231</sup> We note that these considerations apply to the Platform Solutions industry in general and placed less weight on considerations referring to the acquisition of Non-Retail Platform Solutions.



- (b) The majority of third parties indicated that there are significant barriers for suppliers of Retail Platform Solutions to win business in the UK if they do not have a significant track record within the UK, as it signals proven experience in dealing with the UK regulation; and
- (c) Some third parties also noted that, while it is technically feasible to enter from other geographic markets, this would require a significant investment.

### *Tender data*

6.159 Our analysis of customers' tender evaluations highlighted the importance for a supplier of Platform Solutions to offer UK-specific functionalities and regarded previous experience with UK customers as an important advantage.<sup>232</sup> For example:

- (a) Qualitative evidence from [REDACTED] tender evaluation shows that it considered the 'general UK functionality' of the shortlisted suppliers and it undertook a careful assessment of the potential supplier's position in the UK market, including their UK client base, experience, as well as 'commitment' to the UK market;
- (b) When assessing potential suppliers in its 2019 tender, [REDACTED] decided to 'park' [REDACTED] as a 'potential Ancillary supplier for later consideration given it was not able to: 1) meet UK credentials, specifically in relation to scale and SIPP functionality, 2) lacked overall capabilities'. [REDACTED] looked specifically at how [REDACTED] could support 'UK equities, ETFs, investment trusts and fixed income bonds/gilts'. The 'gap analysis' concerning [REDACTED] solution flagged that its [REDACTED];
- (c) In its 2016 tender, [REDACTED] compared the propositions offered by FNZ and GBST. In its comparison, [REDACTED] valued [REDACTED] experience with [REDACTED] and the fact that its technology was [REDACTED]. On the other hand, the fact that [REDACTED] had no [REDACTED] experience was considered a high risk due to possible gaps and the need for new development;
- (d) Qualitative evidence from the [REDACTED] tender shows that broad experience of operating in the UK and a range of UK clients were considered as key features for the purposes of evaluating alternative suppliers; and

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<sup>232</sup> Tender evaluations carried out by [REDACTED].

- (e) Qualitative evidence from [X] indicates that both [X] and [X] were excluded from the final phase due to their lack of UK functionality and experience.<sup>233</sup>

### **Conclusion on geographic market**

6.160 We found that suppliers of Retail Platform Solutions must meet specific and complex UK tax and regulatory requirements.

6.161 Suppliers of Retail Platform Solutions cannot easily and quickly enter into a new country, given the need to adapt to these different requirements, as well as the importance of experience and reputation in serving customers in a particular jurisdiction.

6.162 Accordingly, we found that the relevant geographic market for the supply of Retail Platform Solutions excluding in-house software is the UK (Retail Platform Solutions in the UK).

## **7. Nature of competition**

7.1 In this chapter we assess how competition operates in the supply of Retail Platform Solutions in the UK.

- (a) We first assess the degree of switching and the barriers involved.
- (b) We then briefly cover what customers look for when choosing a Retail Platform Solution (the main parameters of competition).
- (c) Finally, we outline the procurement processes and contractual mechanisms that customers employ.

7.2 Understanding these market features helps us assess the competitive effects arising from the loss of competition between the Parties as a result of the Merger. This is the focus of the next chapter.

### **Switching**

7.3 If the costs of switching from one supplier to another are high, the Merged Entity may be able to raise prices or degrade the quality of products without losing many customers.<sup>234</sup> High switching costs can also increase barriers to

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<sup>233</sup> We note that this was not a tender for Retail Platform Solutions and have therefore put less weight on this evidence. However, we also note that our considerations on the importance for suppliers to offer UK specific functionalities and to demonstrate previous UK experience apply to the Platform Solutions industry more broadly.

<sup>234</sup> [MAGs](#), paragraph 5.4.9 (c).

entry as customers may be less willing to switch to a new supplier.<sup>235</sup> High switching costs may weaken the bargaining position of customers and make them less sensitive to changes in the price, quality or service levels.

- 7.4 We assessed how often customers switch suppliers of Platform Solutions and the barriers involved. These barriers include, but are not limited to, financial costs (such as implementation fees, exit fees), financial risks (such as the risk of disruption) and time costs (such as time taken to move to the new supplier).
- 7.5 We took account of the Parties' submissions, the Parties' internal documents, third party views and evidence from tenders and customers' tender evaluations.

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

7.6 FNZ submitted that:

- (a) Switching does happen, as shown by its tender analysis where it found [REDACTED] instances of Retail customers switching over the last ten years<sup>236</sup> (including a small number currently in progress).<sup>237</sup> It said that there is a market trend towards outsourcing which gives Platform Solution suppliers many opportunities;
- (b) The costs of switching can vary significantly depending on whether the customer has a high-risk appetite and whether the switch is from a newer or older Platform Solution, as well as [REDACTED];<sup>238</sup>
- (c) The main risks of switching for customers and Platform Solution suppliers are:
- (i) [REDACTED];
  - (ii) [REDACTED];
  - (iii) [REDACTED];
- (d) Switching costs may range from [REDACTED] to [REDACTED]. It submitted that, even in the worst case, the switching costs were likely to be small in the context of the customer's total revenue and may lead to cost reductions and enhance the customer's ability to grow;

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<sup>235</sup> MAGs, paragraph 5.8.7. See Chapter 9 for our assessment of Barriers to entry and expansion.

<sup>236</sup> The analysis in FNZ's submission covers the period up to November 2020.

<sup>237</sup> FNZ made no further submissions on this in response to our phase 2 Provisional Findings.

<sup>238</sup> This submission regarding switching costs applies to both the Software-only Solution and to the Combined Platform Solutions.

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

7.7 GBST submitted that:

- (a) Customers rarely switch as it is a significant task and switching generally occurs when the supplier cannot serve the customer;
- (b) Investment Platforms that are going through significant business change (such as acquiring a new platform) and want to review all aspects of the contract may decide to tender and then switch; and
- (c) It believed that switching costs can vary from [REDACTED] to [REDACTED].

***Third party evidence***

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

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

(b) For the ten competitors that provided a response, the median rating was 4.75 ('very difficult') for both software and servicing.<sup>239</sup>

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

- (a) It is risky, complicated, technical, expensive and it can go wrong;
- (b) A customer that switched to FNZ via another supplier said it has taken up to three and a half years at a total cost of around £185 million;
- (c) Another customer noted that the complexity in changing software was because it required data, records and client communications to be moved and needed customer re-training; and
- (d) Another customer said that switching is likely to require a minimum of two years, while another said it would take between 18-30 months.

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

- (a) 'Providers rarely switch. Clients are wary of changing providers as the associated cost, risk and potential for disruption is exorbitant. Most renewals are an opportunity to renegotiate on aspects of the service that either party is concerned about eg. pricing, SLAs, KPIs etc.'
- (b) 'Based on our observations, the majority of UK Retail Platforms that have undergone a re-platforming exercise were replacing Platform Solutions that were between 15 – 25 years in age, indicating re-platforming is an infrequent activity. In addition, based on our observations in the market, switching providers and re-platforming is often costly and difficult and as such there is significant inertia within the market with limited examples of providers switching in the market. From our experience in the market in recent years, we consider most of the major providers of Retail Platform Solutions in the UK to have selected their strategic platform for the near to medium term, however continued M&A activity in the market may give rise to demand for consolidation.'

7.11 A letter from the FCA to Investment Platforms indicates that it considers that switching can be risky and expensive for Investment Platforms. In a 'Dear

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<sup>239</sup> CMA analysis of the phase 1 third party questionnaires.

CEO' letter to the Investment Platform portfolio,<sup>240</sup> it stated that 'poorly planned and executed technology migrations' are exacerbating risks to 'business continuity'.<sup>241</sup> An article from the trade press about this letter also notes that the 'cost of re-platforming using third party firms like FNZ, GBST, Bravura and IFDS (SS&C) has spiralled in recent years'.<sup>242</sup>

- 7.12 Despite the costs and challenges involved, the evidence shows that some switching does take place.
- 7.13 SS&C and FNZ both told us that there has been a general removal of older technology by Investment Platforms in recent years. A significant number of Investment Platforms had older Platform Solutions which were stopping them from remaining competitive and they considered that they had no option but to switch onto more modern technology.<sup>243</sup>
- 7.14 However, SS&C noted that now that many of the older systems have been updated, there is little appetite left in the market to change underlying core systems. It said that Investment Platforms are less likely to switch from their current suppliers now than they might have been in the recent history of the market.

### ***Evidence from tenders***

- 7.15 Evidence from tender documents sent to the Parties by potential customers indicates that a substantial part of the procurement process is devoted to understanding the suppliers' ability to help a switch work well, in particular their planning and history of successful migrations. We have seen that customers ask for extensive evidence from suppliers about previous migrations and contact suppliers' current customers to hear about their experiences<sup>244</sup>
- 7.16 There have been some high-profile examples of switches that have not gone smoothly and resulted in significant disruption for the Investment Platform and their end-investors. In particular, one customer noted that SS&C had experienced significant difficulty in implementing a Platform Solution for two

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<sup>240</sup> This letter sets out the FCA's view on key harms relevant to the platform sector and its expectations of platform providers. One of the identified harms relates to operational resilience and how the FCA expects firms to have adequately planned change programmes that are thoroughly tested, with clear responsibilities defined up front between firms and any third parties.

<sup>241</sup> [FCA letter](#), 6 February 2020.

<sup>242</sup> [Money Marketing news story](#).

<sup>243</sup> [§]. FNZ further submitted that this reflects the recent emergence of Platform Solutions and in particular the Combined Platform Solutions model, meaning many Suppliers of Platform Solutions have not yet had the opportunity to consider switching between Combined Platform Solutions suppliers.

<sup>244</sup> See Appendix E.

significant customers with 'high-profile delays, cost overruns and functional defects'.

7.17 We also examined the outcome of [REDACTED] completed Retail tenders since 2016 (the period for which we have accurate data) where there was an incumbent solution.<sup>245</sup> We found that:

- (a) The customer switched suppliers in [REDACTED] of these tenders.
- (b) In [REDACTED] tenders where the incumbent Platform Solution was at least partially outsourced to a third party, there were [REDACTED] where the customer changed supplier<sup>246</sup>, while for the [REDACTED], the incumbent Platform Solution was kept.<sup>247</sup>
- (c) In [REDACTED] tenders where the incumbent Platform Solutions was provided solely in-house by the customer, [REDACTED] switched to an outsourced Platform Solution.<sup>248</sup> [REDACTED] did not switch from an in-house solution.<sup>249</sup>

7.18 We conducted a sensitivity analysis using tenders conducted by a wider set of platforms (including Retail tenders and Sensitivity Only tenders, as discussed in paragraphs 6.47 and 6.110 and in Appendix G). We examined the outcome of [REDACTED] such tenders since 2016 where there was an incumbent Platform Solution.<sup>250</sup> Based on this data, we found that customers are more likely to switch if they are currently operating an in-house platform solution. In summary, the tender data, including Retail tenders and Sensitivity Only tenders shows:

- (a) In [REDACTED] tenders where the incumbent Platform Solution was at least partially outsourced to a third party, there were [REDACTED] where the customer changed supplier,<sup>251</sup> and [REDACTED] where the winning supplier was one of [REDACTED] incumbent suppliers.<sup>252</sup> In the remaining [REDACTED] the incumbent Platform Solution was kept.<sup>253</sup>

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<sup>245</sup> [REDACTED] out of the [REDACTED] Retail tenders are not included in the switching analysis. [REDACTED] tenders are for new Platforms and, therefore, do not have an incumbent solution to switch from. [REDACTED] abandoned before a winner was chosen.

<sup>246</sup> [REDACTED].

<sup>247</sup> [REDACTED].

<sup>248</sup> [REDACTED].

<sup>249</sup> [REDACTED].

<sup>250</sup> ie the [REDACTED] tenders discussed in paragraph 7.17 and an additional [REDACTED] where the tender was identified as a Sensitivity-Only tender (see Appendix G and Chapter 8), as discussed in Appendices G and I. [REDACTED] was not included because it was for a new proposition and [REDACTED] were not included because they were abandoned before a winner was selected.

<sup>251</sup> [REDACTED].

<sup>252</sup> [REDACTED].

<sup>253</sup> [REDACTED].

(b) In [REDACTED] tenders where the incumbent Platform Solutions was provided solely in-house by the customer, [REDACTED] switched to an outsourced Platform Solution.<sup>254</sup> [REDACTED] kept it in-house.<sup>255</sup>

7.19 This analysis indicates that, even when tendering, customers may not switch suppliers. It also shows that most switching occurs from in-house to outsourced Platform Solutions. This indicates that customers are more willing to switch when they are seeking to outsource their Platform technology provision, but are more cautious of switching when the Platform Solution is already outsourced.

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

### ***Internal documents***

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

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

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

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

### **The main parameters of competition**

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

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<sup>254</sup> [REDACTED].

<sup>255</sup> [REDACTED].



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

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

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]<sup>256</sup>

7.26 GBST submitted that the most important parameters considered by customers when selecting a supplier were:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(e) [REDACTED]

(f) [REDACTED]

7.27 GBST submitted that there were other considerations of moderate importance to customers when selecting a supplier, including [REDACTED].

7.28 GBST submitted that the [REDACTED], were of lower importance for customers evaluating bids for Platform Solutions.

7.29 GBST said that the order of significance of the parameters of competition [REDACTED].

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

7.30 Third party responses indicated that the importance of specific parameters of competition depends somewhat on the customer or tender. However, some recurring themes emerged. These were:

(a) Product development (including R&D);

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<sup>256</sup> [REDACTED].

(b) Reputation, including scale and track record;

(c) Product fit; and

(d) Price.

7.31 Customers, consultants and competitors all highlighted the important role of R&D. For example:

(a) Aegon stated that '[i]t is very important that there is suitable provision for R&D to keep the pace with the market and have an element of competitive edge if possible, so underlying investment is key.'

(b) [X] stated that 'R&D and innovation is highly important as it influences the scope, features and functionality of the solution, the channels through which customers interact and therefore is critical to the customer journey.'

(c) A consultant explained that R&D investment maximises efficiency because it increases automation, 'enables the provider to keep up with innovation in the market,' and 'ensures that technology stays relevant because products can become legacy technology very quickly.'

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

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

7.33 Product fit, meaning how well aligned a potential supplier's product or proposition is to a customer's specific needs, was repeatedly mentioned as a key factor in differentiating between suppliers. Responses indicated that the range of investment tools, level of automation, ability to integrate into third party systems,<sup>257</sup> and accessibility to end users were important considerations when differentiating between potential suppliers' products.

7.34 Price, including ongoing operational costs and the pricing model, was also repeatedly mentioned as a key factor in differentiating between suppliers.

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<sup>257</sup> In terms of effectiveness and speed to market.

## ***Conclusion on main parameters of competition***

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

## **Procurement processes and contractual mechanisms**

- 7.37 We found that customers use lengthy procurement processes involving multiple tender stages and commercial negotiations with a final list of suppliers. Even though they switch supplier infrequently, we found that they use these processes, and the prospect of such processes, to maintain competitive tension and extract the best possible terms from incumbent or potential suppliers.<sup>258</sup>
- 7.38 Evidence from third parties indicates that there is some competition at the early stage of tenders in relation to capabilities and indicative commercial terms, but that the competition on each of these parameters intensifies at subsequent stages of the tender process.<sup>259</sup>
- 7.39 FNZ's contractual arrangements with its customers include [REDACTED]. FNZ submitted that these contractual arrangements often protect customers to ensure they are always on the most advantageous pricing available.<sup>260</sup>
- 7.40 Contractual arrangements are, in general, unlikely to protect customers from the loss of rivalry that might be brought about by a merger. These arrangements can be renegotiated or terminated over time and, even where this could only be done with bilateral consent, the bargaining power held by each of the parties and wider commercial considerations could have a bearing on their incentives to agree to such changes. Moreover, to the extent that

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<sup>258</sup> FNZ told us that tenders create a competitive constraint even when switching does not result.

<sup>259</sup> Further details of these procurement process are provided in Appendix E.

<sup>260</sup> FNZ response to the phase 2 Issues Statement, paragraphs 3.5-3.7.

contractual arrangements provide any protection, this protection would be limited to those customers with such arrangements.

- 7.41 Accordingly, we consider that, both in principle and in practice, contractual arrangements would not serve to protect customers following a reduction in rivalry caused by a merger.<sup>261</sup>

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

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

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<sup>261</sup> We considered the potential impact of the specific benchmarking provisions and asset-based pricing model cited by FNZ in Appendix F.

## 8. Competitive assessment

### Introduction

- 8.1 We have assessed whether the Merger would lead to a significant reduction in horizontal competition between the Parties in the supply of Retail Platform Solutions by removing a competitor which previously provided a significant competitive constraint and, in doing so, whether the Merged Entity has the ability and/or incentive to worsen or not improve its offering when assessed against the position absent the Merger. This could result in Retail Platforms facing higher prices or lower quality of services in the future. Ultimately, these higher prices and deterioration in quality can adversely impact UK consumers that rely on Retail Platforms using Retail Platform Solutions. This is a horizontal unilateral effects theory of harm.
- 8.2 The supply of Retail Platform Solutions is a differentiated bidding market characterised by infrequent switching and long-term contracts. There is a range of different solutions providers, each with slightly different offerings; and customers have differentiated needs based on the final products they wish to offer to end consumers/investors. Because of this, the effect of the Merger can vary for each customer group. Since prices and terms are individually negotiated, even if some customers were not significantly affected by the reduction in choice, this would not necessarily protect other customers who are likely to suffer harm as a result of a significant loss of competition.
- 8.3 In differentiated markets, horizontal unilateral effects are more likely where the merged firms are close competitors or where their products or services are close substitutes. The more closely the merger firms compete, the greater the likelihood of unilateral effects.
- 8.4 Given this market context, we have particularly focused on assessing evidence of closeness of competition between the Parties and the extent to which there may be other remaining close competitors after the Merger who could continue to provide a competitive constraint on the Merged Entity.
- 8.5 We took account of a wide range of evidence collected from the Parties and third parties:
- (a) Customers, consultants and suppliers gave their views on the strength of competition between the Parties and other suppliers (including in-house supply and out-of-market competitors);
  - (c) We analysed tender data, which showed which suppliers bid for which contracts at various stages of the tender process; and

- (d) We reviewed the Parties' internal documents to assess what these told us about competition between the Parties and with other suppliers.
- 8.6 This evidence, assessed in the round, informed our assessment of the closeness of competition between the Parties and the competitive constraints imposed by other suppliers at present and in the foreseeable future.<sup>262</sup>
- 8.7 The structure of this chapter is as follows:
- (a) We present our estimates of shares of supply in the market;
  - (b) We assess closeness of competition between the Parties; and
  - (c) We assess the competitive constraint from alternatives, including in-house and other out-of-market constraints.

## Shares of supply

- 8.8 Measures of concentration, such as shares of supply, can be useful evidence of the relative size of each supplier based on its current customer base. However, in differentiated bidding markets, such as the market for the supply of Retail Platform Solutions in the UK, shares of supply do not fully capture the closeness of competition between firms. Accordingly, shares of supply have been given limited weight in our competitive assessment.
- 8.9 We have considered the Parties' shares of supply within the market for Retail Platform Solutions.<sup>263</sup> We consider below FNZ's submissions and the results of our assessment.
- 8.10 Our analysis shows that the Merged Entity would be the second largest provider in the market on this basis. FNZ is currently the third largest and GBST the fourth largest supplier of Retail Platform Solutions in the UK. The largest supplier would be TCS BaNCS (a highly differentiated supplier), followed by the Merged Entity, then followed by Bravura. On the basis of our sensitivity case, including the wider set of platforms which FNZ has suggested should fall into the Retail Platforms category, FNZ and GBST are the second largest and fourth largest suppliers respectively, and the Merged Entity would be materially larger than any other provider.
- 8.11 Consistent with the position in the Phase 2 report, we have placed limited weight on evidence from shares of supply in the context of assessing the impact of the Merger in this differentiated market. Since the Phase 2 report,

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<sup>262</sup> Appendix B presents the details of the evidence we gathered and how we used it in our assessment.

<sup>263</sup> On the basis of assets under administration.

we received information on a number of additional legacy platforms that are now included in our analysis, which has increased the degree of differentiation between the platforms that are considered within our analysis. As a result, the weight on evidence from shares of supply in the context of assessing the impact of the Merger has decreased.

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

### *FNZ submissions*

- 8.12 FNZ submitted that shares of supply do not meaningfully reflect market power and that the CMA's approach in its phase 1 decision overstated the Parties' shares of the market.<sup>264</sup>
- 8.13 FNZ submitted that the share of supply data reveal that numerous significant competitors will remain post-merger.<sup>265</sup> FNZ considers that shares of supply are not reliable indicators of market power due to customers' requirements for bespoke solutions, the long tender processes and the use of long-term contracts.
- 8.14 FNZ also addressed our use of assets under administration (AUA) as the basis for the share of supply estimates, compared to a revenue-based approach. It submitted that there are weaknesses in both approaches, but that the AUA approach overstates the shares of suppliers which provide a small set of services to customers with high value assets, and that these shares are subject to fluctuation based on the value of customers' assets.<sup>266</sup>
- 8.15 FNZ noted that investment accounting software forms 'the core software component supplied' and provided us with its own calculation of shares of supply, based on the identity of the supplier of the investment accounting software (one part of the Platform Solution).<sup>267</sup> Its calculation included all Investment Platforms apart from private banks and in-house software provision.
- 8.16 On this basis, during the Phase 2 Inquiry and by reference to its share of supply estimates at that date, FNZ submitted that:
- (a) The Parties have a combined share of less than [30-40]%;

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<sup>264</sup> FNZ response to the phase 2 Provisional Findings, paragraph 5.1(ii).

<sup>265</sup> FNZ Initial phase 2 Submission, paragraph 1.2.

<sup>266</sup> In particular, FNZ submitted that 'several of FNZ's own clients have seen significant fluctuations in AUA for reasons completely unrelated to FNZ's own competitive performance. For example, AUA on [redacted] despite the absence of a new contract or increase in scope of the contract.'

<sup>267</sup> FNZ share of supply estimates are provided in Appendix H.

- (b) The Parties have numerous competitors, including SS&C, Bravura, Avaloq, Temenos, SEI and IRESS, with shares larger than, or similar to, GBST's share of [0-5]%; and<sup>268</sup>
- (c) 'The Parties also face strong competition from global players such as TCS BaNCS and Pershing'.<sup>269</sup>
- 8.17 FNZ also submitted that significant constraints will remain, and that the Merger should not be characterised as a '4-to-3' reduction in suppliers, as Bravura, SS&C and SEI are all major competitors.<sup>270</sup>
- 8.18 FNZ provided separate share of supply estimates for Software-only Platform Solutions and Combined Platform Solutions, which it said showed the lack of substantial overlap between the Parties, as well as highlighting the competitors that are most relevant to FNZ, JHC and GBST (which are not, in each case, the other Party).<sup>271</sup>
- 8.19 The above submissions were reiterated by FNZ during the Remittal Inquiry. In addition, in the NoA and its Initial Remittal Submission, FNZ submitted that it had identified a number of errors in the share of supply allocations presented in the Phase 2 Report.<sup>272</sup>
- 8.20 FNZ stated (notwithstanding its earlier submission that shares of supply do not meaningfully reflect market power) that these errors led the CMA to significantly overstate the strength of the combined entity. FNZ submitted that the Parties' combined share of Retail Platform Solutions was overstated and the shares attributable to other competitors were understated. FNZ further stated that these errors had material implications for the CMA's characterisation of the supply-side structure of the retail market, on which the CMA's SLC finding was founded, in particular because Temenos should not have been omitted entirely, TCS BaNCS's share is significantly higher and Bravura's substantial position in the market is further confirmed.<sup>273</sup>
- 8.21 Based on the share of supply estimates that we shared with FNZ's advisors during the course of the Remittal Inquiry, FNZ noted that there were three suppliers other than the Parties with substantial shares of supply: Bravura, SS&C and TCS BaNCS. FNZ submitted that this meant that at least three

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<sup>268</sup> FNZ also submitted that around [5-10]% of share should attributed to Objectway and part of [X] share should be attributed to PSL.

<sup>269</sup> FNZ Initial phase 2 Submission, paragraph 1.2.

<sup>270</sup> During the Remittal Inquiry, FNZ noted that this was particularly the case when the Merger is compared to a counterfactual of SS&C acquiring GBST. See Chapter 5 for further details.

<sup>271</sup> FNZ response to the phase 2 Provisional Findings, Annex 3, page 1.

<sup>272</sup> More details on the apparent errors identified by FNZ is set out in Appendix H.

<sup>273</sup> NoA, paragraph 71 and FNZ Initial Remittal Submission, paragraphs 3.3-3.5.



significant third party competitors would remain even in the narrow retail segment post-Merger (ie in the supply of Retail Platform Solutions), and that ‘put simply, the Merger cannot be characterised as giving rise to a ‘3-to-2’ merger’.<sup>274,275</sup>

- 8.22 FNZ’s main submissions on shares of supply in its response to the Provisional Report were that the shares of supply have changed dramatically since the Phase 2 Report, indicating that there are ‘five major players, with a large number of other credible suppliers’ and the Merger ‘involves a combination of the third and fourth largest players and an aggregate market share of [X] below 40% (more than [X] lower than in the Phase 2 Report).<sup>276</sup> FNZ argued that the Provisional Report down plays the relevance of shares of supply to the competitive assessment, which is a shift in the emphasis which the CMA placed on its shares of supply analysis in the Phase 2 Report.<sup>277,278</sup>

### *GBST submissions*

- 8.23 GBST told us that, other than Bravura, SS&C and SEI, the competitors mentioned by FNZ should not be part of the narrowest plausible market for the supply of Retail Platform Solutions in the UK because these other suppliers do not have certain functionalities such as pension tax wrappers or because they do not provide Retail Platform Solutions but instead provide other technologies.<sup>279</sup>
- 8.24 During the Remittal Inquiry, GBST also commented, as relevant for the share of supply analysis, that TCS BaNCS does not compete in solutions for Retail Platforms and that TCS BaNCS’s product offering is vastly different from GBST’s and FNZ’s.<sup>280</sup>

## ***Our assessment***

### *Methodology*

- 8.25 Appendix G sets out our approach to classifying Investment Platforms for the purposes of our shares of supply analysis (and tender analysis). Appendix H sets out our methodology for the share of supply estimates, including the

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<sup>274</sup> FNZ Remittal Submission, 9 March 2021, paragraphs 5.1. and 5.2.

<sup>275</sup> See paragraphs 5.12 to 5.16 regarding FNZ’s submissions on the effect of the Merger when compared to a counterfactual in which GBST is under the ownership of SS&C.

<sup>276</sup> See paragraph 8.33 and Appendix H where we set out the reasons for these changes. See also FNZ response to the Provisional Report, 30 April 2021, paragraph 4.2.

<sup>277</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.2.

<sup>278</sup> See paragraph 8.11 where we address the treatment of evidence from shares of supply.

<sup>279</sup> GBST response to the FNZ Initial phase 2 Submission, pages 14-15. See also paragraph 6.24.

<sup>280</sup> GBST Remittal submission, 11 March 2021, paragraph 6.1.1.

additional evidence we considered in the Remittal Inquiry and the changes made to our dataset during the Remittal Inquiry.<sup>281</sup>

8.26 We took FNZ's submissions into account in deciding on our approach to estimating shares of supply and made some changes to our calculations as presented in the Phase 2 Report. In summary:

- (a) Consistent with our approach at phase 2, we adopted AUA as the basis for our share of supply estimates rather than a revenue-based approach because AUA figures are readily available from public sources. We consider that this approach ensures greater consistency in the treatment of different platforms and suppliers.
- (b) Wherever possible, we based our share of supply estimates on information from customers on their main provider of Platform Solutions. Where this information was not available, we typically used the investment accounting software supplier specified by FNZ in its share estimates. We had customer information for [REDACTED] platforms in our analysis, relying on FNZ's data for the remaining [REDACTED].<sup>282</sup>
- (c) Where there was uncertainty over which was the main supplier of a given platform, we engaged in further information-gathering to clarify the appropriate approach. This included checking the Investment Platform allocations that were challenged by FNZ in its NoA and Initial Remittal Submission. As a result, based on third party responses, we have not accepted some of the Investment Platform allocations proposed by FNZ in its dataset and submissions; the changes we made to FNZ's dataset and the evidence used to justify them are set out in Appendices G and H.
- (d) We updated the AUA estimates for each platform to reflect the most recent available data, in order to take account of any changes since the Phase 2 Inquiry.

8.27 Following the Provisional Report, we received additional information from customers on [REDACTED] platforms – [REDACTED] which [REDACTED] currently transitioning away from in-house solutions ([REDACTED]), and [REDACTED] legacy [REDACTED] where the legacy systems transitioning away were predominantly in-house solutions ([REDACTED]). We have

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<sup>281</sup> As explained in paragraph 26 of Appendix H, some of the changes made to our dataset during the Remittal Inquiry relate to the inclusion of seven Retail Platforms that FNZ added to its updated shares of supply dataset during the Remittal Inquiry to include new platforms that were recently won and add additional platforms that [FNZ submitted it had] not previously included because of lack of information, which were not included in the data provided by FNZ during the Phase 2 Inquiry.

<sup>282</sup> However, we contacted the customers which were most likely to be contentious in this regard, such as where FNZ's data was different than our phase 2 dataset, or regarding the platforms raised as problematic by FNZ in its NoA.

updated our analysis to include these platforms, while noting that [redacted] are, for the reasons explained elsewhere in this Report (see paragraphs 8.31 and 8.36), differentiated from typical Retail Platforms.

8.28 Following our approach to market definition set out in Chapter 6, we addressed FNZ's assertion that the set of customers within the market for the supply of Retail Platform Solutions was too narrow by testing our results using a wider set of platforms. These are largely based on FNZ's submissions regarding which Investment Platforms should be considered as Retail Platforms, but also reflect information gathered from third parties. This approach reflects FNZ's earlier representations that it is appropriate to consider different sensitivities where the precise boundary of the relevant market is uncertain.<sup>283</sup>

### *Our estimates of share of supply*

8.29 We calculated UK shares for the supply of Retail Platform Solutions.<sup>284</sup> These share of supply estimates are shown in Table 8.1 below. In total, these estimates are based on [redacted].<sup>285</sup>

**Table 8.1. Shares in the supply of Retail Platform Solutions in the UK (based on AUA) (2020)**

Software supplier	Share of supply (%)
FNZ	[10-20]
JHC	[0-5]
<b>FNZ Total</b>	[10-20]
GBST	[10-20]
<b>Parties total</b>	[30-40]
Bravura	[10-20]
Ascentric (via Bravura)	[0-5]
<b>Bravura total</b>	[10-20]
SS&C	[10-20]
TCS BaNCS	[30-40]
Fusion Wealth Limited	[0-5]
IRESS	[0-5]
SEI	[0-5]
State Street	[0-5]
Hubwise	[0-5]
Equiniti	[0-5]

<sup>283</sup> RBB response to the phase 2 CMA competition analysis update, 6 October 2020, page 3, states: 'Given the lack of clear distinction between Retail and Non-Retail Platforms, a proper sensitivity analysis is required [...] the results from the sensitivity analysis should be given at least as much weight as those in the base case.'

<sup>284</sup> [redacted].

<sup>285</sup> These estimates exclude platforms with in-house solutions or where the Platform Solution provider is unknown. Including these platforms would increase these figures to [redacted].

Source: CMA estimates based on the Parties' data: Parties' response to the Remittal RFI, 28 January 2021, Annex 3 and third party evidence. The shares of supply in Table 8.1 present third party software combined with third party or In-House servicing. We excluded AUA of any platforms where the software supplier is unknown. [REDACTED].

8.30 Table 8.1 indicates that:

- (a) FNZ is the third largest supplier, with a share of [10-20]%, while GBST is the fourth largest supplier with a share of [10-20]%;
- (b) The Merged Entity would be the second largest supplier in the supply of Retail Platform Solutions in the UK, accounting for [30-40]% of the market. However, the Merged Entity is the largest supplier of Retail Platform Solutions to active platforms by some margin (see paragraphs 6.96 to 6.101 for details on our treatment of legacy products);
- (c) TCS BaNCS is currently the largest supplier, with a share of [30-40]%; Bravura is the second largest supplier, with a share of [10-20]%; and SS&C is the fifth largest, with a share of [10-20]%;
- (d) There are no other suppliers with a share greater than [0-5]%; and
- (e) Bravura, FNZ, GBST, SS&C and TCS BaNCS together account for more than [90-100]% of the market.

8.31 We note that over [REDACTED]% of TCS BaNCS' share comes from providing Platform Solutions to six platforms of [REDACTED] large customers, [REDACTED] and [REDACTED]. As described further below, these customers use TCS BaNCS predominantly for legacy platforms<sup>286</sup> or more limited active products: the majority of AuA held on the active platforms supported by TCS BaNCS are [REDACTED]. These services are differentiated from those provided by the Parties.<sup>287</sup> In addition, most of SS&C's share comes from providing Platform Solutions to one large customer, St James's Place. As discussed in paragraph 8.194(b), SS&C provides a specific (closed architecture) solution to this customer, an offering that is therefore also differentiated from the services provided by the Parties.

8.32 To test the sensitivity of our findings to which platforms are classified as Retail Platforms, we also estimated the Parties' shares of supply using the wider set of platforms which may fall into the Retail category. The results of this sensitivity test are set out in Appendix H.<sup>288</sup> In summary, this test finds that

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<sup>286</sup> As explained in Chapter 6, legacy or heritage products are closed for new investments and only require the administration of investments concluded before the product was closed to active investments.

<sup>287</sup> We discuss our view on the limited competitive constraint TCS BaNCS poses upon the Parties in paragraph 8.194(d).

<sup>288</sup> Appendix H also sets out what the shares of supply estimates would be if we were to adopt FNZ's views on the allocations of customers and AUAs to suppliers. In the base case, these results show that the Merged Entity is the largest supplier in the market, with a slightly higher share than in our estimates.

the same five suppliers (Bravura, GBST, FNZ, SS&C and TCS BaNCS) were the largest in the market, that FNZ was the second largest supplier in the market, GBST was the fourth largest, and that the Merged Entity would be the largest supplier in the market, with a [REDACTED] share than in our base case.

- 8.33 Compared with the Phase 2 Report, the main change in our results is the higher estimated share of supply for TCS BaNCS. FNZ provided additional data, during the course of our Remittal Inquiry, indicating that TCS BaNCS supplies three additional platforms that had not previously been included within FNZ's share of supply estimates (FNZ was not the supplier of these platforms).<sup>289,290,291</sup> However, we do not think that TCS BaNCS's share of supply is a good indicator of the competitive constraint it places on FNZ or GBST, because it is more focused on providing services for legacy products or more limited active products, and is therefore differentiated from the Parties' product offering.<sup>292</sup>

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

- 8.34 In differentiated bidding markets, such as the market for the supply of Retail Platform Solutions in the UK, shares of supply do not fully capture the closeness of competition between firms and accordingly shares of supply have been given limited weight in our competitive effects assessment. FNZ itself has recognised that shares of supply in this market are not reliable indicators of market power. We have not sought to categorise the merger according to a simple count of how many suppliers remain following the merger.<sup>293</sup>
- 8.35 Our share of supply estimates for the supply of Retail Platform Solutions and our sensitivity analysis present broadly similar results:
- (a) The Merged Entity would be the second largest supplier active in the supply of Retail Platform Solutions, and the largest supplier in our sensitivity analysis;
  - (b) The same five suppliers (FNZ, GBST, TCS BaNCS, Bravura and SS&C) are the largest suppliers; and

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<sup>289</sup> [REDACTED], which have AUAs of [REDACTED] respectively.

<sup>290</sup> [REDACTED].

<sup>291</sup> TCS BaNCS's share also increased as a result of correcting the supplier of the [REDACTED]. TCS BaNCS (via Diligenta) [REDACTED], and [REDACTED].

<sup>292</sup> See Chapter 6.

<sup>293</sup> FNZ's statement that the Merger should not be characterised as a '4-to-3' reduction in suppliers or 'as giving rise to a '3-to-2' merger'(FNZ Remittal Submission, 9 March 2021, paragraphs 5.1. and 5.2) therefore does not reflect our approach in any case.

(c) There is a clear difference between the size of the shares held by these five suppliers and the rest of the market.

8.36 We do not think that TCS BaNCS' share of supply is a good indicator of the competitive constraint it places on FNZ or GBST, because it is more focused on providing services for legacy products or more limited active products, and is therefore differentiated from the Parties' product offering.<sup>294</sup> This illustrates why shares of supply have limited usefulness as an indicator of closeness of competition. We have accordingly focussed our assessment on the closeness of competition between the Parties.

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

8.37 Generally, the more closely two firms compete, the stronger the competitive constraint they impose on each other. The loss of these constraints, as a result of the Merger, could give the Merged Entity the ability and incentive to deteriorate its offering. In cases where the boundaries of the market are not clear-cut, or where there is a high degree of differentiation within the market (as we consider to be the case with Retail Platform Solutions), we consider it appropriate to place limited weight on shares of supply, and rely to a greater extent on other sources of evidence of closeness of competition. This is consistent with FNZ's views that shares of supply are not reliable due to customers' requirements for bespoke solutions, the long tender processes and the use of long-term contracts. This is particularly the case in this market where suppliers of Retail Platform Solutions can individually negotiate pricing and services with customers, including to some extent with customers under existing long-term contracts.

8.38 In order to assess the closeness of competition between the Parties (ie FNZ, including JHC, and GBST), we gathered evidence from customers, competitors and consultants, recent tenders, and the Parties' internal documents. We also considered specific evidence on closeness of competition between the Parties in terms of product development.

8.39 Taking all of the evidence set out below together, we found that FNZ is a strong competitor in the supply of Retail Platform Solutions. FNZ's capabilities in both software and servicing, which are proven at scale, give it a distinct market offering. While GBST does not have its own servicing capabilities, evidence from third parties, tenders and internal documents consistently indicate that FNZ and GBST compete closely with each other.

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<sup>294</sup> See paragraphs 6.96 and 6.101 for our views on legacy products in relation to the product market.

- 8.40 We consider that FNZ and GBST compete closely for customers that do not consider the different delivery models as a significant differentiating factor or are willing to contract with partnerships to deliver a Combined Platform Solution model, of which there are a material number as evidenced by our tender analysis and views of customers.
- 8.41 We found, therefore that the Parties compete closely for the following Retail Platform customers:
- (a) GBST customers that are open to a Combined Platform Solution involving the outsourcing of servicing as well as software;
  - (b) FNZ customers that are open to Combined Platform Solutions offered through a partnership of two suppliers including the GBST Equiniti partnership; and
  - (c) Customers of neither Party that are open to Software-only Solutions or Combined Platform Solutions, either through a partnership or from one provider.

### ***FNZ submissions***

- 8.42 FNZ submitted that:
- (a) The Parties are not close competitors, primarily because they have different delivery and pricing models.<sup>295</sup> FNZ competes more closely with other suppliers of Combined Platform Solutions<sup>296</sup> and different delivery models cannot be close substitutes;<sup>297</sup>
  - (b) It cannot be the case that GBST (and Bravura) exert the strongest constraint on FNZ and that suppliers of Combined Platform Solutions (such as SS&C and Pershing) are less important, because most customers have a preference for a particular delivery model and choose a delivery model before the tender process and certainly before the commercial negotiations stage;<sup>298</sup>
  - (c) The absence of [✂];

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<sup>295</sup> FNZ Initial phase 2 Submission, section 6; FNZ response to the phase 2 Provisional Findings, paragraphs 4.1 4.6; and FNZ Initial Remittal Submission, paragraphs 2.2-2.3.

<sup>296</sup> FNZ said that this point was supported by its tender data.

<sup>297</sup> FNZ response to the phase 2 Provisional Findings, paragraph 5.2.

<sup>298</sup> FNZ response to the phase 2 Provisional Findings, paragraph 4.12(i) and FNZ Initial Remittal Submission, paragraph 2.3.

- (d) FNZ tender data shows that it has only lost one tender to GBST in the past ten years, which was for a very small platform, which had indicated a preference for a Software-only Solution;<sup>299</sup>
- (e) Competition between JHC and GBST is limited, as GBST provides a largely complementary offering to JHC, with GBST's Composer not offering a number of key features provided by JHC;<sup>300</sup>
- (f) GBST offers [REDACTED]<sup>301</sup> and it only [REDACTED].<sup>303</sup> FNZ submitted that GBST is [REDACTED].<sup>304</sup> FNZ submits that GBST's [REDACTED] is demonstrated by [REDACTED];<sup>305</sup> and
- (g) FNZ might well exert a stronger constraint on GBST than GBST does on FNZ but, due to different delivery models, this constraint is not significant in absolute terms nor is it greater than the relative constraint from other Software-only suppliers.<sup>306</sup>

8.43 FNZ's main submissions on closeness of competition between the Parties in its response to the Provisional Report were that:

- (a) The Provisional Report's case against the Merger rests almost entirely on the closeness of competition that allegedly exists between the Parties.<sup>307</sup>
- (b) The Provisional Report's finding that the Parties are close competitors relies largely on the tender analysis and third-party evidence, which, according to FNZ, does not support an SLC finding.<sup>308</sup> For example, the difference in the number of overlaps at the late stage between FNZ and GBST in our tender analysis is not statistically significant compared with the overlap of each Party with other competitors.<sup>309</sup>
- (c) The Provisional Report continues to place significant weight on 'closeness' scores derived from third-party responses to Phase 2

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<sup>299</sup> FNZ response to the phase 2 Provisional Findings, paragraph 5.1(i).

<sup>300</sup> FNZ response to the phase 2 Provisional Findings, paragraph 4.5; FNZ response to the phase 2 Issues Statement, paragraphs 2.26-2.30; and FNZ Initial phase 2 Submission, paragraph 2.7.

<sup>301</sup> FNZ response to the phase 2 Provisional Findings, paragraph 5.1(ii). FNZ response to the phase 2 Issues Statement, paragraphs 2.26-2.30

<sup>302</sup> FNZ Initial phase 2 Submission, paragraph 1.2(vi).

<sup>303</sup> FNZ Initial phase 2 Submission, Table 2.1.

<sup>304</sup> FNZ Initial phase 2 Submission, paragraphs 7.1-7.4.

<sup>305</sup> FNZ response to the phase 2 Provisional Findings, paragraph 5.1(iv).

<sup>306</sup> FNZ response to the phase 2 Provisional Findings, paragraph 5.2.

<sup>307</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.3. We note that the assessment of closeness was always highly important to our consideration of the Merger. For example, paragraphs 46 and 53 of the Summary of the Phase 2 Report state: 'Generally, the more closely two firms compete, the stronger their competitive constraint is on each other' and 'The loss of these constraints, as a result of the Merger, could give the Merged Entity the ability and/or incentive to deteriorate its offering', and found that 'FNZ and GBST compete closely against each other in the supply of Retail Platform Solutions in the UK'.

<sup>308</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.4.

<sup>309</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.17. See paragraph 8.128 for our response to this submission.



questionnaires, which, according to FNZ, are not a reliable basis for assessing the closeness of the Parties and their competitors.<sup>310</sup>

### **GBST submissions**

8.44 GBST submitted that:

- (a) It can compete with suppliers of Combined Platform Solutions when customers have not decided which type of solution they require, or when it partners with a third party to offer a Combined Platform Solution;
- (b) In response to FNZ's submission on [REDACTED], GBST submitted that it has also been providing a Software as a Service (SaaS) proposition since 2009 and that, post-Evolve (its research and development (R&D) programme), Composer will be a market-leading product';
- (c) It has a strong competitive offering, as shown by its recent customer wins<sup>311</sup> and [REDACTED]. It submitted that its pipeline of new customers [REDACTED];
- (d) In response to FNZ's submission that GBST has [REDACTED], GBST submitted that it had [REDACTED]. GBST submitted that the [REDACTED]; and
- (e) There was a bidding war to acquire GBST, and FNZ paid a significant price for it.

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

- (a) FNZ submitted that GBST's partnership with Equiniti is [REDACTED] to FNZ's Combined Platform Solution, referring to the weakness of partnerships, the lack of success of this model in the market, tender data supporting the view that partnerships provide a weak constraint, noting that the GBST Equiniti partnership [REDACTED].<sup>312</sup>

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<sup>310</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.13. 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 K indicates that the average score is not stable' (see FNZ response to the Provisional Report, 30 April 2021, paragraph 4.13(ii)). See paragraphs 8.53 to 8.59 for our assessment of closeness scores. We focus on the relative ranks of scores rather than precise differences. See paragraph 8.54 and footnotes where we set out the reasons why the differences between the results in Chapter 8 and Appendix K are not material.

<sup>311</sup> GBST won a [REDACTED] contract with [REDACTED] in [REDACTED], worth [REDACTED] in revenue.

<sup>312</sup> FNZ response to the phase 2 Provisional Findings, paragraph 4.4 and FNZ Initial phase 2 Submission, paragraph 7.19.

- (b) FNZ also submitted that due to Equiniti's acquisition of Aquila, which FNZ says is a [REDACTED].<sup>313</sup> FNZ suggests that this is demonstrated by [REDACTED].<sup>314</sup>
- (c) GBST submitted that the partnership was set up in order to enable it to [REDACTED] for customers wanting a Combined Platform Solution and that, absent the Merger, it would have been an effective competitor. GBST noted that it could take [REDACTED] and that Bravura's first bid to acquire GBST was only nine months after the announcement of the GBST/Equiniti partnership.

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

- 8.46 Customer views in relation to the competitive dynamics, alongside evidence submitted by consultants and suppliers, were a highly relevant source of evidence in our assessment of closeness (see paragraph 8.71 below).
- 8.47 We consider below third party evidence: (i) on the closeness of competition between FNZ and GBST; and (ii) on how the role of the GBST/Equiniti partnership changed the constraint they place on each other.
- 8.48 Overall, as set out below, third parties generally consider FNZ and GBST to be close competitors, even with their different delivery models. Moreover, there is a group of customers that consider FNZ and GBST to be close alternatives, with Bravura (which also has a different delivery model to FNZ) being the only other supplier noted by some of these customers as competing as closely as the Parties do with each other. In particular, the scores given by third parties to suppliers of Retail Platform Solutions show that they considered that FNZ and GBST are two of three suppliers (together with Bravura) that are the closest competitors.

### ***FNZ submissions***

- 8.49 FNZ made a number of submissions about our third party evidence gathering, including:
- (a) Our evidence gathering was influenced by our use of terminology, in particular that our definition of 'Retail Platform Solutions' has, in FNZ's view, materially changed over the course of the inquiry, leading to likely confusion (including in relation to the characteristics of 'Retail Platform Solutions' that were mentioned in questionnaires, but not included in the Phase 2 Report).<sup>315</sup>

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<sup>313</sup> FNZ Initial Remittal submission, paragraph 2.6.

<sup>314</sup> FNZ Remittal Submission, 9 March 2021, Annex 1, section 2.1.

<sup>315</sup> FNZ Remittal Submission, 9 March 2021, paragraphs 3.7 and 3.8.

(b) The CMA's third party questionnaires in the Phase 2 Inquiry contained leading questions because some questions pre-suppose that the market is segmented between Retail Platforms and Non-Retail Platforms and were written in a way that was liable to distort answers in favour of finding differentiation between platform types.<sup>316</sup>

(c) Third party views represent subjective opinions, and should not be privileged over hard data,<sup>317</sup> and third party views 'in certain cases may be motivated by particular commercial interests, not particularly well-informed and/or include concerns that are not germane to the competition assessment'.

8.50 We consider these submissions in full in Appendix B. For the reasons set out in Appendix B we do not agree with these submissions. We do not consider any changes in the terminology used during the Phase 1 and Phase 2 investigations are sufficiently material to have impacted the probative value of third parties' submissions. In assessing the third party evidence, we have had due regard to a range of factors including: the incentives of the party giving that evidence;<sup>318</sup> the extent to which the party had knowledge that was relevant to the questions we are required to answer<sup>319</sup>; and the extent to which the evidence was consistent with other evidence available to us<sup>320</sup>. Therefore, we consider it is appropriate to place significant weight on third party evidence.

8.51 FNZ's main submissions on third party evidence on closeness of competition between the Parties in its response to the Provisional Report were that:<sup>321</sup>

(a) The evidence from closeness scores is tainted by significant flaws in the questionnaire design.<sup>322</sup>

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<sup>316</sup> FNZ Remittal Submission, 9 March 2021, paragraphs 3.9 and 3.11.

<sup>317</sup> FNZ Remittal Submission, 9 March 2021, paragraph 3.2.

<sup>318</sup> For example, we took into account whether a consultant had a previous relationship with any of the Parties (eg relationship of [redacted] with GBST) and interpreted the evidence accordingly but less weight on the submissions made by this third party, unless supported by objective evidence.

<sup>319</sup> For example, we placed more weight on the evidence provided by customers that had run procurement processes in recent years.

<sup>320</sup> For example, we considered whether the evidence submitted by [redacted] about their offer and the extent to which it competed with the Parties was consistent with evidence provided by customers [redacted] and other third parties [redacted].

<sup>321</sup> See paragraphs 8.62 to 8.65 for our methodology on collecting information and views on FNZ's representations on closeness of competition scores.

<sup>322</sup> FNZ states that, 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'. FNZ response to the Provisional Report, 30 April 2021, paragraph 4.13(i). We address these arguments in paragraphs 8.61 to 8.63 below.

- (b) The scores given depend on respondents' interpretations of supposed distinctions between different scores, eg 'a somewhat close alternative' (score = 2) and 'a moderately close alternative' (score = 3).<sup>323,324</sup>
- (c) The Provisional Report appears to be irrationally selective as regards which version of closeness scores to present, and the approach to sampling seems arbitrary.<sup>325</sup>
- (d) Compared to the tender analysis, the evidential value of these closeness scores is very limited. FNZ said that 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.<sup>326</sup>
- (e) The Provisional Report positions third-party comments on competitive dynamics as a 'highly relevant' source of evidence on closeness of competition. However, FNZ argued that based only a minority of customers (seven) consider FNZ and GBST to be close alternatives. The Provisional Report also fails to compare this against the number of customers that considered SS&C and GBST to be close alternatives.<sup>327</sup>
- (f) Only a minority of customers (eight of 34 customers who responded) consider that the GBST/Equiniti partnership is a meaningful competitor to FNZ, with the vast majority of customers (26 of 34) being either unable to comment or considering that such a partnership would not be a meaningful competitor.<sup>328</sup> It highlighted that the tender data shows that

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<sup>323</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.13(ii).

<sup>324</sup> 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 K.

<sup>325</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.13(iii). FNZ notes that the (i) sample used for the 'closeness' score analysis reported in the Phase 2 Provisional Findings is different from that in the Phase 2 Report and the Provisional Report; and (ii) Provisional Report included customers who had completed tenders since 2016 in the closeness scores and that the Provisional Report relegates the different average closeness scores based on responses from all third parties (ie based on a larger sample of respondents) to Appendix K. See paragraph 8.64 for our response to these submissions.

<sup>326</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.14. See paragraph 8.65 for our views on precise weighting of evidence.

<sup>327</sup> See FNZ response to the Provisional Report, 30 April 2021, paragraph 4.15. See paragraph 8.71(a) below where we have clarified this point.

<sup>328</sup> See FNZ response to the Provisional Report, 30 April 2021, paragraph 4.15(ii).

partnerships overall have [redacted], and that real-world evidence is of greater significance than hypothetical views from a small set of customers.<sup>329</sup>

### *Closeness of competition between GBST and FNZ*

8.52 We consider below the closeness scores given by third parties<sup>330</sup> for the Parties and six other suppliers<sup>331</sup> of Retail Platform Solutions in the UK. Using this evidence, we calculated average ‘closeness scores’ (‘third party scores analysis’) to measure: (i) how close an alternative FNZ is to GBST; (ii) how close an alternative GBST is to FNZ; and (iii) how close each of them is to other competitors (assessed in the section about Competitive constraint from alternatives) (see Appendix K for more details). We also assessed wider qualitative evidence from customers, competitors and consultants. We also considered how GBST’s partnership with Equiniti affected its ability to compete with FNZ in cases where customers have a preference for Combined Platform Solutions.

#### *Third party scores analysis*

8.53 We asked third parties to provide scores on how close alternatives FNZ and GBST were to each other.<sup>332</sup>

8.54 Figure 8.1 below shows the average ‘closeness scores’<sup>333</sup> given by third parties for Bravura, SS&C, SEI, Pershing, Avaloq and Temenos, as well as FNZ and GBST.<sup>334</sup>

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

[redacted]

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

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<sup>329</sup> See paragraph 8.77 for our response on this point. See FNZ response to the Provisional Report, 30 April 2021, paragraph 4.15(ii).

<sup>330</sup> Seven competitors, four consultants and 23 customers ([redacted]) provided closeness scores.

<sup>331</sup> These six suppliers are: Bravura, SS&C, SEI, Pershing, Avaloq and Temenos. These competitors included two suppliers of Non-Retail Platform Solutions (Avaloq and Temenos) to help us assess the degree of constraint from both within and outside of the relevant market.

<sup>332</sup> We also asked respondents to suggest any other suppliers and to provide closeness scores for those. We did not receive a sufficient number of responses from third parties to enable us to calculate average closeness scores reliably for these other suppliers.

<sup>333</sup> Options given for scores ranged were 1 = not at all a close alternative, 2 = a somewhat close alternative, 3 = a moderately close alternative, 4 = a close alternative 5 = a very close alternative. Each supplier had a response from at least 15 third parties, from which the average score was calculated.

<sup>334</sup> Competitors, consultants, and customers that have undertaken a tender since 2016. We have not used the scores from other customers as we gave limited weight to views of customers that have not tendered recently. See Appendix K for analysis that includes all customer responses. Our results in Appendix K do not materially differ from the results presented in this section. The relative position in terms of closeness is similar between the two sets.

- 8.55 The scores show that third parties considered, on average, that:
- (a) GBST and Bravura are the closest alternatives to FNZ, with GBST slightly closer, with scores between 3.5 and 4 each;<sup>335</sup>
  - (b) They are followed by SS&C and SEI, with scores between 3 and 3.5;<sup>336</sup> and
  - (c) Pershing, Avaloq and Temenos are seen as less-close alternatives to FNZ with scores between 2 and 3.<sup>337</sup>
- 8.56 GBST is seen to have fewer close competitors:
- (a) Bravura and FNZ are seen as the closest alternatives to GBST with scores between 4.5 to 5 and 4 to 4.5 respectively;<sup>338</sup>
  - (b) They are followed by SS&C and SEI with scores between 2.5 and 3;<sup>339</sup> and
  - (c) Avaloq, Pershing and Temenos are less close still (with scores between 1.5 and 2.5).<sup>340</sup>
- 8.57 Based on these scores, on average, some third parties consider FNZ a stronger constraint on GBST than GBST is on FNZ. However, GBST is the closest alternative to FNZ, and FNZ the second closest to GBST after Bravura. FNZ's strong competitive position is consistent with our share of supply estimates, which show FNZ as one of the largest suppliers of Retail Platform Solutions in the UK pre-Merger.
- 8.58 In order to understand how third parties scored FNZ and GBST compared to other suppliers in terms of relative scores instead of absolute scores, we also

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<sup>335</sup> This reflects that [REDACTED] of respondents provided a rating for Bravura's closeness to FNZ of 5 ('a very close alternative') ([REDACTED]) or 4 ('a close alternative') ([REDACTED]), with similar results for GBST ([REDACTED] rated it 5 in closeness, and [REDACTED] rated it 4). Conversely, [REDACTED] rated either as 1 ('not at all a close alternative') ([REDACTED] for Bravura and [REDACTED] for GBST).

<sup>336</sup> This reflects that [REDACTED] respondents gave SS&C and SEI the highest score in closeness to FNZ: for SS&C, [REDACTED] rated it as 5 in closeness to FNZ, and [REDACTED] rated it as 4 in closeness. [REDACTED] gave SS&C a closeness score of 3 ('a moderately close alternative'). For SEI, [REDACTED] rated it as 5 in closeness to FNZ and [REDACTED] rated it as 4. Respondents were [REDACTED] to rate SEI as 3 or 2 ('a somewhat close alternative') with [REDACTED] giving these scores respectively.

<sup>337</sup> This reflects that [REDACTED] of respondents gave ratings for closeness to FNZ of 1 or 2 to Avaloq ([REDACTED]) and Temenos ([REDACTED] gave a score of 1 and [REDACTED] gave a score of 2). For Pershing, [REDACTED].

<sup>338</sup> This reflects that [REDACTED] of respondents provided a rating for Bravura's closeness to GBST of 5 ('a very close alternative') ([REDACTED]) or 4 ('a close alternative') ([REDACTED]). Similarly, [REDACTED] rated FNZ's closeness to GBST as 5 ([REDACTED]) or 4 ([REDACTED]). No other supplier was scored as 5 by [REDACTED].

<sup>339</sup> For SS&C and SEI, this reflects scoring [REDACTED]. SS&C's scores on closeness to GBST were [REDACTED] between 2 ([REDACTED]), 3 ([REDACTED]) and 4 ([REDACTED]). For SEI a [REDACTED] scored it as 3 in closeness to GBST ([REDACTED]) and [REDACTED] respondents rating it as 1 or 2 ([REDACTED]) than rated it 4 or 5 ([REDACTED]).

<sup>340</sup> Scoring for these providers' closeness to GBST was [REDACTED]: for Pershing, [REDACTED] scored it as 1 ([REDACTED]), 2 ([REDACTED]) or 3 ([REDACTED]) with [REDACTED] scoring it as 5; for Temenos, [REDACTED] also scored it as 1 ([REDACTED]), 2 ([REDACTED]) or 3 ([REDACTED]), with [REDACTED] scoring it as 4; for Avaloq, [REDACTED] rated its closeness to GBST as 1 ([REDACTED]), 2 ([REDACTED]) or 3 ([REDACTED]), than rated it 4 or 5 ([REDACTED]).

considered, for each third party response, how many other suppliers were given scores greater than or equal to the Parties.

- 8.59 These results indicate that nearly half of respondents (eight out of eighteen) indicated either no or only one other competitor was as close to the Parties as they are to each other. For other respondents, there were other competitors who they ranked as similarly close to the Parties. However, the average scores indicate that respondents were not consistent in which other providers they considered to be close to the Parties (except Bravura). Considering these results alongside the average closeness scores indicates that whilst the views of individual third parties may vary, FNZ and GBST are generally considered close alternatives to one another.
- 8.60 FNZ submitted that our closeness scores analysis indicated that GBST and FNZ are not closer to each other than each of the six other suppliers on the basis of how often third parties provided closeness scores for these other suppliers.<sup>341</sup> We do not, however, consider that FNZ's analysis is relevant to our assessment of competition, as the number of scores is less important, given that they were prompted, than the average closeness score of a specific competitor, which is the main outcome of the third party scores analysis.
- 8.61 FNZ also submitted that we understated the presence of smaller suppliers because we did not prompt respondents to think of them.<sup>342</sup> More generally, in its response to the Provisional Report, FNZ suggested that the evidence from closeness scores was tainted by significant flaws in the questionnaire design.<sup>343</sup>
- 8.62 We disagree with FNZ's submissions. While we initially prompted third parties with a list of six named suppliers who had been identified in Phase 1 (those in Figure 8.1 above), we sought to increase the number of suppliers for which we could reliably report average closeness scores by subsequently prompting other third parties (customers whose contracts were no more than two years old) with 19 named suppliers.<sup>344</sup> We also asked all third parties for suggestions of other suppliers and to provide closeness scores for them.
- 8.63 These additional steps did not allow us to calculate reliable average closeness scores for any more suppliers because the number of respondents who referred to these other suppliers remained very low, with only five respondents at most referring to them. If these suppliers were significant constraints on the

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<sup>341</sup> FNZ response to the phase 2 Provisional Findings, paragraph 4.13(ii).

<sup>342</sup> FNZ response to the phase 2 Provisional Findings, paragraph 4.8.

<sup>343</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.13.

<sup>344</sup> These suppliers had reached a final stage of a tender against at least one of the Parties since 2016 in our Phase 2 dataset. These suppliers were [REDACTED].

Parties, we would have expected third parties to have referred to them more often. This strongly indicates that those suppliers are not widely seen by third parties to be close alternatives to FNZ or GBST.<sup>345</sup>

- 8.64 In response to FNZ's submission that the Provisional Report appeared to be irrationally selective as regards which version of closeness scores to present, and the approach to sampling seemed arbitrary (see paragraph 8.51(b)), we consider that it was appropriate to include the customers that tendered since 2016 for consistency with our tender analysis, which includes tenders from 2016 onwards. For completeness we set out results including customers who had not tendered recently in Appendix K
- 8.65 FNZ also submitted that we should attach less weight to closeness scores than tender analysis, as the closeness scores represent 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 (see paragraph 8.51(c)).<sup>346</sup>
- 8.66 In response, we consider that closeness scores can provide a helpful way of summarising third party views on the relative strengths of competitors, alongside other qualitative and quantitative evidence. We have carefully considered the evidence received from third parties, including considering their level of knowledge of the market (for example, focusing more on responses from customers who have engaged with the market more recently)<sup>347</sup> and their incentives in responding in considering how to interpret this evidence. We note that precise weighting of different evidence bases is more relevant when evidence is conflicting. In this case, evidence from tenders and third party views both indicate the Parties are close competitors, and so the precise weight attached to each of these two evidence sources is less important.

#### *Qualitative evidence from third parties*

- 8.67 The scores for each supplier are averages which do not show how closeness of competition can vary depending on the requirements and preferences of a customer. We complemented this evidence with qualitative evidence from customers, competitors and consultants.

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<sup>345</sup> Appendix J sets out further third party evidence on a number of these other suppliers which indicates that they appear to offer only a limited competitive constraint on the Parties. See also our assessment of Entry and Expansion in Chapter 9.

<sup>346</sup> FNZ response to the phase 2 Provisional Findings, paragraph 4.14.

<sup>347</sup> We note that closeness scores from customers may provide some information as to who these customers may consider in future tenders, and so complement our information on previous tenders.



- 8.68 Third parties told us that FNZ is a strong competitor with capabilities in both software and servicing, proven at scale. For example:
- (a) A competitor told us that FNZ is currently the only credible supplier offering a Combined Platform Solution; and
  - (b) A customer noted that FNZ has a simpler, more efficient operational model than other suppliers.
- 8.69 Customers submitted that GBST has scale, proven experience and a strong reputation in pensions software and is a leading supplier of Retail Platform Solutions in the UK. Third parties considered that the upgrade of GBST's software was necessary, as it had fallen marginally behind FNZ, but believed that the upgrade should re-establish its credibility.
- 8.70 Third parties noted that FNZ targets a broader range of customers than GBST, as it tenders for both Retail and Non-Retail Platforms while GBST focuses on Retail.
- 8.71 The evidence indicates that some customers, such as those that do not consider the Parties' different delivery models to be a significant differentiating factor, consider the Parties to be closer competitors.. For example:
- (a) Seven of the customers who provided closeness scores considered FNZ and GBST to be close alternatives, with Bravura being the only other supplier noted by some as competing as closely as the Parties do with each other. More specifically, [REDACTED]. This includes GBST's [REDACTED], Aegon, which told us that it is open to a Combined Platform Solution such as that provided by FNZ. [REDACTED]; and
  - (b) [REDACTED], another large customer of GBST, told us that it uses both JHC and GBST. In its view, the overlapping functionality of the two systems has created a helpful competitive tension between the two suppliers as they have sought to get [REDACTED] to more widely adopt their respective systems.

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

- 8.72 We also assessed how GBST's partnership with Equiniti affected its ability to compete with FNZ in cases where customers have a preference for Combined Platform Solutions.
- 8.73 In relation to partnerships in general, third parties gave different views on the strength of partnership models compared to Combined Platform Solutions from a single firm.

- (a) Eleven of the 18 customers that gave a view said that they were open to partnership models or even preferred them. Reasons given included that: a partnership could bring together specialists to create a strong solution, they would not be dependent on a single supplier, and they could replace one partner, giving them greater control over supply;<sup>348</sup>
- (b) The other seven customers indicated that they prefer a Combined Platform Solution from a single supplier to a partnership. They found that a single supplier was more efficient, that software and servicing would be more complementary, and that the supplier relationship was simpler; and
- (c) Two competitors noted that the successful provision of Combined Platform Solutions from a single supplier has been proven, whilst partnerships have so far failed to gain customers.<sup>349</sup>

8.74 We asked third parties to give a view on the ability of the GBST Equiniti partnership to compete as a credible alternative to FNZ in providing Combined Platform Solutions:

- (a) Of 34 customers, 22 said they did not know enough to give a view, but eight thought that the GBST Equiniti partnership provided a credible alternative and four said that it did not;
- (b) Of eight customers that are current FNZ customers,<sup>350</sup> three provided a view and all said that the GBST/Equiniti partnership was a credible alternative; and
- (c) Of five consultants, three did not give a firm view and two considered that, absent the merger, GBST and Equiniti could have competed effectively with the Combined Platform Solutions provided by FNZ.

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

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<sup>348</sup> [REDACTED].

<sup>349</sup> [REDACTED].

<sup>350</sup> Data provided by FNZ. Customers where FNZ provides both the software and the servicing solution (ie excluding JHC customers). The other 26 customers that provided a response were either customers of GBST or JHC, or they had undertaken a tender since 2016 in which at least one of the Parties had participated.

- 8.76 We note that Equiniti acquired Aquila in November 2018. FNZ submitted that Aquila is [redacted] as a result of Equiniti's acquisition of Aquila.<sup>351</sup> In particular, Aquila/Equiniti bid [redacted] and also [redacted].<sup>352</sup> This position is contradicted by [redacted]. GBST and Equiniti have bid together in [redacted].
- 8.77 In response to FNZ's submission in response to the Provisional Report that only a minority of customers (eight of 34 customers who responded) consider that a GBST/Equiniti partnership is a meaningful competitor to FNZ,<sup>353</sup> we need to interpret third party responses in context: most third parties did not feel able to comment because the partnership was relatively new and, of those third parties that commented, more said it was credible than said it was not; and although third parties were asked to respond by reference to a scenario absent the Merger, their response may have been affected by the perception that the Merger or other change in GBST's ownership could prevent the partnership from moving forward. Furthermore, we have evidence that the GBST/Equiniti partnership has participated in [redacted] Retail and [redacted] Sensitivity-Only tenders (including at final stage in [redacted]).
- 8.78 Overall, the third party evidence considered above shows that GBST is a close competitor to FNZ, regardless of a partnership for the offer of a Combined Platform Solution. Its partnership with Equiniti may have strengthened competition between the Parties, in particular for customers which would prefer a Combined Platform Solution, although the partnership is largely untested at this stage.

### ***Tender analysis***

- 8.79 We analysed recent tenders in which the Parties participated in order to assess the degree to which they compete against each other.
- 8.80 Tender data was highly relevant in our assessment. In assessing the tender data, we have taken into account that tenders in this market are infrequent (because of the nature of the switching process) and that the tender data does not fully capture the competitive interactions between the Parties (eg around contract renegotiations).
- 8.81 The tender evidence considered in this section shows that the Parties are close competitors:

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<sup>351</sup> FNZ Initial Remittal submission, 12 February 2021, paragraph 2.6.

<sup>352</sup> FNZ Remittal submission, 9 March 2021, Annex 1, section 2.1.

<sup>353</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.15.

- (a) In Retail tenders,<sup>354</sup> since 2016, FNZ (or JHC) and GBST have overlapped in around [redacted] the tenders in which they have participated ([redacted] tenders in total), of which [redacted] were at the commercial negotiations stage. In the context of infrequent, long-term tenders, this was [redacted].
- (b) [redacted].
- (c) [redacted]. GBST also submitted that some tender processes have been disrupted by the Coronavirus (COVID-19) pandemic, although the effect of is disputed by FNZ (as discussed below).

8.82 We set out below:

- (a) FNZ's submissions on its own tender analysis;
- (b) Our methodology;
- (c) The results of our tender analysis; and
- (d) Our assessment of this evidence.

#### *FNZ tender analysis and submissions*

8.83 During the Phase 2 Inquiry, FNZ submitted an analysis of [redacted] tenders since 2016 where it is aware of the identity of the winning supplier. FNZ submitted that this showed that:

- (a) Of [redacted] tenders, there were [redacted] where the customer indicated a willingness to consider both Software-only and Combined Platform Solutions;<sup>355</sup>
- (b) FNZ and GBST met each other in just [redacted]% of their tenders and that in the small number of occasions where FNZ (and not JHC) competed, FNZ did not lose to GBST. FNZ submitted that it is not aware of having competed with GBST [redacted] of a tender;
- (c) JHC has only lost [redacted] to GBST<sup>356</sup> and of the [redacted] tenders in which GBST has competed, it [redacted];
- (d) Competition over pricing and service terms only takes place at the final commercial negotiation stage of a tender, and the very small number of

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<sup>354</sup> See description in paragraph 8.92.

<sup>355</sup> FNZ Initial phase 2 Submission, paragraph 1.2.1. See also FNZ Initial phase 2 Submission, paragraph 2.10, Annex 2.

<sup>356</sup> FNZ Initial phase 2 Submission, paragraph 2.11. See also FNZ Initial phase 2 Submission, Annex 2.

Retail tenders where FNZ or JHC overlapped with GBST at this stage cannot alone lead to the conclusion that the Parties are close competitors, particularly when the individual circumstances of these tenders are considered.<sup>357</sup> Furthermore:

- (i) Some of the projects ([REDACTED]) were discontinued;<sup>358</sup>
- (ii) Other suppliers were present at the final commercial negotiations stage; and
- (iii) The functionalities offered by the Parties were different. Specifically, GBST [REDACTED], and JHC [REDACTED].<sup>359</sup>

(e) The absence of competition [REDACTED].

8.84 During the Remittal Inquiry, and based on our updated tender analysis, FNZ subsequently submitted that:

(a) Although meaningful competition does not take place at the early stage, when adding up all the overlaps at this stage in tenders between suppliers since 2016, [REDACTED].<sup>360</sup>

(b) [REDACTED];<sup>361</sup>

(i) The [REDACTED] overlaps between FNZ and GBST at the competitive negotiations stage were [REDACTED]. FNZ noted that: ‘The Parties [REDACTED]. As the tender dataset has been expanded to cover the period to February 2021, this means that the Parties [REDACTED]’;<sup>362</sup>

(ii) [REDACTED] were subsequently abandoned, which means that the CMA should put less weight on them. FNZ subsequently submitted that the fact a tender did not proceed may indicate the customer was unsure whether to outsource at all, even at a late stage;<sup>363</sup> and

(iii) [REDACTED].

8.85 FNZ also submitted that there are reasons to discount [REDACTED] overlaps when making an assessment in 2021:

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<sup>357</sup> FNZ response to the phase 2 Provisional Findings, paragraph 4.12(iii); FNZ response to the phase 2 Provisional Findings, Annex 1, section 4.1.2.

<sup>358</sup> The [REDACTED] tender and [REDACTED] tender.

<sup>359</sup> FNZ response to the phase 2 Provisional Findings, Annex 1, section 4.1.2.

<sup>360</sup> FNZ Remittal Submission, 9 March 2021, paragraph 6.1(iii).

<sup>361</sup> NoA, paragraph 66b and FNZ Initial Remittal Submission, 12 February 2021, paragraph 2.5.

<sup>362</sup> FNZ Remittal submission, 9 March 2021, paragraph 6.1(i).

<sup>363</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.6

- (a) In [REDACTED], the overlap was [REDACTED].<sup>364</sup> [REDACTED];
- (b) The [REDACTED] tender is [REDACTED] retail tenders where the CMA dataset identifies end-user segment as open to PaaS or Software-Only from the outset; and
- (c) In the [REDACTED], the overlap was [REDACTED].<sup>365</sup>

8.86 FNZ further submitted that there is limited overlap between PaaS and Software-only delivery model. The updated tender dataset shows that in over [REDACTED] of Retail tenders, platforms specify whether they want a PaaS or Software-only delivery model from the outset.<sup>366</sup> In addition, PaaS providers and Software-only providers also only overlap in [REDACTED] of the [REDACTED] Retail tenders.<sup>367</sup> PaaS and Software-only delivery models are highly differentiated. This suggests that FNZ and GBST, whose primary delivery models are PaaS and Software-only respectively, [REDACTED].<sup>368</sup>

8.87 In its response to the Provisional Report, FNZ submitted that:

- (a) Substantive competition only takes place at the late stage so overlaps at the RFI and RFP are not informative of competitive effects, there was [REDACTED] between the Parties at the RFP stage and overlaps at the RFI stage do not indicate material competition between the Parties when assessed in the context of the [REDACTED].<sup>369</sup>
- (b) The CMA's approach of excluding tenders that neither FNZ nor GBST competed in is problematic because it necessarily overstates the extent to which the Parties overlap as a percentage of all tenders. In addition, a fuller set of Retail tenders would provide for a more robust analysis as well as a better basis to understand whether or not there is a clear market-wide distinction between providers competing for Retail versus ('Non-Retail' or 'Sensitivity-only') other contracts.<sup>370,371</sup>

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<sup>364</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 2.6.

<sup>365</sup> FNZ Remittal Submission, 9 March 2021, Annex on Tender Analysis, page 3.

<sup>366</sup> FNZ Remittal Submission, 9 March 2021, paragraph 6.1(ii).

<sup>367</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 2.3.

<sup>368</sup> FNZ Remittal Submission, 9 March 2021, paragraph 6.1(ii).

<sup>369</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.12. See paragraph 8.98 for why we consider overlaps at the RFI stage and paragraph 8.243 for our assessment of the additional providers that appear.

<sup>370</sup> FNZ also noted that the CMA should have sought to understand which solutions reached the final stage of tenders that did not involve the parties as the Provisional Report asserts that harm could arise to platforms which are not customers of the Parties. See FNZ response to the Provisional Report, 30 April 2021, paragraph 4.7.

<sup>371</sup> We note that, contrary to what FNZ implied in FNZ response to the Provisional Report, 30 April 2021, in the Provisional Report we have: (i) explained why we consider tenders from across the period are relevant (paragraphs 8.71(b) and 8.106); (ii) considered both early and late stage overlaps and the same finding holds (eg paragraph 8.96); (iii) considered the features highlighted by FNZ and do not find these to provide a reason to discount these overlaps (paragraphs 8.91 and 8.108) and (iv) discussed the low absolute numbers (of tenders and overlaps) (paragraph 8.96).

- (c) The small sample size means that [redacted] overlaps at the late stage are not statistically different from [redacted] at the late stage.<sup>372</sup> Therefore, FNZ submitted, it is inappropriate to conclude that the Parties pose stronger constraints on each other than other competitors based on the number of late stage overlaps. The only reliable conclusion is that there are [redacted] competitors which have reached the late stage of a Retail or Sensitivity-only tender and can credibly supply Retail platforms.<sup>373</sup>
- (d) The tender data does not support the assertion that absent the pandemic, FNZ and GBST would have overlapped more.<sup>374</sup> The data [redacted].<sup>375</sup>
- (e) 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. The opposite might be inferred given the absence of [redacted].<sup>376</sup>

8.88 FNZ made a number of submissions on our tender analysis, including submissions on our approach to sensitivity testing and on our approach to classifying platforms (discussed at paragraphs 6.48, 6.110 and 8.42). We considered these submissions in Appendix G and I respectively, where we explain in more detail our approach to sensitivity testing and why we consider our platform classifications are reliable.

#### *GBST submissions*

8.89 During the Remittal Inquiry, GBST submitted that the Coronavirus (COVID-19) pandemic has slowed down the procurement-related decision-making processes at the Investment Platforms and resulted in extensions to more contracts with incumbent suppliers where there would otherwise have been a tender process. It stated that, as a result, rather than focusing on more recent years, we should examine the longest possible time period, as more recent data may not reflect how tenders would normally be awarded. We explain below in paragraphs 8.97 our view on the time period we have considered, and discuss the effect of the pandemic at paragraphs 8.130 to 8.131.

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<sup>372</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.17

<sup>373</sup> See paragraph 8.127 for our response to this submission.

<sup>374</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.8.

<sup>375</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.9. See paragraph 8.130 for our response to this submission.

<sup>376</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.11. See paragraph 8.130 for our response to this submission.

## *CMA tender analysis*

8.90 Below we explain the methodology followed in our tender analysis and present the results. We then set out our overall assessment of the tender evidence.

### *Methodology*

8.91 We carried out an analysis of tender data compiled from a wide range of sources in order to assess the closeness of competition between the Parties.<sup>377</sup>

8.92 We gathered information on all tenders which either FNZ or GBST (or both) were involved in since 2016. In contrast to FNZ's submission, in our view it is appropriate to focus on tenders in which at least one of the Parties participated because these are the tenders (and customers) which would be potentially affected by the Merger.

8.93 While there may have been some other tenders which did not involve either FNZ or GBST, in a differentiated market these are likely to be customers for whom other suppliers are preferred, and for which the Merger will have a less significant impact. Including tenders where neither Party participated (even at the initial tender stage) would therefore understate the degree to which the Parties compete.

8.94 Tenders were classified into three categories:

(a) Tenders for Retail Platform Solutions (Retail tenders);

(b) Tenders for platforms identified to be included in our sensitivity analysis as set out in Appendix I (Sensitivity-Only tenders); and

(c) Tenders not identified to be for Retail Platform Solutions or to be included in our sensitivity analysis (Non-Retail tenders).

8.95 Our analysis focuses on Retail tenders. We have also conducted a sensitivity analysis that includes both Retail and Sensitivity-Only tenders to assess the robustness of our results to include the wider set of platforms which may fall into the Retail Platforms category.

8.96 When assessing the tenders, we considered:

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<sup>377</sup> See Appendix B for a description of our evidence base for this analysis.



- (a) How often the Parties overlap in tenders in the various stages of the process (early or final stage);<sup>378</sup>
- (b) How tender requirements (such as for a Software-only Solution) affect how closely the Parties compete;
- (c) Qualitative evidence from customers' tender evaluations, including any rankings; and
- (d) FNZ's representations on interpreting the tender evidence.

8.97 The evidence covers tenders over the last five years since 2016. We found that there have been no material changes to competitive conditions over this period that would lead to weaker competition between the Parties in the supply of Retail Platform Solutions. On the contrary, evidence from third parties and the Parties' internal documents indicated that GBST's product development and its partnership with Equiniti may have strengthened competition between GBST and FNZ over this period. We therefore considered the tender evidence throughout this whole period to be a good reflection of current market conditions (see further detail in paragraph 8.120).

8.98 In our view, we should not rely only on competition at the final stage of a tender in our analysis. Contrary to FNZ's submission, we do not consider it appropriate to only consider late stage overlaps and discount overlaps between the Parties at an earlier stage: participation at the early stage of a tender is informative, because it shows how customers evaluated their supply options, and the probative value of this information does not depend on whether the customer proceeded to award the tender after the final stage.

8.99 The early stage involves assessing the capability of suppliers, for example through requests for information. More frequent participation at this early stage against the Parties provides an indication of how close an alternative a supplier is to the Parties. At this early stage, customers will invite to tender suppliers that have a prospect of meeting their requirements. This can involve the use of consultants to identify potential suppliers to participate at this early stage rather than spend unnecessary time assessing unsuitable suppliers.<sup>379</sup>

8.100 Including tenders in which at least one of the Parties participated since 2016, even if only at early stage, resulted in a total of [X] Retail tenders being included in our analysis. (This compares with [X] Retail tenders in which at least one of the Parties participated at the final stage).

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<sup>378</sup> Appendix E sets out how a tender process works, including the typical stages of a tender process.

<sup>379</sup> See Appendix E for further details.

8.101 We set out in Appendix H our assessment of a small number of procurement processes considered qualitatively. These largely do not affect our assessment of the strength of different competitive constraints. However, to the extent these do provide further information relevant to our assessment, we have incorporated this into our analysis in relation to alternative competitive constraints.

### *Results*

8.102 Our analysis shows that FNZ, JHC and GBST have participated in [REDACTED] tenders. Of these:

- (a) [REDACTED] were for Retail tenders;
- (b) [REDACTED] were for Sensitivity-Only tenders; and
- (c) [REDACTED] were for Non-Retail tenders.

8.103 Table 8.2 shows the total number of tenders included in the main analysis (Retail tenders) and the sensitivity analysis (Retail and Sensitivity-Only tenders). It summarises the number of tenders in which the Parties participated, won and overlapped. Information on Non-Retail tenders is set out in Appendix H.

**Table 8.2: Summary of results**

	Main analysis (Retail tenders)	Sensitivity Analysis (Retail & Sensitivity-only tenders)
Total no. tenders	[REDACTED]	[REDACTED]
FNZ participation	[REDACTED]	[REDACTED]
JHC participation	[REDACTED]	[REDACTED]
GBST participation	[REDACTED]	[REDACTED]
FNZ win	[REDACTED]	[REDACTED]
JHC win	[REDACTED]	[REDACTED]
GBST win	[REDACTED]	[REDACTED]
FNZ/GBST overlap (any stage)	[REDACTED]	[REDACTED]
JHC/GBST overlap (any stage)	[REDACTED]	[REDACTED]

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

8.104 While low in absolute terms, the [REDACTED] Retail tenders in which the Parties overlap account for a significant proportion of each Party's total participation in

Retail tenders:<sup>380</sup> they account for [%] of the [%] tenders where FNZ or JHC bid; and they account for [%] of the [%] tenders where GBST bid. As Table 8.2 shows:

- (a) FNZ overlapped with GBST at the early stage [%] times, and JHC and GBST overlapped [%].<sup>381</sup>
- (b) GBST overlapped with FNZ [%] and with JHC [%] at the final stage. In these [%] tenders, FNZ or JHC and GBST were the only two bidders at the final stage.<sup>382</sup> Of these:
  - (i) FNZ won [%] against [%]; and
  - (ii) GBST won [%] against [%] and [%] against [%].<sup>383 384</sup>

8.105 There are [%] tenders that FNZ won when competing with GBST at the final stage that [%].<sup>385</sup> However, this does not change the fact that GBST was treated as the next best alternative for the customer. We consider that tenders, even if abandoned at the end of the process, are informative of closeness of competition between the Parties. This is because the evidence shows how customers evaluated their supply options and the probative value of this information does not depend on whether the customer proceeded with the project. Similarly, the fact that the [%].

8.106 When we widened the analysis to include Sensitivity-Only tenders we found that the Parties overlapped in [%]. These accounted for [%] of the tenders where FNZ or JHC bid and [%] of the tenders where GBST bid. GBST overlapped with FNZ and JHC at the early stage [%] and [%] respectively. [%].

8.107 The tender evidence shows that the Parties are close competitors for some customers. Table 8.3 shows that these customers use competition between FNZ's Combined Platform Solutions and GBST, either as a Software-only solution or in partnership with a servicing supplier, as part of their procurement processes. This is the case both at the early stage and the final stage of tenders.

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<sup>380</sup> This overlap in these [%] tenders is higher at [%] in our analysis than in FNZ's analysis which showed a [%]% overlap because FNZ included Non-Retail tenders in its analysis and GBST did not compete in any of these.

<sup>381</sup> Retail tenders where FNZ (excluding JHC) and GBST met are [%].

<sup>382</sup> FNZ and GBST reached the final stage in tenders for [%]. JHC and GBST reached the final stage in the [%].

<sup>383</sup> [%].

<sup>384</sup> [%]. According to the tender data submitted by FNZ, [%], which had an AUA of £[%] at the time.

<sup>385</sup> [%] and [%].

8.108 Table 8.3 presents details of the tenders in which the Parties overlapped, including which other competitors than the Parties participated at early stage, final stage and who won.

**Table 8.3. Retail tenders and Sensitivity-Only tenders where the Parties overlapped since 2016**

[REDACTED]

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

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

### *Our assessment*

8.109 When compared to the Parties' overlaps with other competitors (which we discuss later in this chapter), the extent of the overlap between the Parties in our tender data is significant.<sup>386</sup>

- *Frequency of overlaps at different stages of the tender process*

8.110 In absolute terms, the Parties have overlapped in a relatively small number of Retail tenders – [REDACTED] in total since 2016, and [REDACTED] at the commercial negotiations stage. However, this reflects the small number of tenders for Retail Platforms that take place each year and the variation in customers' requirements and preferences for suppliers. On its own, the absolute number of tenders in which the Parties overlap is therefore not particularly informative of the closeness of competition between the Parties. This is reflected in the fact that, while the Parties overlap in a small number of Retail tenders, these represent a relatively large proportion of the Retail tenders in which they have bid ([REDACTED] for FNZ and [REDACTED] for GBST). By contrast, the next supplier with the most Retail tender overlaps with GBST and FNZ/JHC (aside from Bravura) only accounted for roughly [REDACTED] of each Party's total Retail tenders respectively.

8.111 In relative terms, the extent to which the Parties compete in tenders compared to other competitors (as discussed later in paragraphs 8.198 onwards) indicates that FNZ and GBST are closer alternatives to each other than other competitors [REDACTED]. We considered overlaps at the early and final stages of tenders to assess the closeness of competition between the Parties:

- (a) The frequency with which the Parties overlap at the early stage of tenders relative to other competitors indicates whether the Parties' Platform Solutions are close alternatives to each other relative to other

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<sup>386</sup> See the section Competitive constraints from alternatives, paragraph 8.216 for more information.

competitors. We expect closer alternatives to be invited to bid against each other more often than other competitors.

- (b) Similarly, the more the Parties overlap at the final stage of tenders relative to other competitors, the more likely they are to be closer alternatives to each other than either of them is to other competitors. Final stage overlaps also show examples of when the Parties competed closely on price in the past because the final stage of a tender is typically more focused on negotiating prices and terms.

8.112 We found that, [REDACTED].<sup>387</sup>

8.113 We found that our sensitivity analysis produced similar results: the Parties overlap in a relatively high proportion of tenders, and [REDACTED]. However, we note that all of the Parties' overlaps occurred in Retail tenders, reflecting GBST's stronger competitive focus in the supply of Retail Platform Solutions than Non-Retail Platform Solutions.

- *Qualitative evidence from tender evaluation*

8.114 We also gathered information from customers who ran these tenders with regard to their evaluation of suppliers in the context of these procurement processes (set out in more detail in Appendix J). This qualitative evidence showed that they considered the Parties as close alternatives, including the GBST Equiniti partnership as an alternative to FNZ, and JHC as an alternative to GBST:

- (a) One customer identified GBST in partnership with Equiniti as the closest alternative to FNZ as part of their procurement evaluations for a new Retail Investment Platform proposition, with Bravura being ranked third in the process.
- (b) Another customer identified FNZ's technology to be as good as GBST, although GBST was ranked second, very close to FNZ in first place. CTC and Bravura were ranked third and fourth in the final rank, but they were distant in terms of scores from both FNZ and GBST. [REDACTED].
- (c) Another customer, which awarded the tender to FNZ, identified GBST as a credible alternative for the Software-only Solution. At the time, it considered Bravura/Genpact to be a closer alternative to FNZ's Combined

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<sup>387</sup> See Chapter 8, Competitive constraint from alternatives section for this assessment.

Platform Solutions than GBST. It also considered that SEI's servicing was not proven at the scale and scope required.

- (d) A customer of FNZ, [REDACTED], ranked GBST/Equiniti as the closest alternative to FNZ.
- (e) One customer identified JHC as its closest alternative to GBST as part of its procurement evaluation. Bravura, FNZ and SS&C were also identified as possible alternatives but were dismissed earlier in the process for different reasons. While the customer recognised that JHC traditionally served private client investment management and stockbroking platforms, it had concluded during the tender that JHC was expanding to build functionalities often required by Retail Platforms (for example, by developing pensions functionality) and would be able to deliver the Platform Solutions with some development and integration work. GBST was selected based on its capacity to deliver the functionalities needed within the required timeframe.

8.115 Overall, the quantitative evidence and the qualitative evidence from tenders shows that FNZ and GBST, together with Bravura, are the closest competitors to each other in the supply of Retail Platform Solutions.

- *Assessment of FNZ's representations*

8.116 In assessing this evidence, we have considered FNZ's representations as described in paragraphs 8.83-8.87(d) about.<sup>388</sup>

- (a) Differences between PaaS and Software-only delivery models;
- (b) The time since FNZ and GBST last overlapped at the Commercial Negotiation stage;
- (c) GBST's partnership with Equiniti;
- (d) Whether there is a statistically significant difference in the number of overlaps between the Parties and other competitors; and
- (e) That absent the pandemic there is no guarantee there would have been more tenders nor would FNZ and GBST have necessarily overlapped more.

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<sup>388</sup> We have considered the abandonment of [REDACTED] tenders at which FNZ and GBST overlapped at the Commercial Negotiation stage (about which FNZ also made representations) at paragraph 8.105.

- 8.117 In relation to competition between different delivery models, our tender data indicates that [REDACTED] Retail tenders involved both at least one PaaS supplier and one Software-only supplier, either alone or in a partnership, at the early stage of a tender. Of the [REDACTED] tenders for Retail Platforms where we were aware of at least two competing suppliers in the final stage, [REDACTED] contained both a PaaS supplier and a Software-Only supplier, either alone or in partnership, at the final stage.<sup>389</sup>
- 8.118 In our view this indicates that a material number of customers do not specify their preferred delivery model prior to tendering, resulting in competition between Software-only providers and PaaS providers. In addition, customers seeking to outsource both the software and servicing components of their Platform Solution will consider suppliers that can offer both on their own as well as suppliers that offer both via a partnership (eg GBST/Equiniti).
- 8.119 This evidence indicates that there may also be some customers that do not consider the Parties to be close competitors, which may reflect their different delivery models (or other aspects of differentiation between the Parties relevant to that customer's specific requirements and preferences). As a result, these customers would only invite one of the Parties to participate in their tenders or eliminate one of them at an early stage of the tender process. However, the position of these customers would not protect those customers for which the Parties are close competitors from higher prices given that terms are individually agreed with each customer.
- 8.120 While FNZ submitted that FNZ and GBST last met at commercial negotiation stage of a tender [REDACTED], this provides only partial insight into competitive interactions between the Parties:
- (a) 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) [REDACTED]. As noted at paragraph 8.98, we consider that engagement in tenders after RFI but before the commercial negotiation stage can be an indicator of close competition between the Parties.
  - (b) In the context of a market where tenders occur infrequently and contracts typically last for 10-15 years, we consider that the results of tenders happening five years ago continue to be informative of current competitive

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<sup>389</sup> Within the sensitivity analysis, [REDACTED] ([REDACTED]) tenders involved both a PaaS supplier and a Software-Only supplier, either alone or in a partnership, at the early stage of a tender. Of the [REDACTED] tenders where we were aware of at least two competing suppliers in the final stage, [REDACTED] contained both a PaaS supplier and a Software-Only supplier, either alone or in partnership, at the final stage.

conditions, absent material changes in the competitive conditions. As noted at paragraph 8.97, we did not find that there had been significant changes in competitive conditions during the period.

- (c) We received differing submissions from the Parties on whether recent tender processes have been disrupted by the Coronavirus (Covid-19) pandemic.<sup>390</sup> We consider this further at paragraphs 8.130 to 8.131. However, for the reasons set out above in this paragraph and in paragraph 8.97, we consider we should take into account tenders from the full time period considered, regardless of whether the pandemic had any impact. Furthermore, there is some evidence that GBST [REDACTED].<sup>391</sup>

8.121 The fact that FNZ won recent tenders where GBST competed against it (including tenders in which GBST was the next best alternative to FNZ) shows that GBST provided a constraint on FNZ in these tenders. Where two competitors compete closely with each other but where one is stronger than the other, it may be the case that only one of them wins the tenders where they overlap. This is particularly so if there are only a limited number of tenders. GBST therefore did not need to win these tenders, or any others against FNZ, in order to provide a strong constraint on FNZ.

8.122 In relation to the GBST/ Equiniti partnership, FNZ submitted that [REDACTED]. However, we found that [REDACTED].

8.123 In addition, while FNZ has suggested that [REDACTED], this position is contradicted by [REDACTED].'

8.124 We recognise that the presence of other bidders in tenders, including at the final stages of the process, is important in assessing the effects of the Merger. We assess the presence of other competitors in tenders that the Parties bid for in the section on Competitive constraint from alternatives.

8.125 Overall, we consider that the tender analysis (both our main analysis and sensitivity analysis) indicates that FNZ and GBST compete closely for customers that do not consider the different delivery models as a significant differentiating factor.

8.126 This is clearly shown in several tenders over the past five years where customers have considered either GBST's Software-only solution or its

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<sup>390</sup> [REDACTED]. FNZ states that 'In FNZ's experience, the Covid-19 pandemic has not had a meaningful impact on the number of recent tenders' and FNZ's submission in response to the Provisional Report, 30 April 2021, paragraph 4.10, which states that 'the objective [tender] data does indicate a marked reduction in tender activity in 2019 or 2020'.

<sup>391</sup> First, [REDACTED].



partnership with Equiniti to be a close alternative to FNZ's Combined Platform Solutions, and in some cases the next best alternative.<sup>392</sup>

8.127 FNZ also claimed that, the small number of tenders means that there is no statistically significant difference between the number of times FNZ and GBST overlapped at the final stage with each other compared with several other competitors and therefore it is inappropriate to conclude the Parties pose stronger constraints on each other based on the number of late stage overlaps.<sup>393</sup>

8.128 We disagree with FNZ that we cannot place weight on the finding that [REDACTED]. We collected evidence on all the tenders which the Parties participated in over the past five years – ie we were not using a small sample to infer characteristics of a wider population of tenders. We considered this full set of competitive interactions between the Parties and other competitors in the round. We also considered the evidence of overlaps between the Parties at late stage alongside other evidence from the tenders including overlaps at the earlier stages of tenders and qualitative tender evidence, as well as other evidence from third parties and internal documents, in order to reach an overall assessment.<sup>394</sup>

8.129 The results of the tender data analysis also showed that, together with Bravura, FNZ and GBST overlap the most with each other in tenders, [REDACTED]. This tender evidence, therefore, shows that FNZ and GBST are close alternatives.

8.130 Finally, FNZ provided data that showing there is no objective evidence that there would have been more tenders absent the pandemic as there was [REDACTED], compared to previous years, nor are there reasons to believe that FNZ and GBST would have participated or overlapped, even if there had been more tenders.<sup>395</sup> In response, we are aware of two tenders that were paused due to the pandemic. While we cannot be certain that these tenders would have gone ahead, our understanding from the customers is that it is likely that they would have progressed.

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<sup>392</sup> We do not consider that Equiniti's acquisition of Aquila in 2018 materially affects the continued ability of GBST to partner with Equiniti in cases where customers have a preference for a PaaS solution, for the reasons set out in paragraphs 8.122 and 8.123 above.

<sup>393</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.17.

<sup>394</sup> More narrowly, even if we were observing a sample of tenders, we do not consider that the statistical test employed by FNZ is applicable in this context. This is because the test used (Fisher's Exact Test) assumes that all observations are independent, whereas in practice the proportion of tender overlaps between the parties is not independent of the proportion of tender overlaps with other competitors.

<sup>395</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.8.

8.131 We note that while FNZ and GBST [redacted]. Consistent with the broader body of evidence (set out in detail in this Report), we consider that there is some possibility that FNZ and GBST would have overlapped in tenders that could have taken place in 2020 absent the pandemic. We do not, however, consider that it is necessary to reach a firm view on this point given, in particular, that it is appropriate, on the facts of this case, to consider tender data over a longer period and that there is no evidence of recent changes in competitive conditions.

### ***Internal documents***

8.132 We have assessed internal documents from each Party to ascertain how closely they consider that they compete with each other and how they position themselves in the market relative to other competitors. Given the importance of product development, we assessed, in particular, evidence from the Parties' internal documents on whether and to what extent competition between the Parties is a driver of their product development.

8.133 Internal documents produced by the Parties before the Merger was in contemplation are a relevant source of evidence to the extent they provide insight into competitive conditions. More limited weight was given to internal documents that were contemporaneous to the Merger and to documents produced for the Parties by third party consultants and advisers.

8.134 Overall, we found that:

- (a) GBST's internal documents characterise FNZ and GBST as the main competitors to each other, alongside Bravura. In particular, GBST's internal documents show that competition from FNZ is a key driver of its product development, and FNZ's and GBST's internal documents demonstrate that GBST invested in Project Evolve to improve its competitiveness against FNZ.
- (b) FNZ's documents, to the limited extent that they provide insight into competitive conditions, also identify GBST as a competitor to FNZ, although we have found no clear evidence that competition from GBST is a significant driver of FNZ's product development.

### ***FNZ submissions***

8.135 FNZ submitted that:

- (a) Its internal documents do not provide a reliable basis from which to draw conclusions because only a small set of documents has been used in our

assessment;<sup>396</sup> many of these documents were either in draft form and/or not produced directly for senior FNZ management, and some documents were produced by third parties and their findings are ‘unreliable’ and ‘inaccurate’.<sup>397</sup>

- (b) We have misinterpreted statements within the documents, have taken them out of context,<sup>398</sup> and have not taken into account those documents which show that GBST is not a strong competitor.
- (c) [REDACTED] and that tender data is a more reliable source of evidence on competition. It also pointed to its share of supply estimates as a better view on the competitive landscape.<sup>399</sup>
- (d) Its internal documents contain many references to the fact that a Combined Platform Solution fundamentally differs from a Software-only solution.<sup>400,401</sup>

8.136 In addition, in response to the Provisional Report, FNZ submitted that the documents provide no reasonable basis to find that FNZ and GBST are close competitors.<sup>402</sup> It submitted that the internal documents relied on by the CMA represent a very small subset of the documents that were submitted and make up a very small percentage of the evidence that the CMA must consider. FNZ stated that they cannot be allocated any significant weight, especially in light of other economic evidence.<sup>403,404</sup> These are very similar to arguments previously raised by FNZ, which we consider at paragraphs 6.132, 6.138 to 6.147 and 6.153.

8.137 We took FNZ’s comments into account in our assessment of its internal documents. We agree with the broad principle underpinning FNZ’s submissions: that the relevance of a given internal document depends not only on the information provided within it, but the context in which that document was produced.

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<sup>396</sup> [REDACTED].

<sup>397</sup> [REDACTED].

<sup>398</sup> For example, FNZ submitted that [REDACTED].

<sup>399</sup> FNZ response to phase 2 Provisional Findings, paragraph 4.15.

<sup>400</sup> FNZ response to the phase 2 Provisional Report, 30 April 2021, paragraph 4.18.

<sup>401</sup> Appendix M provides summaries of the internal documents described in this chapter as well as further examples of internal documents relevant to our assessment. The document extracts themselves are in Appendix L and our approach to the review of internal documents is in Appendix B.

<sup>402</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.23

<sup>403</sup> In particular, as the CMA acknowledges 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’.

<sup>404</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.23

## *Our assessment*

- 8.138 In general, we consider that internal documents are a useful source of evidence, as they reflect how the Parties consider the market in the ordinary course of business. Evidence in relation to how competition operated in the market prior to a merger helps us to understand how rivalry is likely to be affected by it. This is true even when there are relatively few documents of relevance (although the production of high volumes of documents on a given point would, of course, also typically form part of the CMA's assessment of the context of those documents).
- 8.139 Our treatment of any internal document takes into account both its content and the purpose for which it was prepared – for instance, we tend to place greater weight on documents prepared to inform senior-level decision-making. We also consider the context of any mentions of competitors – we do not just conduct a quantitative analysis of the number of times a given supplier is mentioned, but will rather consider the nature of a reference to a competitor, and to what extent that informs the nature of the constraint offered by the competitor.

### *FNZ internal documents*

- 8.140 FNZ's internal documents, including documents for the FNZ board, indicate that it characterises itself as the most significant supplier of Retail Platform Solutions in the UK, with a unique and strong position in providing Combined Platform Solutions. Examples include:
- (a) noting that it [REDACTED]; and
  - (b) referring to [REDACTED].
- 8.141 A third party report produced for FNZ [REDACTED].
- 8.142 In internal documents that consider the competitive landscape, FNZ [REDACTED]. The documents, which include a senior management presentation, indicate that:
- (a) [REDACTED];
  - (b) [REDACTED];
  - (c) [REDACTED]; and
  - (d) [REDACTED].
- 8.143 Additionally, an FNZ presentation from September 2019, entitled [REDACTED].

8.144 The picture of the competitive landscape in these documents appears to vary according to the purpose of the document: for example, whether the document is internal or customer-facing.

8.145 FNZ documents [REDACTED].

8.146 Only two FNZ documents [REDACTED].

8.147 With regard to specific points submitted by FNZ on our use of internal documents:

- (a) FNZ submitted that [REDACTED]. We agree that this is consistent with the relatively low number of its internal documents that were focussed on the competitive landscape. However, this does not detract from the probative value of the few documents that do, in our view, indicate FNZ's contemporaneous view of the competitive landscape. It is not uncommon for a merger investigation to gather a large number of documents but for only a relatively small proportion of those documents to be ultimately relevant for the purposes of competitive assessment.
- (b) FNZ submitted that we had misinterpreted statements within the documents, taken them out of context or had downplayed documents which show that GBST is not a strong competitor. We took into account FNZ's descriptions and explanations of the content and context of these documents, where FNZ has made submissions on specific documents, and incorporated them into our assessment. We focussed on a subset of internal documents that were identified as being most relevant to the Parties' contemporaneous view of competitive conditions following an initial review. We took into account specific documents in which GBST is not identified as a competitor which we considered, in the round, with all other relevant documents. In response to our Provisional Findings and Phase 2 Report, as well as in response to the Provisional Report, FNZ has not brought to our attention other internal documents that it considers might downplay the competitive significance of GBST to FNZ, and that were not included in our review.
- (c) We note that some of the documents produced for FNZ by third parties were based on input from key staff at FNZ and that one was subsequently incorporated into a management presentation. We took into account that FNZ has, during the course of our investigation, expressed to us its dissatisfaction with our use of these documents. However, in the absence of any contemporaneous evidence indicating that questions or concerns were raised by FNZ about the content of these documents at the time they were produced or at any point subsequently (outside of our

investigation), we consider that these documents should be regarded as evidence that is relevant to our investigation. The fact that one of these documents was subsequently incorporated into an FNZ management presentation also indicates that FNZ attached some value to that document. Nevertheless, we sought (in keeping with the general principle set out above) to carefully consider the context of each third party document. On this basis, we typically give documents produced by third parties, even with FNZ management input, less weight than documents of a similar nature produced directly by FNZ senior management.

#### *GBST's internal documents*

8.148 GBST documents that analyse competitive conditions include board reports, documents relating to the bids made for GBST in 2019 and those prepared for GBST by consultants.

8.149 These [REDACTED].

8.150 We found relatively few internal documents from GBST that [REDACTED]. One document considered why some [REDACTED].

8.151 However, an FNZ presentation relating to its acquisition of GBST mentions the interest of a major GBST customer [REDACTED].<sup>405</sup>

8.152 Overall, we find that GBST's internal documents characterise FNZ and GBST as the main competitors to each other alongside Bravura. FNZ's documents, to the limited extent that they provide insight into competitive conditions, also identify GBST as a competitor to FNZ.

8.153 Our assessment of the Parties' internal documents is taken together with other sources of evidence, rather than on a stand-alone basis, in reaching our conclusions. In this regard, many of the themes that we observe in the Parties' internal documents (for example in relation to the existing market position of FNZ and the nature of the competitive interaction between the Parties) are also reflected in other sources of evidence, such as third party evidence and tender data.

#### *Closeness of competition in relation to product development*

8.154 Product development is important as an indicator of competition in this market.<sup>406</sup> In this section, we assess the evidence from the Parties' internal

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<sup>405</sup> More details are in Appendix M.

<sup>406</sup> See Chapter 7.

documents on whether and to what extent competition between the Parties is a driver of their product development.

8.155 We focus on evidence from internal documents relating to Evolve, a GBST R&D project to update its main product, Composer. [REDACTED].

*FNZ submissions*

8.156 FNZ submitted that GBST does not drive innovation by FNZ and that [REDACTED]. FNZ told us that its incentive to innovate is driven by competition with other suppliers of Combined Platform Solutions and customer demands.<sup>407</sup>

*Incentives for development of FNZ's products*

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

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

8.159 FNZ told us that it [REDACTED]. This, in turn, means that most of FNZ's R&D and related spending can be [REDACTED]. We consider that its characterisation of the product development process is consistent with a finding that competition for customers plays a role in product development.<sup>408</sup>

8.160 A third party report for FNZ [REDACTED] but FNZ submitted that [REDACTED].

*Incentives for development of GBST's products*

8.161 Before the Merger, competition from FNZ appeared to be a more significant driver of GBST's product development than any impact that GBST has on FNZ's product development incentives:

(a) GBST internal documents, including [REDACTED], show that it was clearly [REDACTED].

(b) FNZ's board minutes also show that [REDACTED].<sup>409</sup>

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<sup>407</sup> FNZ response to the phase 2 Provisional Findings, paragraph 5.1(v).

<sup>408</sup> Appendix N sets out views on Project Evolve from the Parties and third parties.

<sup>409</sup> Further details are provided in Annex K.

- 8.162 FNZ's internal documents showed that it believed that Evolve was intended to help GBST sell Composer to new customers. They also indicate that FNZ [REDACTED].<sup>410</sup>
- 8.163 FNZ submitted that, as part of the acquisition process, its intention after the Merger is to replace GBST's programme [REDACTED].
- 8.164 FNZ submitted that [REDACTED].
- 8.165 In particular, FNZ stated that '[REDACTED]'. In support of this position, FNZ referred to a document [REDACTED].
- 8.166 Our review of FNZ's documents confirms that [REDACTED], but it is not clear whether this relates to R&D or other expenditure such as the cost of migrating existing GBST customers onto FNZ technology.

*Our assessment*

- 8.167 GBST's internal documents show that competition from FNZ is a key driver of its product development. FNZ's and GBST's internal documents demonstrate that GBST invested in Project Evolve to improve its competitiveness against FNZ.
- 8.168 We found no clear evidence that competition from GBST is a significant driver of FNZ's product development, but we found that product development is driven by customer requirements. Competition between suppliers in meeting these customer requirements would therefore also be expected to drive product development at FNZ. As FNZ (including JHC) has a wider range of target customers than GBST,<sup>411</sup> its incentives to develop its technology may not be driven by competition from GBST to the same extent as competition from FNZ incentivises GBST's product development.
- 8.169 While FNZ's intentions for product development in the event that the Merger is cleared are not necessarily indicative of the competitive pressure exercised by FNZ on GBST pre-Merger, we note we found that [REDACTED] would be consistent with a reduced incentive to innovate brought out by the Merger, which would be reflected initially in a reduction in the innovation that would otherwise be carried out by GBST. We found no conclusive evidence [REDACTED].

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<sup>410</sup> See Appendix N for these documents. [REDACTED]

<sup>411</sup> See paragraph 8.42.



## Conclusion on closeness of competition between the Parties

8.170 Taking all of the evidence set out in paragraphs 8.42 to 8.169 together, we found that FNZ is a strong competitor in the supply of Retail Platform Solutions. FNZ's capabilities in both software and servicing, which are proven at scale, give it a distinct market offering. While GBST does not have its own servicing capabilities, evidence from third parties, tenders and internal documents consistently indicate that FNZ and GBST compete closely with each other.

8.171 We consider that FNZ and GBST compete closely for customers that do not consider the different delivery models as a significant differentiating factor or are willing to contract with partnerships to deliver a Combined Platform Solution model, of which there are a material number as evidenced by our tender analysis<sup>412</sup> and views from customers:

- (a) This is clearly shown in tenders where customers have considered either GBST's software-only solution or its partnership with Equiniti to be a close alternative to FNZ's Combined Platform Solution, and in some cases the next best alternative;<sup>413</sup>
- (b) The results of the tender data analysis (discussed above and in paragraphs 8.90 to 8.129) showed that, together with Bravura, FNZ and GBST overlap the most with each other in tenders, [REDACTED]. This tender evidence is consistent with FNZ and GBST being close alternatives;
- (c) Third parties generally consider FNZ and GBST to be close competitors, even with their different delivery models. Moreover, there are a group of customers that consider FNZ and GBST to be close alternatives, with Bravura (which also has a different delivery model to FNZ) being the only other supplier noted by some of these customers as competing as closely as the Parties do with each other; and
- (d) GBST's internal documents characterise FNZ and GBST as the main competitors to each other alongside Bravura. FNZ's documents, to the

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<sup>412</sup> We are not able to quantify precisely how many customers do not consider different delivery models a differentiating factor or are willing to contract with partnerships, but as noted at paragraph 8.117, [REDACTED] tenders for Retail Platforms involved both a PaaS supplier and a Software-only supplier, either alone or in a partnership, at the early stage of a tender. Of the 13 tenders for Retail Platforms where we were aware of at least two competing suppliers in the final stage, [REDACTED] contained both a PaaS supplier and a Software-Only supplier, either alone or in partnership, at the final stage.

<sup>413</sup> We do not consider that Equiniti's acquisition of Aquila in 2018 materially affects the continued ability of GBST to partner with Equiniti in cases where customers have a preference for a PaaS solution, for the reasons set out in paragraphs 8.122 and 8.123 above.

limited extent that they provide insight into competitive conditions, also identify GBST as a competitor to FNZ.

8.172 We found that the Parties compete closely for the following Retail Platforms:

- (a) GBST customers that are open to a Combined Platform Solution involving the outsourcing of servicing as well as software;
- (b) FNZ customers that are open to Combined Platform Solutions offered through a partnership of two suppliers including the GBST Equiniti partnership; and
- (c) customers of neither Party that are open to Software-only Solutions or Combined Platform Solutions, either through a partnership or from one provider.

8.173 Other customers may be less likely to consider FNZ's and GBST's different delivery models as alternatives, because they prefer a Software-only Solution or a Combined Platform Solution. These customers may be less affected by the Merger to a material extent. However, the position of these customers would not protect those customers for which the Parties are close competitors from higher prices given that terms are agreed with each customer individually. Furthermore, these customers may also be worse off as a result of any adverse effect on product development brought by the Merger.

8.174 We found that there are some differences in the constraint that each Party imposes on the other. However, on balance this is not material in terms of the overall constraint each Party imposes on the other.

8.175 As the larger competitor, FNZ is seen (by itself and many others) to impose a stronger constraint on GBST than GBST does on FNZ. But there is also evidence that GBST is a significant constraint on FNZ, in particular that some FNZ customers consider the GBST Equiniti partnership to be a credible alternative to FNZ and that there have been recent tenders won by FNZ where GBST competed with FNZ, including [REDACTED] at the final stage.<sup>414</sup> We found that there may be greater asymmetry in relation to competition in product development than for competition on price and commercial terms, but even in the presence of such asymmetry there is still a loss of close competition.

8.176 We also found that there is competition between GBST and JHC: both offer Software-only Solutions. Although JHC may focus more on Non-Retail

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<sup>414</sup> These are the [REDACTED] and [REDACTED]. [REDACTED].

Platforms, and GBST more on Retail Platforms, they [REDACTED]. In addition, one customer, [REDACTED], uses both JHC and GBST and told us that having two systems has created a helpful competitive tension between the two suppliers.

8.177 On the basis of the evidence set out above, we conclude that the Parties compete closely with each other in the supply of Retail Platform Solutions in the UK.

## **Competitive constraint from alternatives**

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

8.179 Considering the evidence from third parties, tender analysis and internal documents in the round, we found that Bravura was identified as the closest alternative to the Parties across all our sources of evidence. Third parties identified it as the closest alternative, and our tender analysis also shows that Bravura is a close competitor to each of the Parties. This indicates that Bravura is likely to remain a close competitor to the Parties post-Merger.

8.180 We also found that the other competitors to FNZ and GBST would not impose a significant competitive constraint on the merged entity:

(a) SS&C has a restricted offering and gaps in its product capability. Its only material platform administration relationship is with St. James's Place ([REDACTED]% of revenue), which it supplies with a specific (closed architecture) solution. Although SS&C won [REDACTED] against each Party, these tenders were [REDACTED], [REDACTED] and SS&C [REDACTED].

(b) SEI was also viewed by third parties as having a restricted offering, using older technology than the Parties and with limited scale in the UK. It overlapped with FNZ or JHC in [REDACTED] tenders and with GBST [REDACTED] since 2016. However, [REDACTED].

8.181 We found that TCS BaNCS has a high share of supply because it provides solutions to a number of legacy platforms in our analysis, managing a significant volume of assets. However, the third party and tender evidence suggested that it is not a close competitor to either FNZ or GBST given the differentiated nature of the supply of Platform Solutions to legacy products. TCS BaNCS [REDACTED] and was mentioned (unprompted) as a potential competitor to the Parties by only two out of 36 customers that provided us with information about alternative suppliers. [REDACTED].

8.182 We found that, although there was a long tail of providers who appeared at least once against the Parties in tenders, individually or collectively these would not create a significant constraint on the merged entity at least for those customers for whom the Parties are currently close competitors.

8.183 In the section below we assess the following submissions and evidence on competitive constraints from alternative suppliers:

- (a) FNZ and GBST submissions;
- (b) Third party evidence;
- (c) Tender analysis; and
- (d) Internal documents.

### ***FNZ submissions***

8.184 FNZ submitted that:

- (a) FNZ and GBST are subject to significant competitive constraints from many other competitors, including from other Platform Solution suppliers as well as from in-house provision.
- (b) Suppliers of Combined Platform Solutions and suppliers of Software-only Solutions are both credible alternatives for customers.
- (c) There is strong competition between suppliers of Platform Solutions for all Investment Platforms, both Retail and Non-Retail, due to the commonality in their requirements.<sup>415</sup>
- (d) The following suppliers of Platform Solutions are competitors: Avaloq, SS&C, Temenos, Pershing, Bravura, SEI, Platform Securities, IRESS, TCS BaNCS, 3i Infotech, Equiniti, ERI Bancaire, State Street, Broadridge, Objectway and PSL.
- (e) [REDACTED].<sup>416</sup> FNZ also submitted that SS&C has [REDACTED], which is described as being [REDACTED].<sup>417</sup>
- (f) There are [REDACTED].<sup>418</sup> A total of around [REDACTED] competitors (excluding the Parties and in-house) have reached the late stage of a Retail or Borderline tender

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<sup>415</sup> FNZ Initial phase 2 Submission, paragraph 1.2(iii).

<sup>416</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 5.11(b).

<sup>417</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.20

<sup>418</sup> FNZ response to the phase 2 Provisional Findings, paragraph 4.8.

and/or supply a Retail or Borderline platform. The Parties also faced [REDACTED] rivals at the RFI stage in the tenders classified as Retail and 'Borderline' in the Phase 2 Report.<sup>419</sup>

- (g) The many Software-only alternatives to GBST<sup>420</sup> would ensure that GBST customers could not be harmed by the Merger.
- (h) All customers are able to self-supply some or all of their Platform Solutions, and some switch back to in-house provision. This is demonstrated by the example of [REDACTED].

8.185 FNZ's main submissions on the competitive constraint from alternative suppliers in its response to the Provisional Report were that:

- (a) The Provisional Report continues to understate the degree of competition from third parties.<sup>421</sup>
- (b) The Provisional Report's finding that SS&C, TCS BaNCS, Pershing, Avaloq and Temenos only offer a weak constraint on FNZ does not reflect FNZ's experience of these players.<sup>422</sup>
- (c) The Provisional Report excludes as many as [REDACTED] additional competitors, which 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.<sup>423</sup>
- (d) The Provisional Report is wrong to dismiss TCS BaNCS as an irrelevant player:<sup>424</sup>
  - (i) A material portion of TCS BaNCS's supply [REDACTED] is to platforms that supply active products and, in any case, platforms with legacy

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<sup>419</sup> FNZ Remittal Submission, 9 March 2021, paragraphs 6.4-6.5.

<sup>420</sup> [REDACTED]

<sup>421</sup> See from paragraph 8.269 for our assessment on the degree of competition between third parties.

<sup>422</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.22(i). See from paragraph 8.270 for our conclusion on the competitive constraint of the listed suppliers.

<sup>423</sup> FNZ expanded to say that not considering suppliers in the shares of supply as close alternatives because they do not appear in the tender analysis or may supply legacy platforms is irrational because they have a track-record of supplying Retail platforms or platforms with Retail components. See FNZ response to the Provisional Report, 30 April 2021, paragraph 4.18(ii). See paragraph 8.212 for our response to this submission and Appendix J where we set out additional information on a number of suppliers.

<sup>424</sup> FNZ noted that TCS BaNCS was barely mentioned in the competitive assessment in the Phase 2 Report. Now that the shares of supply have been corrected, it emerges in the Provisional Report 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 even though a material portion of its supply is in fact to platforms that supply active products. See FNZ response to the Provisional Report, 30 April 2021, paragraph 4.21. See paragraph 8.272 for our assessment of TCS BaNCS.

products have the same technology and administration requirements as those with active products.<sup>425</sup>

(ii) [REDACTED].<sup>426</sup>

(iii) TCS BaNCS has made clear that ‘it wants to expand its UK business’.<sup>427</sup>

(e) 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 and the CMA has not considered 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).<sup>428</sup>

### **GBST submissions**

8.186 GBST submitted that:

(a) It has a narrower focus than FNZ and its software is typically only targeted at Retail Platforms where it has a strong offering, due in part to the depth of its functionality around pensions.

(b) It competes closely with FNZ in the supply of Retail Platform Solutions in the UK and it has also monitored the following alternative suppliers who are active in this segment: Bravura, SS&C, SECCL, Ohpen, Sapiens, Hubwise and InvestCloud.

(c) Among these competitors, the ones that it monitors more closely are [REDACTED] and [REDACTED], while others are a weaker constraint.

8.187 GBST submitted that each of the other suppliers we asked it about were weaker competitive constraints on it than [REDACTED] or [REDACTED]:

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<sup>425</sup> See FNZ response to the Provisional Report, 30 April 2021, paragraphs 3.7 and 4.21(i).

<sup>426</sup> See FNZ response to the Provisional Report, 30 April 2021, paragraph 4.21(ii).

<sup>427</sup> FNZ notes that 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. See FNZ response to the Provisional Report, 30 April 2021, paragraph 4.21(iii). See paragraphs 8.8 to 8.11 where we set out how evidence from shares of supply is treated.

<sup>428</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.22(ii) and (iii). FNZ considers that these suppliers have the ability to expand in response to a price increase (or equivalent quality reduction). We note that for the reasons set out in more detail in Chapter 9, we found that there are significant barriers to entry (see paragraph 9.52) and expansion and that potential entry from suppliers of Non-Retail Platform Solutions is unlikely. Given the significant barriers to entry, we do not consider that the suppliers identified by FNZ are likely to enter into the supply of Retail Platform Solutions in a timely and sufficient way, even in response to a price increase arising from the Merger. Further, See paragraph 6.84 where we set out evidence on the difficulty of adapting Platform Solutions.

- (a) Avaloq, SEI and Temenos do not focus on Retail Platform Solutions in the UK and do not have the functionality to administer pension tax wrappers, annuities, UK onshore and offshore bonds. Avaloq and Temenos are private banking solutions.
- (b) SS&C is a competitor, but its main product is 'a very bespoke implementation' and 'the cost of turning that into a competitive product has proven to be prohibitive for SS&C'.
- (c) It competes [redacted] with SEI and Pershing. Pershing is 'between a Retail and a private client solution'. It [redacted].
- (d) TCS BaNCS [redacted]. In the Remittal, GBST added that TCS BaNCS operates bespoke solutions for legacy books and that GBST does not consider it is a competitor.
- (e) Hubwise is a small competitor and GBST does not see it as able to take and serve GBST's customers.
- (f) Objectway is not a strong competitor due to weakness in its technology.
- (g) Investcloud focusses on Platform Solutions to private client investment managers and on the US market, rather than the UK.
- (h) Ohpen [redacted] the cost of entering was too high.
- (i) Sapiens [redacted].
- (j) IRESS, Evalue and Wealth Wizards do not have back office solutions that Retail Platforms need.
- (k) Torstone is a small supplier to private client investment managers without a full Retail offering, so does not compete with GBST in this market.
- (l) Fusion Box and Embark offer technology which is not comparable to FNZ or GBST's Platform Solutions.

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

8.188 As mentioned above, customer views, alongside evidence submitted by consultants and suppliers in relation to the competitive dynamics, were a highly relevant source of evidence.

8.189 The third party scores analysis (see Figure 8.1 above) and the wider qualitative evidence from customers, competitors and consultants consistently

show that Bravura is the closest competitor to the Parties and the only significant constraint.

8.190 Third party evidence also shows that in-house supply of Retail Platform Solutions is not an alternative to the Parties' offering for the vast majority of customers.

#### *FNZ submissions*

8.191 As described above, FNZ made a number of submissions about our third party evidence gathering which are addressed in more detail in Appendix B. For the reasons set out in Appendix B and summarised in paragraph 8.50, we do not accept these submissions and we consider it is appropriate to place significant weight on third party evidence.

#### *Our assessment of third party evidence*

8.192 The third party scores analysis indicate how close other providers are to FNZ and GBST. We have considered FNZ's submissions with regard to the robustness of this analysis at paragraphs 8.61 to 8.64.

8.193 We set out the closeness scores given by third parties for the Parties and six other suppliers in Figure 8.1 above. The third party scores analysis show that on average:

(a) For FNZ: GBST and Bravura were considered to be the closest alternative suppliers, with SS&C and SEI further behind, and Pershing, Avaloq and Temenos seen as less close alternatives.

(b) For GBST: FNZ and Bravura were considered to be the closest alternative suppliers, with SEI, SS&C, Pershing, Avaloq and Temenos seen as less close alternatives.

8.194 The closeness scores are broadly consistent with the wider qualitative evidence from customers, competitors and consultants, which indicates that:<sup>429</sup>

(a) Bravura is the closest alternative to the Parties:

(i) Third parties told us that Bravura's technology is comparable to FNZ and GBST and Bravura has similar experience and a good reputation in the UK market.

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<sup>429</sup> See Appendix J for further details including references for this evidence.



- (ii) While Bravura only provides software, nine third parties considered Bravura in partnership with a servicing provider like Genpact to be a credible supplier of Combined Platform Solutions.<sup>430</sup>
  - (iii) Bravura was also the most frequently mentioned alternative supplier of Retail Platform Solutions in the UK by the Parties' customers at Phase 1 of our inquiry.<sup>431</sup>
- (b) SS&C, SEI and Pershing provide a weak constraint on the Parties:
- (i) Third parties said that although SS&C supplies Retail Platform Solutions in the UK, it is weaker than GBST, FNZ and Bravura because its only material platform administration relationship is with St. James Place, for which it provides a specific (closed architecture) solution. This means that SS&C does not offer an open architecture solution, which is preferred by several customers. Third parties also noted that SS&C has gaps in its product capability and also suffered a high-profile failure to implement [REDACTED].
  - (ii) SS&C submitted that it is trying to compete in the supply of Retail Platform Solutions in the UK but is not as strong a competitor as it would like due to [REDACTED].<sup>432</sup> In particular, SS&C explained that in order to [REDACTED] with FNZ's and GBST's offerings, [REDACTED].<sup>433</sup> [REDACTED].
  - (iii) SEI told us that it can supply both Retail and Non-Retail Platform Solutions, but some third parties indicated that the breadth of SEI's offering is restricted, that it uses older technology than the Parties and has limited scale in the UK.
  - (iv) Pershing submitted that although it can supply both Retail and Non-Retail Platforms, its typical customers are Non-Retail Platforms. Other third parties shared this view and noted that Pershing is focused on Non-Retail Platforms.<sup>434</sup> Third parties submitted that Pershing has a dated technology with limited functionality and is expensive.

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<sup>430</sup> Three customers ([REDACTED]), three competitors ([REDACTED]) and three consultants ([REDACTED]).

<sup>431</sup> Those who responded to the phase 1 third party questionnaires.

<sup>432</sup> FNZ 'submits in its response to the Provisional Report, 30 April 2021, in paragraph 4.20, that the Provisional Report dismisses SS&C as a Retail competitor (paragraphs 8.237, 8.239) and, in a change from the Phase 2 Report, suggests that SS&C is a Non-Retail (and not Retail-focussed) supplier (para. 9.32). we note that: (i) our characterisation of SS&C is based on information from SS&C on [REDACTED]; and (ii) reflects SS&C's view on what it would need to do to build greater presence in the market; identical language was included in the Phase 2 Report (paragraph 9.32); and (iii) the CMA has consistently considered that SS&C exerts 'only a weak constraint on the Parties' (see paragraph 8.177 of the Phase 2 Report and Paragraph 8.239 of the Provisional Report).

<sup>433</sup> See also Appendix J for further details.

<sup>434</sup> In this regard third parties also explained that Pershing is more focused on supporting the more complex requirements of the wealth market although one third party noted that it also offers a good level of UK wrapper support.

- (c) Avaloq and Temenos both told us that they do not compete with the Parties in the supply of Retail Platform Solutions in the UK:
- (i) Avaloq told us that the only exception to this is Investment Platforms that do not require it to offer pensions functionality or support Independent Financial Advisers such as some retail banks.
  - (ii) Temenos said that it is not active in the retail banking market on the wealth side; and
  - (iii) other third parties agreed with Avaloq and Temenos' comments that they do not represent a constraint on the Parties in the supply of Retail Platform Solutions.
- (d) TCS BaNCS provides a limited competitive constraint upon each of the Parties<sup>435</sup>, in spite of its relatively high estimated share of supply:
- (i) Both Phoenix and M&G confirmed that they receive services that are supplied by TCS BaNCS (including Diligenta).<sup>436</sup> [REDACTED].<sup>437,438</sup>
  - (ii) The broader evidence base consistently indicates that TCS BaNCS imposes a limited competitive constraint. TCS BaNCS submitted it has plans to expand in the UK Retail Platform space, but that increasing its presence would take time because customers are resistant to changing providers and, while its work with [REDACTED] enables it to handle scaled, end-to-end operations in the UK, it does not help TCS BaNCS tender for pure investment opportunities in the market because it does not contribute towards this kind of track record. Only two of the Parties' customers (unprompted) out of 36 customers mentioned TCS BaNCS as a suitable alternative provider of servicing/BPO solutions.<sup>439</sup> Also, only [REDACTED] (out of five consultants) that provided us information about the different suppliers considers TCS BaNCS as a suitable supplier of Retail Platform Solutions in the UK due to its 'experience in the sector'.<sup>440</sup> Further, TCS BaNCS's [REDACTED] corroborates the position that TCS BaNCS imposes a limited competitive constraint upon the Parties.

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<sup>435</sup> FNZ submitted that '[REDACTED]'. The evidence submitted by third parties to the CMA show, however, that TCS BaNCS provides a limited competitive constraint upon each of the Parties.

<sup>436</sup> [REDACTED].

<sup>437</sup> [REDACTED].

<sup>438</sup> [REDACTED].

<sup>439</sup> We did not include TCS BaNCS in the list of competitors for whom we prompted third parties to provide closeness scores as it had not been identified as a significant supplier of Retail Platform Solutions.

<sup>440</sup> [REDACTED]: 'Sapiens, and Diligenta (TCS BaNCs) would provide technology to primarily manage single line products or legacy books of business.'

- (iii) TCS BaNCS's high estimated share of supply is, in large part, attributable to the high value of AuA stemming from legacy platforms which it supplies, with [60-70]% of the AuA attributed to TCS BaNCS coming from these legacy platforms.<sup>441</sup> Further, [70-80]% of the AuA attributed to TCS BaNCS from active platforms stems from active platforms supplied to a single customer, [REDACTED], that are materially different to those operated by the customers for which the Parties compete. While we consider its platforms technically meet our definition of an Investment Platform set out in the appendix, and so have included them in our analysis, [REDACTED].
  - (iv) While TCS told us that 'it wants to expand its UK business', only limited weight can be placed on a such a broad statement of intention (rather than more concrete plans) within our assessment of the likelihood, timeliness and sufficiency of entry, especially in light of the evidence on barriers to entry and expansion particularly in Chapter 9. TCS BaNCS's stated [REDACTED]. In principle, cross-selling from supporting legacy platforms into supporting active platforms may provide a route to market, but the evidence indicates this is challenging (as shown by TCS BaNCS's limited presence in tender data or internal documents).
  - (v) Finally, [REDACTED] told us that there are no plans to migrate any books (including in relation to [REDACTED]) from [REDACTED]. [REDACTED] stated it had embarked on a programme to migrate many of its legacy products on to a single platform through an arrangement with [REDACTED]. A key factor in the procurement exercise for this platform was the ability of a single platform to support the many complex features present in the legacy product range. [REDACTED] was able to meet this need, [REDACTED].
- (e) Third parties also indicated that Hubwise, Simcorp and SECCL were possible suppliers of Retail Platform Solutions in the UK but not at the same scale as either of the Parties.<sup>442</sup> For example:
- (i) Several third parties told us that Hubwise is not considered a credible competitor for Retail Platforms due to its insufficient scale.<sup>443</sup>

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<sup>441</sup> While around [30-40]% of the AuA attributed to TCS BaNCS in our shares of supply analysis is from active platforms, this mainly involves supply to customers to which it also provides services to legacy products. One of the customers for which it does this told us that their decision to use TCS BaNCS was to some degree to reduce the number of Platform Solutions suppliers they use. [REDACTED]. This suggests that it may have chosen TCS BaNCS for its active platforms in order to reduce the number of relationships with Investment Platform Solutions providers it needs to manage. This may not be possible for some customers with more complex active platforms.

<sup>442</sup> We consider these competitors' ability to expand in Chapter 9.

<sup>443</sup> [REDACTED] also explained that its scale is preventing [REDACTED] from securing contracts with larger clients.

- (ii) One third party mentioned that Simcorp operated in the ‘smaller retail and private banking space’, but Simcorp was not otherwise mentioned by other third parties.
  - (iii) One customer told us that SECCL’s breadth and depth of functionality is not yet comparable to that of other major players and that it does not have a track record of working with credible platform businesses.<sup>444</sup>
- (f) Third party evidence also indicates that other suppliers identified by the Parties impose only a very weak constraint on the Parties:
- (i) Equiniti, and its recent acquisition of Aquila, was mentioned as a potential long-term option by one third party albeit one that would require partnership and longer-term investment. Another customer mentioned that its short form market review found that GBST, through its partnership with Equiniti, provided the widest coverage on the relevant areas other than FNZ while another mentioned that the merger of FNZ and GBST put doubt into the long term viability of using Equiniti alongside GBST.
  - (ii) Capita was mentioned by one customer who noted that its partnership with GBST was not taken forward because it was untested and lacked custody services. Capita was not otherwise mentioned by other third parties.
  - (iii) IRESS was not mentioned as a credible supplier by any Retail Platforms and only one consultant mentioned it as a possible alternative to FNZ and GBST.

8.195 Further evidence on views received from third parties on competitors is set out in Appendix J.

*Third party evidence on constraints from in-house supply*

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

- (a) Evidence from third parties generally suggests that in-house supply of software is not a significant constraint on the Parties because, as set out in Chapter 6, the supply of software in-house is not an option for the vast

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<sup>444</sup> Although [REDACTED]. See further details in Appendix J.

majority of the Parties' customers (20 out of 23 who gave a view on this) but only an option where the customer already has an in-house solution.

(b) In contrast, most customers (14 out of 19 who gave a view on this) said that in-house servicing was a viable option.<sup>445</sup>

8.197 Overall, we consider that this indicates that in-house supply of software is not a significant constraint on the Parties due to the vast majority of customers' being dependent on external suppliers for the supply of their software (through either Software-only or Combined Platform Solutions).

### ***Tender analysis***

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

8.199 As set out below, we found that the tender data shows that Bravura is the closest competitor to both FNZ and GBST in the tender data and that other competitors, including SEI and SS&C impose only a weak constraint on the Parties.

8.200 We also note that TCS BaNCS [REDACTED], in spite of its relatively high share of supply.

8.201 We set out below

- (a) FNZ's submissions on its own tender analysis;
- (b) The results of our tender analysis; and
- (c) Our overall assessment of the tender data.

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

8.202 Using its own tender analysis, FNZ stated that, since 2016, the following suppliers had won tenders in which it had competed:<sup>446 447</sup>

- (a) [REDACTED];
- (b) [REDACTED];

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<sup>445</sup> Customer responses to phase 2 customer questionnaires. Further details on in-house supply are provided in Chapter 6 and Appendix J.

<sup>446</sup> FNZ Initial phase 2 Submission, Annex 2.

<sup>447</sup> [REDACTED].

(c) [REDACTED];

(d) [REDACTED]; and

(e) [REDACTED].

8.203 Based on its tender analysis, FNZ submitted that the Parties encountered [REDACTED] competitors, of which at least [REDACTED] won tenders in which either or both of the Parties participated. FNZ noted that it has also lost a tender [REDACTED].<sup>448</sup>

8.204 Using our tender analysis, FNZ subsequently identified [REDACTED] suppliers that had bid for contracts with Retail Platforms at the early stage of a tender.<sup>449</sup> FNZ also identified [REDACTED] suppliers that had reached the final stage of a tender, either by directly identifying them from the tender evidence or by inferring that a supplier had reached this stage.

8.205 In response to the Provisional Findings, FNZ submitted that it is inappropriate to only consider competitors that have interacted with either one of the Parties at the late stage of a Retail or Sensitivity-only tenders, as this excludes two groups of credible competitors. The first are those who have participated in the late stage of tenders in which the CMA's tender dataset where neither of the Parties reached the late stage and the second are those who currently supply platforms in the CMA's shares of supply assessment but that do not appear at the late stage in a tender in the CMA's tender dataset.<sup>450</sup> FNZ stated the reason the latter category should be included is because they have a track record of supplying Retail platforms or platforms with Retail components, and the CMA has provided no evidence whether they relate to legacy products (despite suggesting that they may, which is unlikely as FNZ conservatively excluded platforms that supply legacy products when putting together its shares of supply estimates).

8.206 FNZ submitted that when these changes are made, the CMA has omitted [REDACTED] credible suppliers for Retail tenders and [REDACTED] credible suppliers for Sensitivity-only tenders.<sup>451</sup> This includes [REDACTED] as a Retail platform supplier as [REDACTED], a Retail platform in the dataset used for the CMA's shares of supply dataset. FNZ also said that the tender analysis ignores the presence of other credible

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<sup>448</sup> FNZ Initial phase 2 Submission, Annex 2.

<sup>449</sup> FNZ Initial Remittal Submission, 12 February 2021, paragraph 2.11(i). See paragraph 8.92 and 8.210 for why we don't include the former and latter categories of suppliers respectively.

<sup>450</sup> FNZ response to the Provisional report, 30 April 2021, paragraph 4.18

<sup>451</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.19.

suppliers because it does not take into account the number of suppliers [REDACTED].<sup>452, 453</sup>

8.207 Finally, FNZ submitted that the small sample size of tenders means that [REDACTED] overlaps at the late stage is not statistically different from [REDACTED] at the late stage. It is therefore inappropriate to conclude that the Parties pose stronger constraints on each other than other competitors based on the number of late stage overlaps.<sup>454</sup>

### *CMA tender analysis*

8.208 As previously noted, our tender analysis focuses on Retail tenders and is supplemented with a sensitivity analysis that includes Retail tenders and Sensitivity-only tenders in order to assess the robustness of our results. We separately analyse tenders for Non-Retail Platform Solutions in Appendix I. Together, this allows us to evaluate the alternatives and constraints from both within and outside the relevant market.<sup>455</sup>

8.209 We have discussed why we think it is appropriate to focus only on tenders in which at least one of the Parties participated at paragraph 8.92.

8.210 FNZ also stated we have not taken into account providers who currently supply platforms in the CMA's shares of supply assessment but that do not appear at the late stage in a tender in the CMA's tender dataset.<sup>456</sup> We note that 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. Therefore, we consider it appropriate to exclude these suppliers because including them would not give a reliable indication of constraints on the Parties.

8.211 As described in paragraph 8.96, we consider overlaps at various stages in tenders and qualitative evidence when analysing tender data to assess the competitive constraint alternative suppliers impose on the Parties. This allows

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<sup>452</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.5. See paragraph 8.212 for our response to this submission.

<sup>453</sup> FNZ also submitted that Atos' win in the Nest tender means that [REDACTED]. FNZ response to the Provisional Report, 30 April 2021, paragraph 4.21(iv). We set out in Appendix I why we have excluded this tender from our analysis. We have received no other information which indicates [REDACTED].

<sup>454</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.17. See paragraph 8.127 for our response to this submission.

<sup>455</sup> As noted above and in Appendix I, in this section we assess Retail tenders and conduct a sensitivity analysis that includes both Retail tenders and Sensitivity-only tenders. Appendix I presents an assessment of tenders for Non-Retail Platform Solutions.

<sup>456</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.18(ii).

us to assess competitors more comprehensively and include those who may not have overlapped with the Parties at the final stage of a tender.

8.212 We do not believe we should give additional focus to suppliers who reached the commercial negotiation stage when the Parties did not. This is because it adds little to the analysis as it does not focus on who the Parties compete with over prices and terms at the final stage. We have also looked at tenders where the Parties competed at earlier stages and this already captures the wider set of potential competitors proposed in this analysis.<sup>457</sup>

8.213 More detail of the methodology used is given in paragraphs 8.90 to 8.101. In Appendix I we also provide more detail on the methodology we adopted in compiling and assessing our tender dataset, the changes made to the tender dataset during the Remittal Inquiry and our sensitivity analysis including tenders for Non-Retail Platforms.

8.214 Qualitative information from tender evaluations as to the strength of different competitors is set out in Appendix J. This broadly matches the views expressed by third parties in their questionnaire responses.

8.215 The analysis includes:

- (a) The frequency of the Parties' and competitors' overlaps in tenders, both at an early and final stage;
- (b) The frequency of competitors winning tenders; and
- (c) Qualitative evidence from customers' tender evaluations. As noted above, this aspect of our analysis is set out in Appendix J.

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

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

8.217 Figure 8.2 below summarises the results of our tender analysis by showing the frequency of other suppliers' overlaps with GBST or FNZ/JHC in tenders for Retail Platform Solutions (those that overlapped at least twice).

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<sup>457</sup> For thoroughness we tested this approach and found it does not add much to our existing analysis of overlaps at the early and late stages. While there is a longer tail of suppliers with [X], most suppliers have already been discussed or don't have wider evidence to support them being a significant constraint. Furthermore, under this analysis, [X].



**Figure 8.2. Number of times each supplier overlapped with GBST and FNZ/JHC at the early stage of Retail and Sensitivity-Only tenders (January 2016-February 2021)**

[REDACTED]

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

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

Suppliers which overlapped with GBST once in Retail tenders include: [REDACTED]

Suppliers which overlapped with GBST once in Sensitivity-Only tenders include: [REDACTED].

Suppliers which overlapped with FNZ/JHC once in Retail tenders include: [REDACTED].

Suppliers which overlapped with FNZ/JHC once in Sensitivity-Only tenders include: [REDACTED].

8.218 GBST was in partnership with Equiniti in [REDACTED] overlapping with FNZ.

8.219 [REDACTED] met GBST in a total of [REDACTED] and of these overlaps it was [REDACTED]. [REDACTED] met FNZ/JHC in a total of [REDACTED] and of these overlaps it was in [REDACTED].

8.220 Since 2016, the Parties participated in a total of [REDACTED] Retail tenders: FNZ participated in [REDACTED], JHC in [REDACTED] and GBST participated in [REDACTED]. Figure 8.2 shows that the Parties overlapped in [REDACTED] of the Retail tenders. In terms of their overlap with other suppliers:

- (a) [REDACTED] overlapped with GBST [REDACTED] times and FNZ/JHC [REDACTED] times;
- (b) [REDACTED] overlapped with FNZ/JHC [REDACTED] times and with GBST [REDACTED];
- (c) [REDACTED] overlapped with GBST [REDACTED] times and FNZ/JHC [REDACTED];
- (d) [REDACTED] overlapped with [REDACTED] three times;
- (e) in-house solutions overlapped with GBST [REDACTED] times and with FNZ/JHC [REDACTED]; and
- (f) There is a tail of [REDACTED] suppliers who overlapped with the Parties fewer than three times in a Retail tender. Of these, [REDACTED] suppliers overlapped [REDACTED] with at least one of the Parties and the remaining [REDACTED] suppliers overlapped just [REDACTED] with at least one of the Parties.

8.221 The Parties therefore overlapped most in Retail tenders with [REDACTED].

8.222 Considering the results of the sensitivity analysis, FNZ, JHC and GBST have participated in [REDACTED] and [REDACTED] tenders for Retail or Sensitivity-Only Platforms since 2016 respectively. The Parties, FNZ/JHC and GBST, overlapped in [REDACTED] tenders. Their overlaps with other suppliers was as follows:

- (a) [REDACTED] had the greatest number of overlaps for both Parties, overlapping with FNZ/JHC in [REDACTED] tenders and with GBST in [REDACTED] tenders.
- (b) Both [REDACTED] overlapped with FNZ/JHC in [REDACTED] tenders, and with GBST in [REDACTED] tenders.

- (c) In-house solutions overlapped with FNZ/JHC in [X] tenders, and with GBST in [X] tenders.
- (d) [X] overlapped with FNZ/JHC in [X] tenders, and with GBST in [X] tenders.
- (e) [X] overlapped with FNZ/JHC in [X] tender and with GBST in [X] tenders.
- (f) [X] overlapped with FNZ/JHC in [X] tenders and overlapped with GBST in [X] tenders.
- (g) There is a tail of [X] suppliers who overlapped with the Parties in Retail tenders and Sensitivity-Only tenders fewer than [X] times. Of these, [X] suppliers overlapped [X] with at least one of the Parties and the remaining [X] suppliers overlapped just [X] with at least one of the Parties.

8.223 The Parties therefore overlapped most in Retail and Sensitivity-Only tenders with [X].

*Frequency of overlap with the Parties at the final stage*

8.224 We examined the suppliers that overlapped with the Parties at the final stage of Retail tenders, which usually involves commercial negotiations.<sup>458</sup>

*Overlaps with FNZ (JHC) at the final stage*

8.225 Table 8.4 below shows the frequency with which FNZ and JHC met other competitors at the final stage in both Retail and Sensitivity-Only tenders.

**Table 8.4. Frequency at which other suppliers overlapped with FNZ or JHC at the final stage in Retail tenders and Sensitivity-Only tenders (January 2016-February 2021)**

[X]

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

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

8.226 FNZ reached the final stage in [X] and JHC reached the final stage in [X].<sup>459</sup> As previously described, we note that the absolute number of overlaps is small due to the nature of the market. Taken in the context of the wider

<sup>458</sup> See Appendix E.

<sup>459</sup> Tenders in which they reached a final stage and when there was a competitor at that stage.

evidence, we find these results are still informative in assessing alternative competitors.

8.227 In terms of competitors met in the final stages of Retail tenders, as shown in Table 8.4:

- (a) FNZ overlapped with [REDACTED] in [REDACTED];
- (b) FNZ competed [REDACTED] in [REDACTED];
- (c) JHC reached the final stage in [REDACTED];
- (d) FNZ competed with [REDACTED] in [REDACTED]; and
- (e) In [REDACTED].

8.228 Within the sensitivity analysis:

- (a) FNZ reached the final stage in [REDACTED] tenders, and in [REDACTED] of these it was the only bidder that we had identified at that stage; and
- (b) JHC reached the final stage in [REDACTED] tenders, and in [REDACTED] of these it was the only bidder that we had identified at that stage.

8.229 Of these, with regard to Sensitivity-Only tenders:

- (a) FNZ overlapped with [REDACTED]; and
- (b) [REDACTED] and [REDACTED].

8.230 Therefore, the only competitors FNZ has overlapped with [REDACTED] at the final stage of either a Retail or Sensitivity-Only tender are [REDACTED].

#### *Overlaps with GBST at the final stage*

8.231 GBST reached the final stage in [REDACTED] tenders and in [REDACTED] of these Retail tenders [REDACTED].<sup>460</sup> Table 8.5 below shows the frequency with which GBST overlapped with other suppliers in the remaining [REDACTED] Retail tenders.

**Table 8.5. Frequency with which other suppliers overlapped with GBST at final stage in Retail tenders (January 2016-February 2021)**

[REDACTED]

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

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

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<sup>460</sup> We considered all tenders in which GBST reached the final stage.

8.232 In terms of competitors met in the final stages of Retail tenders, as shown in Table 8.5:

- (a) [REDACTED];
- (b) [REDACTED]; and
- (c) [REDACTED].<sup>461</sup>

8.233 [REDACTED]

8.234 Therefore, the [REDACTED] has overlapped with at the final stage of a Retail or Sensitivity-Only tender [REDACTED].

*Winners of tenders where the Parties bid*

8.235 We also analysed the winners of Retail tenders and Sensitivity-Only tenders where the Parties bid. This is set out in Figure 8.3.

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

[REDACTED]

Source: CMA analysis using data from the Parties, customers and competitors.  
Note: This includes all competitors who have won a tender for Retail Platforms and Sensitivity only platforms when overlapping with the Parties, including tenders in which a winner was chosen or a supplier was ranked first at the final stage but the customer abandoned the project. The graphs exclude, therefore, on-going tenders and abandoned tenders that concluded without a clear winner.

8.236 Figure 8.3 shows that in Retail tenders:

- (a) FNZ or JHC lost [REDACTED] to [REDACTED] and [REDACTED] at the final stage in [REDACTED];
- (b) [REDACTED] and [REDACTED] at the final stage in any tender [REDACTED];
- (c) [REDACTED] tenders to [REDACTED] and were present at the final stage in the [REDACTED] tenders [REDACTED] won;
- (d) GBST lost [REDACTED] tenders to FNZ or JHC and were present at the final stage in [REDACTED]; and
- (e) GBST lost [REDACTED].

8.237 The sensitivity analysis found that in addition to the results mentioned above:

- (a) FNZ or JHC lost [REDACTED] to each of [REDACTED].

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<sup>461</sup> [REDACTED] and [REDACTED] reached the final stage in the same tender, while [REDACTED] and [REDACTED] reached the final stage of [REDACTED].

(b) GBST lost [REDACTED] to each of [REDACTED].

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

*Our overall assessment of the tender data*

8.239 We found that Bravura is the closest competitor to both FNZ and GBST based on the tender data:

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED]; and

(d) [REDACTED].

8.240 We found that each Party is the second closest competitor to the other in the tender data. [REDACTED].

8.241 We now consider competitors with whom the Parties overlap less frequently than each other and Bravura, but still on multiple occasions. The tender evidence indicates that SEI is only a weak constraint on the Parties:

(a) SEI overlapped with FNZ or JHC in [REDACTED] and with GBST in [REDACTED], compared to the Parties overlapping [REDACTED] times. It [REDACTED] overlap with the Parties at the final stage of any Retail tenders;<sup>462</sup> and

(b) Even if we include Sensitivity-Only tenders, that does not materially change these results – SEI overlapped at an early stage with FNZ in [REDACTED] tenders and GBST in [REDACTED] tenders, compared with the Parties overlapping [REDACTED] times; and it [REDACTED] overlap with the Parties at the final stage of any tender.

8.242 The tender evidence also indicates that SS&C is only a weak constraint on the Parties:

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<sup>462</sup> [REDACTED]. However, the customer confirmed [REDACTED] and so it has not been included in our analysis. For more information see appendix I.

- (a) SS&C overlapped with FNZ or JHC in [REDACTED] and GBST in [REDACTED]. It overlapped [REDACTED] with GBST and [REDACTED] with FNZ or JHC at the final stage in a Retail tender.
- (b) Even if we include Sensitivity-Only tenders, that does not materially change these results – SS&C overlapped with FNZ or JHC in [REDACTED] tenders in the sensitivity analysis and GBST in [REDACTED] tenders in the sensitivity analysis, and had [REDACTED] additional overlaps in the final stage of a tender.
- (c) Although SS&C won [REDACTED] against each Party, [REDACTED].<sup>463</sup> This is consistent with SS&C’s Platform Solutions being considered by third parties to be the most suitable for these platforms.<sup>464,465</sup>
- (d) While FNZ submitted that [REDACTED], the evidence shows that:
  - (i) [REDACTED], this provides limited evidence to support the position that SS&C’s competitive offering is getting stronger;
  - (ii) SS&C has bid in [REDACTED] Retail tenders ([REDACTED] in the sensitivity analysis) since 2016 and reached the final stage in a tender [REDACTED]. This is [REDACTED] than either FNZ,<sup>466</sup> GBST<sup>467</sup> or Bravura;<sup>468</sup>
  - (iii) SS&C won [REDACTED].<sup>469</sup> [REDACTED] these were for Non-Retail Platforms; and
    - (i) [REDACTED] won the [REDACTED] and [REDACTED], SS&C had some form of an incumbent position (ie provided other related services to these customers) and therefore had an advantageous position over other suppliers.<sup>470</sup> [REDACTED].

8.243 We found that all other competitors present a weak constraint on the Parties. With the exception of [REDACTED] overlaps with GBST, no other competitor overlapped with either of the Parties in more than [REDACTED] tenders even at an early stage in the supply of Retail Platform Solutions:

- (a) [REDACTED],<sup>471</sup> overlapped with GBST in three tenders. [REDACTED]. The sensitivity does not materially change our analysis: [REDACTED] overlapped with GBST in [REDACTED] tenders in the sensitivity, but still [REDACTED]. FNZ [REDACTED] and [REDACTED].

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<sup>463</sup> [REDACTED].

<sup>464</sup> [REDACTED].

<sup>465</sup> See Appendix J.

<sup>466</sup> FNZ bid in [REDACTED] tenders ([REDACTED] in the sensitivity analysis) and reached the final stage in [REDACTED] ([REDACTED] in the sensitivity analysis). JHC bid in [REDACTED] tender ([REDACTED] in the sensitivity analysis) and reached the final stage in [REDACTED].

<sup>467</sup> GBST bid in [REDACTED] tenders ([REDACTED] in the sensitivity analysis) and reached the final stage in [REDACTED] tenders ([REDACTED]).

<sup>468</sup> Bravura [REDACTED] and reached the [REDACTED].

<sup>469</sup> [REDACTED]. However, [REDACTED] has confirmed that this tender has not completed and no winner has been chosen yet [REDACTED]. Based on information provided by [REDACTED] this tender has been classified as Non-Retail.

<sup>470</sup> See paragraph 7.37.

<sup>471</sup> [REDACTED].

- (b) [redacted] overlapped with GBST [redacted] times and [redacted] with FNZ. In only [redacted] of these tenders did [redacted] compete at the final stage ([redacted] against GBST). [redacted] participation in [redacted] tenders was limited to [redacted] customers [redacted] and is not indicative of significant and widespread competition. [redacted] told us that it targets insurers as customers, that it competes with FNZ and GBST only occasionally, but plans to compete more closely with GBST on mid-lower tier opportunities.
- (c) [redacted] participated in [redacted] Retail tender. [redacted] overlapped with FNZ in [redacted] and with GBST [redacted]. [redacted]. In our sensitivity analysis, [redacted] participated in [redacted] tenders, overlapping with FNZ in [redacted] and GBST [redacted]. [redacted] won [redacted] in the sensitivity [redacted].
- (d) [redacted] participated in [redacted] Retail tenders. It participated in [redacted] in the sensitivity analysis and overlapped with JHC [redacted], FNZ [redacted] and GBST [redacted]. It reached the final stage in [redacted] of these tenders against JHC.
- (e) [redacted] participated in [redacted] Retail tenders. It overlapped [redacted] times with FNZ or JHC and [redacted] with GBST at the early stage in tenders in the sensitivity analysis. This is consistent with [redacted] focus on Non-Retail Platforms. It indicates that [redacted] may be able to compete for some customers whose platforms have both Retail and Non-Retail elements, but that [redacted] is not a constraint on the Parties where they compete more closely, for example in tenders with a stronger Retail focus. Qualitative evidence from a tender for [redacted]:
- (i) [redacted]; and
- (ii) [redacted].
- (f) [redacted] overlapped [redacted] with GBST [redacted] with FNZ in Retail tenders [redacted]. [redacted] reached the final stage and won [redacted] when competing against GBST. As explained by [redacted], its proposition is much narrower than GBST's proposition as it provides mainly front-office tools and its software tends to be used alongside GBST rather than replacing it.
- (g) [redacted] overlapped [redacted] with GBST and [redacted] with FNZ in Retail tenders [redacted]. In this tender, [redacted].
- (h) Hubwise overlapped [redacted] times with GBST and [redacted] with FNZ in Retail tenders. In the sensitivity analysis Hubwise overlapped with FNZ [redacted]. [redacted]. This indicates that Hubwise may be a slightly stronger constraint than the quantitative data may otherwise suggest but nevertheless it remains an infrequent competitor against the Parties.

- (i) No other suppliers overlapped with the Parties in more than [REDACTED] tenders when we include Sensitivity-Only tenders (including suppliers that focus on Non-Retail Platforms).

8.244 We also note that TCS BaNCS overlapped with FNZ or GBST in [REDACTED] of the tenders in our dataset, in spite of its relatively high estimated share of supply.<sup>472</sup> This is consistent with evidence from third parties,<sup>473</sup> and from TCS BaNCS<sup>474</sup> itself, suggesting that it is focused on supporting legacy platforms, and has a significantly different product offering from those of FNZ and GBST. FNZ submitted that [REDACTED] in which FNZ and TCS BaNCS overlap should be taken account of in the CMA's assessment because it claimed that the [REDACTED] involved supplying Retail Platform Solutions, which demonstrates that FNZ and TCS BaNCS offer similar functionality.<sup>475</sup> We found that these tenders did not meet the qualifying criteria to be included within our analysis (and were not otherwise relevant for competitive assessment given that: (i) in one case the tender was not for an Investment Platform; and (ii) in the other [REDACTED]). We provide further detail as to why these tenders and other tenders were excluded in Appendix I.

8.245 We considered FNZ's submission that the Parties are constrained by a large number of competitors that appear at least once in the tender data.<sup>476</sup> However, we currently do not consider that these competitors would impose a material competitive constraint on the Parties post-merger because:

- (a) Aside from the competitors identified above, the other competitors appeared in our tender data at most [REDACTED] and in most cases only at the early stage of a tender. They were not mentioned by third parties as important competitors to the Parties (see for example paragraphs 8.194(e) to 8.194(f)) and did not appear in FNZ's or GBST's internal documents.
- (b) There is no evidence to suggest that the presence of a large number of weaker competitors would collectively impose a substantial constraint on

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<sup>472</sup> TCS BaNCS only appears in [REDACTED] we have information for ([REDACTED]). As discussed in Appendix I, given the specific features of these processes we have put little weight on these in our assessment. FNZ stated that it competed in a tender process for [REDACTED] business in 2020 and understood that it [REDACTED]. However, [REDACTED] did not consider its process to be a formal tender as it was intended to help build an internal business case on whether to apply for investment and funding to consider a change of suppliers and did not progress past the RFI stage. With regard to [REDACTED], it was seeking a specific Platform Solution.

<sup>473</sup> See paragraph 8.194(d).

<sup>474</sup> [REDACTED]. See also paragraphs 8.181 and 8.194.

<sup>475</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.21(iv).

<sup>476</sup> FNZ Remittal Submission, 9 March 2021, paragraphs 6.4-6.5. FNZ stated that: (i) a total of around [REDACTED] competitors (excluding the Parties and in-house) have reached the late stage of a tender for Retail Platform Solutions since 2016 and/or supply an existing platform; and (ii) The Parties also faced [REDACTED] rivals at the RFI stage in tenders for Retail Platform Solutions.



the Parties, especially given the importance of experience, reputation and scale in customers' choice.

- 8.246 FNZ submitted that in a small sample there is not a statistically significant difference between [redacted] overlaps at the final stage and [redacted] overlaps at the final stage.<sup>477</sup> We set out why we place weight on the finding that [redacted] (see paragraph 8.128).
- 8.247 We note FNZ's submission that we had omitted [redacted] credible suppliers for Retail tenders and [redacted] credible suppliers for Sensitivity-only tenders. The [redacted] suppliers FNZ identifies for Retail tenders are [redacted]. The [redacted] suppliers FNZ identifies for Sensitivity-Only tenders are [redacted]. We have discussed [redacted] above (see paragraphs 8.241 and 8.243). We discuss in-house below at paragraph 8.249. The other suppliers appeared in our tender data at most [redacted], as noted at paragraph 8.245.
- 8.248 As also noted in paragraph 8.245, the wider evidence does not indicate these are important competitors to the Parties. For instance, third party evidence set out in paragraph 8.194 is consistent with the tender data and indicates that [redacted] impose a weak constraint on the Parties.
- 8.249 An in-house Platform Solution was identified as an option in [redacted] of the [redacted] tenders for Retail Platforms and, in all cases, in-house was the incumbent solution. An in-house solution was [redacted] considered where the incumbent Platform Solution was already outsourced. This indicates that in-house supply is a constraint [redacted] when a Retail Platform is considering switching from in-house to outsourced Platform Solutions.
- 8.250 Appendix I presents the alternatives to the Parties in Non-Retail tenders, at both early and final stages, and the winners on those tenders. This assessment shows a predominantly different set of suppliers competing in tenders for Non-Retail Platforms to those competing for Retail Platforms.
- 8.251 We therefore consider on the basis of our tender analysis that only Bravura offers a similar constraint on the Parties to the one the Parties exert on each other in the supply of Retail Platform Solutions.

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<sup>477</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.17.

## ***Internal documents***

8.252 We explained above (see paragraph 8.132 onwards) the weight we are placing on documents produced by the Parties or by third party consultants and advisers.

8.253 We have considered the evidence in the Parties' internal documents on the competitive constraints from alternative suppliers and from in-house supply.

8.254 [REDACTED]. Other competitors, such as [REDACTED], [REDACTED] and [REDACTED], are mentioned noticeably less frequently by FNZ. [REDACTED] is mentioned less often than even these other suppliers.

## ***FNZ submissions***

8.255 During Phase 2, FNZ submitted that its internal documents mention many other suppliers, as well as GBST and Bravura, and that internal documents demonstrate the level of competition between FNZ and other suppliers.<sup>478</sup>

8.256 In response to the Provisional Report, FNZ submitted that its internal documents consider the wider Platform Solutions sector in which FNZ operates, not just the Retail Platform Solutions in the UK Market. FNZ stated that this is consistent with the Parties being constrained by a broad range of competitors than what is acknowledged in the Provisional Report's competitive assessment.<sup>479</sup>

## ***Our assessment***

### ***FNZ internal documents***

8.257 FNZ's internal documents show that FNZ [REDACTED].<sup>480</sup>

8.258 Some FNZ documents, including management presentations from 2018 and 2019, refer [REDACTED]. A third party report prepared for FNZ also states that [REDACTED].

8.259 Other competitors, such as [REDACTED]. [REDACTED] is mentioned less often than even these other suppliers.<sup>481</sup> Further, the context of such mentions generally [REDACTED].

8.260 [REDACTED]. Third party documents for FNZ also indicate this.

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<sup>478</sup> [REDACTED].

<sup>479</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 4.23

<sup>480</sup> See paragraph 8.138 and paragraphs 8.142 and 8.144.

<sup>481</sup> See for example [REDACTED].

8.261 We found that many FNZ internal documents consider the wider Platform Solutions sector in which FNZ operates, not just the Retail Platform Solutions in the UK market which we are considering. We consider that this evidence reflects suppliers that FNZ competes with outside relevant market rather than the fact that these suppliers compete with the Parties in relation to the supply of Retail Platform Solutions. As such it does not support FNZ's claim that it is constrained by a broad range of competitors within the market for Retail Platform Solutions.

#### *GBST internal documents*

8.262 We found GBST's documents are more focussed on the supply of Retail Platform Solutions, as this is where it is most active.

8.263 GBST's internal documents (as described in paragraph 8.148) primarily [REDACTED]. [REDACTED].

8.264 These documents refer to [REDACTED]. A few GBST documents mention [REDACTED]. [REDACTED] is only mentioned in a very limited number of documents [REDACTED]. The documents typically [REDACTED].

8.265 A consultant's report for GBST treats [REDACTED]. One document identifies [REDACTED].

8.266 Like FNZ, GBST's internal documents show that [REDACTED].

8.267 GBST's internal documents also show that [REDACTED].

8.268 Overall, the evidence from internal document is consistent with Bravura being the main competitive constraint on the Parties.

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

8.269 We find that Bravura, GBST and FNZ are the closest competitors in the supply of Retail Platform Solutions. Bravura is the only competitor that offers a similar constraint on the Parties to the one that the Parties exert on each other. Other competitors such as SS&C, SEI and TCS BaNCS, exert only a weak constraint on the Parties.

8.270 Taken together, evidence from third parties, tenders, and the Parties' internal documents shows that Bravura provides a strong constraint on the Parties. This includes providing a strong constraint on FNZ's Combined Platform Solutions, even though Bravura does not have its own servicing capabilities.

(a) Third parties told us that Bravura is a close competitor to FNZ and, in particular, GBST. They noted that Bravura's technology, experience and

reputation is comparable to FNZ and GBST in the supply of Retail Platform Solutions in the UK.

- (b) Our tender analysis also shows that Bravura is a close competitor to each of the Parties. [REDACTED],<sup>482</sup> the tender evidence, overall, indicates that Bravura is a strong alternative to GBST.
- (c) GBST's internal documents typically identify Bravura, together with FNZ, as GBST's main competitors. To the extent that they provide insight into competitive conditions, FNZ's internal documents also identify Bravura as a competitor to FNZ.

8.271 We currently consider that SS&C and SEI are the next closest competitors aside from Bravura but that they exert only a weak constraint on the Parties.

- (a) Third parties on average gave SS&C a lower rating on how close an alternative it was to the Parties compared to how close an alternative the Parties are to each other. Third parties, including SS&C, also provided evidence that SS&C is a weaker competitor than GBST, FNZ and Bravura, in particular due to limitations with SS&C's software. Consistent with this evidence, [REDACTED].
- (b) Third parties considered that SEI was a less close alternative to the Parties compared to how close an alternative the Parties are to each other. Some indicated that the breadth of its offering is restricted, that its technology is not as modern as the Parties, and that it has limited scale in the UK. Consistent with this evidence, [REDACTED].
- (c) GBST's internal documents identify SS&C and SEI as competitors, but as less of a constraint than FNZ and Bravura. To the extent that they provide insight into competitive conditions, FNZ's internal documents also identify SS&C, SEI and other suppliers as competitors. However, these documents do not indicate that any of these competitors exert a material constraint on FNZ.

8.272 The only other competitor with a material presence in our share of supply estimates is TCS BaNCS. However, third party evidence indicates TCS BaNCS also appears to offer only a limited competitive constraint on each of the Parties. While TCS BaNCS has a relatively high share of supply, this is largely due to [REDACTED] and [REDACTED], where these customers use TCS BaNCS predominantly for legacy platforms or more limited active products. As

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<sup>482</sup> See paragraph 8.127 where we consider FNZ's submissions on the statistical significance of overlaps at the final stage.

discussed above, TCS BaNCS appears significantly differentiated from the products and services offered by the Parties [REDACTED].

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

- (a) Third parties indicated that they were not close alternatives to either Party in the supply of Retail Platform Solutions, although some may exert a stronger constraint on FNZ at the Non-Retail end of FNZ's broader target customer base.
- (b) Third parties indicated that the constraint from Pershing, Avaloq, and Temenos is generally limited, especially on GBST, due to their strengths in Non-Retail Platforms Solutions, rather than Retail Platform Solutions. They also indicated that competitors such as Hubwise and SECCL were possible suppliers of Retail Platform Solutions in the UK but not at the same scale as either of the Parties.
- (c) Our tender analysis indicates that these other competitors are generally not close alternatives to either of the Parties. They overlap infrequently with either Party in tenders for Retail Platform Solutions and even less at the final stage of these tenders ([REDACTED]). Our sensitivity analysis does not change these results.
- (d) As noted above, with the exception of Bravura, neither Party's internal documents indicated that other competitors would exert a material constraint on each of the Parties.

8.274 This evidence shows that, although FNZ pointed to a large number of competitors that appeared in at least one tender alongside FNZ or GBST – (around [REDACTED] competitors in late stage tenders and an additional [REDACTED] competitors at the RFI stage),<sup>483</sup> in practice these other competitors, both individually and cumulatively, impose only a weak constraint on the Parties.

8.275 We find that in-house supply of software does not impose a significant constraint on suppliers of Investment Platform Solutions.

- (a) Third parties indicated that in-house supply of software is only viable for very few customers, although in-house supply of servicing is viable more widely;

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<sup>483</sup> FNZ Remittal Submission, 9 March 2021, paragraphs 6.4 and 6.5.

- (b) Our tender analysis showed that in-house supply of software is primarily an option for Retail Platforms who already self-supply and who are considering outsourcing against continuing this model; and
- (c) Each Party's documents view in-house Platform Solutions as an opportunity to sell more business rather than a competitive constraint.

## Lessening of competition

### ***FNZ submissions***

8.276 FNZ submitted that the CMA's analysis failed to establish whether there is a substantial lessening of competition by investigating the magnitude of the subset of the market affected by the alleged weakening of competition in relation to the size of the market as a whole. It submitted that Retail Platforms would only be expected to experience significantly reduced competition where (cumulatively):

- (a) The Platform is not open to supply from a 'Non-Retail Platforms solutions provider' (this includes Sensitivity-only Platform Solutions as well as Non-Retail Platform Solutions).
- (b) The Platform is open to supply of either Software-only or a Combined Platforms service delivery model.
- (c) The Platform intends to tender in the near future and not currently self-supplying (and does not view in-house supply of software as a good alternative to out-sourcing).<sup>484</sup>

8.277 FNZ submitted that very few platforms would meet these conditions and, if such platforms only cover a minimal part of the market, any lessening of competition in relation to those platforms is also minimal.<sup>485</sup>

8.278 In response to the Provisional Report, FNZ submitted that:

- (a) According to the Provisional Report, only a small subset of platform customers could conceivably be affected by the Transaction. These customers would be (i) GBST customers who are open to a PaaS solution or a partnership, (ii) FNZ customers who are open to a partnership, and

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<sup>484</sup> FNZ Remittal Submission, 9 March, Annex 1, section 2.1. and FNZ response to the Provisional Report, paragraph 4.18.

<sup>485</sup> NoA, paragraphs 65 to 68. See also FNZ Initial Remittal Submission, paragraph 5.29 which states 'FNZ does not consider that a single platform would meet the above criteria; much less a sufficient proportion of the market to give rise to an SLC'.

- (iii) customers of neither party that are open to either separate software and/or servicing (including partnerships) or a PaaS solution.<sup>486</sup>
- (b) Some customers have a strong preference for in-house servicing as it is an important part of their customer proposition and 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 JHC) does not offer.<sup>487</sup> 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, and they would continue to be able to choose from a wide range of Software-only suppliers post-transaction.
- (c) 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].<sup>488</sup>
- (d) customers have a large number of credible suppliers to choose from whether they prefer PaaS, partnerships, or both.<sup>489</sup>
- (e) 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 model of mixing IAS and PAS providers.<sup>490</sup>
- (f) PaaS and software-only delivery models are highly differentiated and the tender dataset shows that in [REDACTED] of Retail tenders, platforms specify whether want a PaaS or software-only delivery model at the outset. This means that customers in just [REDACTED] of tenders could plausibly be affected by the transaction.<sup>491, 492</sup>
- (g) It is irrational to find an SLC when there is a low (or no) incremental change between the shares of supply or number of players in the market

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<sup>486</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 5.1

<sup>487</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 5.1(i). We note that just because some customers have a strong preference for in-house servicing does not mean that some GBST customers are not open to PaaS.

<sup>488</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 5.1(ii). See paragraphs 8.116 to 8.119 for our response to this submission.

<sup>489</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 5.1(ii). See paragraphs 8.239 to 8.244 for our assessment of various suppliers.

<sup>490</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 5.1. We disagree as IAS and PAS partnerships are different to partnerships between software and service providers. For further information see paragraph 6.76

<sup>491</sup> If (unusually) a customer is open to both delivery models, then it has at least [REDACTED] credible providers other than the Parties that have won Retail contracts or made it to the last stage of Retail tenders to choose from.

<sup>492</sup> FNZ response to the Provisional Report, 30 April 2021, paragraph 5.1(iii). See paragraphs 8.117 to 8.119 for our assessment on this subject.

when comparing the transaction to a counterfactual where SS&C and GBST have merged.<sup>493</sup>

8.279 We note that FNZ's submissions in response to the Provisional Report (see paragraph 8.278) do not provide new evidence supporting FNZ's position that the lessening of competition resulting from the Merger is not substantial and we have addressed these submissions in our assessment below. In relation to the submissions summarised in paragraph 8.278(g), we set out in paragraph 5.16(a) that, while an SS&C/GBST entity would have a significant share in the supply of Retail Platforms Solutions in the UK of around [20-30]%, in differentiated bidding markets, such as the market in which the Parties' activities overlap in this case, shares of supply do not fully capture the closeness of competition between firms. We set out in paragraph 5.49 that SS&C exerts a limited competitive constraint on the Parties in the relevant market and is not a close competitor to GBST such that under a counterfactual where SS&C had acquired GBST, the conditions of competition would not be materially different from the pre-Merger conditions of competition.

### ***Our assessment***

8.280 There are a number of indicia that point, subject to countervailing factors, to a lessening of competition arising from the Merger as being substantial.

8.281 First, a number of customers expressed concerns in relation to the effects of the Merger (see Appendix O). The reasons raised by customers include that the Merger would have an adverse effect on price, quality or innovation or simply reduce the number of suppliers.

8.282 Second, we find that the Retail Platform Solutions market includes [X] Retail Platforms which manage AuA with a value of around £[X] (an average of more than £[X] per platform). Any such customers (and potentially future customers, such as those that currently use in-house supply) are likely to be adversely affected by the Merger where they value the Parties' services and consider them as close competitors. Platforms with Retail and Non-Retail elements may also be negatively affected where they still view the Parties as potential suppliers of Platform Solutions.

8.283 Third, we note that the commercial terms agreed with each of these customers can also vary and affect the way particular customers are impacted. Some customers may be less affected, such as those customers

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<sup>493</sup> FNZ response to the Provisional Report, 30 April 2021, paragraphs 2.3 and 5.1(iii).



which have a strong preference for Combined Platform Solutions from a single supplier and those with preferences that are closer to Non-Retail Platforms. However, even GBST customers with a strong preference for GBST's software-only model are likely to be affected by the Merger due to the loss of competition between FNZ and GBST in relation to product development. In particular, FNZ and GBST's internal documents indicate that competition with FNZ was a key driver of GBST's product development.

8.284 We, therefore, do not agree that only platforms meeting FNZ's conditions above are likely to be affected by the Merger. Furthermore, focusing only on customers who may tender in the near future ignores that tenders are infrequent due to the significant costs and risks involved in switching Platform Solutions provider as discussed in Chapter 7. Platforms may be affected even if they do not intend to tender in the near future, given the potential for degradations in service or quality even within contract periods, and the potential effect of a reduction of outside options on bargaining power between parties in renegotiating contracts.

8.285 For these reasons set out above, subject to any countervailing factors, we anticipate that the Merger will lead to an SLC for a substantial proportion of the Retail Platforms that are current or potential customers of the Parties, even if not every customer will be affected equally.

8.286 This SLC can also affect end consumers using the Retail Platforms affected by the Merger. These end customers can experience a degradation in the terms of the offering they receive from their Retail Platforms, either in terms of the price, service or quality of the Platform Solutions supplied.<sup>494</sup> As noted above, each Retail Platform is responsible for administering an average of more than £[redacted] in assets. 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.<sup>495</sup>

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

8.287 We find that FNZ is a strong competitor in Retail Platform Solutions in the UK. FNZ's capabilities in both software and servicing, which are proven at scale, give it a distinct market offering. Some competitors, such as GBST and

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<sup>494</sup> A letter from the FCA to Investment Platforms highlighted 'Insufficient investment, processes and resources for technology and operations can lead to business continuity issues with services to customers and advisers being unavailable, intermittent or restricted.' [FCA letter](#), 6 February 2020. This shows that a degradation in service from Platform Solutions providers can have a direct effect on end customers.

<sup>495</sup> We note that, for long term investments such as pensions even a very small increase in fees can have a substantial adverse impact on the value of the investment.

Bravura, do not have the same servicing model as FNZ, whereas others have weaknesses in their software.

8.288 In differentiated bidding markets, such as the market for the supply of Retail Platform Solutions in the UK, shares of supply do not fully capture the closeness of competition between firms and accordingly shares of supply have been given limited weight in our competitive effects assessment. Evidence from third parties, tenders and internal documents was consistent in showing that the Parties compete closely against each other and that, with the exception of Bravura, other suppliers (including those who appear to operate primarily outside the market for Retail Platform Solutions) generally offer only a weak constraint:

- (a) First, third parties indicated that FNZ and GBST are close alternatives to each other. We found that there is a group of customers that consider FNZ and GBST to be close alternatives, with Bravura being the only other supplier noted by some of these customers as competing as closely as the Parties do with each other. Evidence from third parties indicated that other suppliers are weak competitors to the Parties.
- (b) Second, the Parties, together with Bravura, [REDACTED]. This evidence indicated that other suppliers are only a weak constraint on the Parties. [REDACTED], [REDACTED] and [REDACTED] were tied with the next most overlaps with one of the Parties but [REDACTED] and [REDACTED] only overlapped at the final stage [REDACTED] with one of the Parties. [REDACTED] at the final stage with either of the Parties. Other suppliers competed significantly less often at the early stage of tenders than the Parties did with each other. These other suppliers did not [REDACTED]. We also found very similar results when looking at the sensitivity case including a wider set of tenders (see paragraph 8.221 and 8.222).
- (c) Third, GBST's internal documents typically identify FNZ and Bravura as its main competitors. To the extent that they provide insight into competitive conditions, FNZ's internal documents also identify GBST and Bravura as competitors to FNZ. With the exception of Bravura, neither Party's internal documents suggest that other competitors would exert a material constraint on the Merged Entity.

8.289 This evidence shows that, even though GBST and Bravura do not have their own servicing capabilities, they compete closely with FNZ's Combined Platform Solutions. In particular, GBST and Bravura were the only suppliers that have competed with FNZ [REDACTED].

8.290 Third party evidence and our tender analysis indicate that in-house supply of software is viable for very few Retail Platforms and is typically limited to

situations where customers already self-supply software. The Parties' internal documents also demonstrate that they view in-house Platform Solutions as an opportunity to sell more business rather than as a competitive constraint.

- 8.291 We find that switching supply of Retail Platform Solutions is complex, risky, lengthy, and expensive for customers. This puts customers in a weaker bargaining position, which exacerbates our concerns over the loss of competition between the Parties resulting from the Merger.
- 8.292 As the Merger will remove the rivalry between GBST and FNZ, we consider that it is likely to result in negative outcomes for Retail Platforms in terms of price and quality of service. FNZ's and GBST's customers, including potential future customers who may consider the Parties to be close alternatives, are likely to be adversely affected by the Merger. Retail Platforms that consider the Parties to be close alternatives are more likely to be affected. However, even GBST customers with a strong preference for GBST's software-only model are likely to be affected by the Merger because the loss of competition between FNZ and GBST in relation to product development.
- 8.293 End consumers using the Retail Platforms affected by the Merger can also experience a degradation in the terms of the offering they receive from their Retail Platforms, either in terms of the price, service or quality of the Platform Solutions supplied. 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.
- 8.294 We have therefore found that, subject to our findings on any Countervailing Factors, the Merger has resulted or may be expected to result in an SLC in the market for the supply of Retail Platform Solutions in the UK.

## **9. Countervailing factors**

- 9.1 When considering whether a merger may be expected to result in an SLC, we consider factors that may mitigate the initial effect of a merger on competition ('countervailing factors') which in some cases may mean that there is no SLC. These factors include:
- (a) The responses of other suppliers (such as rivals and potential new entrants) to the merger, for instance the entry into the relevant market of new providers or expansion by existing providers;
  - (b) The ability of customers to exercise buyer power; and

(c) The effect of any rivalry-enhancing efficiencies arising as a result of the merger.<sup>496</sup>

## **Entry and expansion**

- 9.2 As part of the assessment of the effect of a merger on competition, we look at whether entry by new firms or expansion by existing firms may mitigate or prevent an SLC from arising.
- 9.3 We considered whether entry or expansion would be likely to outweigh the SLC we found in relation to the supply of Retail Platform Solutions in the UK and we considered whether entry and/or expansion would be timely, likely, and sufficient.<sup>497</sup>
- 9.4 We considered the extent to which there are barriers to entry or expansion in the supply of Retail Platform Solutions in the UK and the possible sources of entry or expansion.

### **Views of FNZ**

- 9.5 FNZ told us that the barriers to entry and expansion 'are not such as to discourage any credible competitor and are reducing further as a result of continuing regulatory convergence'.
- 9.6 FNZ provided a list of examples of recent new entrants into the Platform Solutions market, including UBS, Hubwise, SECCL, Aladdin (Blackrock), Multrees and GPP Wealth Solutions.
- 9.7 FNZ told us that examples of likely entry or expansion are, by their nature, difficult to predict, but that FNZ is aware of the following current specific examples of expansion:
- (a) 'Avaloq and Temenos: actively bidding for supply of Solutions for Advised Platforms in the 'open' advice sector in Australia;
  - (b) SS&C: actively looking to win business in the advised segment (specifically the IFA sub-segment). IFDS (now SS&C) has already won two large customers, St James's Place and Old Mutual Wealth (now Quilter) (although as noted above it subsequently lost the Old Mutual Wealth contract, which FNZ believes was due to cost overruns);

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<sup>496</sup> MAGs, sections 5.7-5.9.

<sup>497</sup> MAGs, paragraph 5.8.3.

- (c) Entry by start-up companies such as Hubwise and SECCL; and
  - (d) BlackRock: expanding Aladdin into a WMP Solution to directly compete with FNZ.'
- 9.8 FNZ also mentioned two further 'challenger Solution providers': Focus Solutions and Third Financial.
- 9.9 FNZ told us that companies which supply similar markets internationally do not need to redevelop their products for the UK, allowing them to enter cost-effectively.<sup>498</sup> FNZ noted the following examples:<sup>499</sup>
- (a) 'Avaloq: processes c.320,000 customers with BT Panorama servicing legacy Financial Planning Firms in Australia;
  - (b) Pershing: with \$2 trillion in AUA globally, has significantly more scale than FNZ;
  - (c) SEI: provides solutions for Wells Fargo wealth management in the USA, one of the largest-scale US wealth management businesses; and
  - (d) Temenos: provides solutions for Macquarie Wrap financial planning platform in Australia, which FNZ understands accounts for 300,000 or more customers.'
- 9.10 FNZ told us that the requirements of Non-Retail Platforms encompass those of Retail Platforms and enable them to serve Retail Platforms quickly and at lower cost, as technology and administration requirements are the same.<sup>500</sup> FNZ told us that acquiring pensions administration capabilities is not necessary and is, in any case, comparatively straightforward.<sup>501</sup> It gave the example of Avaloq doing so in Australia and suggested that a provider of Combined Platform Solutions could work with a software-only provider to access the pensions solution.
- 9.11 Further, FNZ submitted that a number of providers were well placed to enter and/or expand into the Retail Platforms segment if prices were to rise, stating that:<sup>502</sup>
- (a) '[REDACTED]';

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<sup>498</sup> FNZ Initial phase 2 submission, paragraph 4.41.

<sup>499</sup> FNZ Initial phase 2 submission, paragraph 4.41 (i)-(iv). These comments were in relation to entry into the Platform Solutions space more broadly and not just the retail segment.

<sup>500</sup> FNZ Initial phase 2 submission, paragraph 4.33.

<sup>501</sup> FNZ Initial phase 2 submission, paragraphs 4.35-4.38.

<sup>502</sup> FNZ response to the phase 2 Provisional Findings, paragraph 3.17.

- (b) providers such as Avaloq, Pershing and Temenos operate at scale and already have a proven track record of supplying competitive Platform Solutions in the UK and internationally; and
  - (c) the third party evidence indicates that a wide range of suppliers are considered alternatives to FNZ and GBST.’
- 9.12 FNZ told us that the barriers to entry and expansion are low, particularly for large global providers that are already present in the UK, such as Pershing, Avaloq, TCS BaNCS and Temenos.
- 9.13 FNZ submitted that our timely, likely and sufficient criteria can be satisfied by Pershing, Avaloq, TCS BaNCS and Temenos.
- (a) Timely: ‘Where contracts are determined in tender processes, the relevant question is how quickly a non-Retail focused supplier could, at the commercial negotiations stage, reach a position to make a credible bid to serve a Retail Platform. This is the stage [...] at which substantive competition takes place.’
  - (b) Likely: FNZ told us that these entities already operate at scale and within the UK; have the necessary expertise and financial resources to supply Retail Platforms and a track record of competing against FNZ in the UK and internationally. It noted that CMA evidence showed that Avaloq and Pershing were recognised by the CMA’s survey participants as credible alternatives to GBST more often than FNZ, and Temenos was recognised the same number of times, highlighting their strong reputation. FNZ submitted that Retail Platforms represented a sufficient incentive for these suppliers in terms of their annual recurring revenue.
  - (c) Sufficient: FNZ told us that a new or expanded competitor would be able to compete against the merged entity on comparable terms, in respect of goods, services and price.
- 9.14 FNZ said that entry and expansion are enabled by platforms switching and that its tender data showed [X] instances of retail customers switching over the last ten years.
- 9.15 It said that the market trend towards outsourcing provided further opportunities: it identified [X] instances of major retail customers outsourcing Platform Solutions over the past ten years.
- 9.16 It also noted that ‘platforms using proprietary solutions still account for more than [X]% of AUA held on Investment Platforms and that, if only a modest

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

9.17 GBST made no submissions on entry and expansion.

9.18 GBST’s internal documents contained [REDACTED].<sup>503</sup> Its documents [REDACTED].

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

9.19 We contacted competitors, consultants and customers seeking views on barriers to, and potential for, entry and expansion in the market for Retail Platform Solutions in the UK.

9.20 The views of these third parties indicate that there are significant barriers to entry and expansion in the supply of Retail Platform Solutions.

9.21 Competitors told us that developing a new software solution for the Retail Platform market in the UK is challenging. They said that it takes time, money and requires a lot of specific expertise to develop the software and enhance its functionality to support customer and regulatory requirements. No competitor told us that entry into this market was easy.

9.22 Some third parties mentioned scale as a barrier:

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

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

(c) Avaloq mentioned scale as a factor.

9.23 SS&C told us that the unwillingness of platform operators to consider moving to a new platform is a challenge, particularly for a new entrant.

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

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

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

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<sup>503</sup> See Chapter 6.

## ***Our assessment***

- 9.25 The tender evidence indicates that, in general, new entrants have little prospect of winning tenders for Retail Platform Solutions or exerting a significant constraint on the Parties.
- 9.26 Using the tender dataset updated and modified during the Remittal Inquiry, we examined the outcome of [REDACTED] completed tenders for Retail Platform Solutions (Retail tenders) since 2016 where there was an incumbent solution:<sup>504</sup>
- (a) [REDACTED] out of [REDACTED] customers switched from a purely in-house solution to an external supplier.<sup>505</sup>
  - (b) [REDACTED] out of [REDACTED] customers switched from an external supplier to another external supplier. The remaining [REDACTED] customers continued with the incumbent external supplier.
- 9.27 We also conducted a sensitivity analysis which included both Retail tenders and tenders identified to be a part of our sensitivity analysis (Sensitivity only tenders). There were [REDACTED] tenders in the sensitivity analysis since 2016 where there was an incumbent solution.<sup>506</sup> Out of the [REDACTED] tenders we found that:
- (a) [REDACTED] out of [REDACTED] customers switched from a purely in-house solution to an external supplier.
  - (b) [REDACTED] out of [REDACTED] customers switched from one or more external suppliers to another external supplier. The remaining [REDACTED] customers continued with the incumbent external supplier.
- 9.28 FNZ's examples of switching were over a longer time period which may indicate that, before 2016, there were more opportunities for new entrants.
- 9.29 As described above, we consider that customers were far more likely to switch from an in-house solution than from an external supplier. This means there are low prospects for new entrants to win new customers in the future, particularly given that many Retail Platforms have already outsourced their Platform Solutions.

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<sup>504</sup> [REDACTED] out of the [REDACTED] Retail tenders are not included in the switching analysis. [REDACTED] tenders are for new Platforms and, therefore, do not have an incumbent solution to switch from. [REDACTED] on-going, and [REDACTED] were abandoned before a winner was chosen.

<sup>505</sup> [REDACTED].

<sup>506</sup> Of the [REDACTED] Retail and sensitivity only tenders [REDACTED] were not included because they were for a new proposition, [REDACTED] were not included because they were abandoned before a winner was selected and [REDACTED] was not selected because it is currently ongoing.



- 9.30 We also found that, compared to established suppliers of Retail Platform Solutions such as FNZ, GBST and Bravura, other suppliers, including new entrants, have participated significantly less frequently in tenders for Retail Platforms, both at the early and final stages.<sup>507</sup> Ohpen, a new entrant in Retail Platform Solutions in the UK won a tender in 2016, but the project ceased in 2018. No other new entrant has won a tender for a Retail Platform against one or both Parties since 2016.
- 9.31 We investigated the most credible sources of entry and or expansion into the UK market for Retail Platform Solutions. We found that:
- (a) Some of the companies mentioned by FNZ such as UBS and Aladdin (by BlackRock) do not compete for the same customers as FNZ and we saw no evidence that this will change in the medium term.
  - (b) Some of the other companies mentioned by FNZ are already active in the UK, such as SS&C, Focus Solutions, Third Financial and GPP Wealth Solutions, but these are not recent entrants and their presence has already been taken into account within our competitive assessment. We saw no evidence of expansion plans by any of these suppliers.
- 9.32 As set out in Chapter 6, it is lengthy and costly for Non-Retail Platform Solutions suppliers to adapt their offering and difficult to lower their costs to compete strongly in the supply of Retail Platforms. For example, SS&C told us that it would be keen to build a significantly larger presence in the UK retail advisory, direct-to-customer and institutional wealth management sectors. However, it also submitted that the work needed to 'accommodate the needs of the retail investment platform market which as a sector remain stubbornly unprofitable, does not appear to hold great appeal'.
- 9.33 We consider, therefore, that entry or expansion is more likely to come from one of the following sources:
- (a) Entry by large international competitors into the relevant market in the UK such as Pershing, Avaloq, TCS BaNCS and Temenos. We assessed whether these firms are likely to impose a sufficient competitive constraint against the Merged Entity in a timely manner; and
  - (b) Expansion by recent new entrants such as the three most consistently cited firms, Hubwise, SECCL and Multrees. We focussed on the extent to

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<sup>507</sup> See Chapter 8.

which these three recent entrants could expand to provide a stronger constraint than they currently do.

9.34 We set out the evidence in relation to these two sources of potential entry and expansion below.

#### *Large international competitors*

9.35 Our competitive assessment found that Pershing, Avaloq, TCS BaNCS and Temenos are not currently close competitors of FNZ or GBST.

9.36 Avaloq told us that:

(a) [REDACTED]

(b) When asked what would make it consider entering the market, Avaloq said that this [REDACTED].

(c) It is currently focusing on wealth managers and private banks, but it is exploring other areas. It intends to 'compete more closely for these Retail Platform customers, those without an IFA or pensions focus, such as Investment Platforms with retail components offered by banks'.

9.37 Temenos told us that:

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

(b) [REDACTED]. It said that it [REDACTED].

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

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

(b) TCS BaNCS said that it wants to expand its UK business and replicate the success it has had with [REDACTED] in the next three to five years. It said that its lack of presence today is because it is new to the UK market, not due to lack of intent or product incapability but that it takes time to increase market presence. It said that UK market participants tend to be in it long-term and customers are resistant to changing providers. It said that it will be tough to win business from FNZ due to its strength in the market.

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

#### *Smaller competitors*

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

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

9.42 Hubwise has been focused on platforms business for the last three years and said that it is already supplying Platform Solutions and has strong demand from medium-sized customers with £[redacted] of assets. It said that it intends the total assets held on its platforms to reach £[redacted] in 2020, £[redacted] in 2021 and £[redacted]. It told us that it will [redacted]. Hubwise internal documents include [redacted] AUA by [redacted].

9.43 SECCL provides Combined Platform Solutions to Retail Platforms and it said that it also aims to supply software only. It won its first customer in 2018 and said that it offers the same services as FNZ but at a far smaller scale. It currently supplies platforms with around £[redacted] of assets and said that it will have over £[redacted] of assets managed on its platform. It said that when its system is complete ([redacted]), it will be able to attract large customers with assets of around £[redacted]. It said that it would not currently target FNZ and GBST's customers directly because they would be looking to transfer at least £[redacted] of assets or much more and it does not currently have the ability to handle such clients, and they would probably not have the risk appetite to engage SECCL at present.

9.44 SECCL told us that it plans to compete strongly and expand as rapidly as possible. However, it said that it takes time and investment until new providers start making a profit.

9.45 Multrees was established in 2010. It said that it is not a product (tax wrapper or fund supermarket) provider. It does not create its own products or provide financial advice but is an 'independent, unconflicted open-architecture business'. It said that FNZ targets 'big-ticket deals which leaves the middle of the market open to other suppliers'. It said that it does not need major

investment in order to grow because it has scalable infrastructure which means that it can add more business without employing significantly more staff. [REDACTED].

9.46 We found that each of these firms is much smaller than FNZ, GBST, Bravura and SS&C in terms of AUA of customers served:

(a) FNZ has over £[REDACTED] AUA and its largest customer is [REDACTED] with over £[REDACTED] AUA.

(b) GBST's largest customer is [REDACTED] with \$[REDACTED] AUA.

(c) FNZ told us that St. James's Place, served by SS&C, has US\$[REDACTED] AUA and Fidelity International, a Bravura customer, has US\$[REDACTED] AUA.<sup>508</sup>

9.47 None of the smaller firms supplying Retail Platform Solutions in the UK are currently able to serve the size of customers that FNZ and GBST do. From reviewing their expansion plans we do not consider this will change in any reasonable time horizon.

#### *Additional evidence on entry and expansion*

9.48 Our tender analysis (in Chapter 8) shows that:

(a) FNZ/JHC have not bid against [REDACTED].

(b) FNZ/JHC have only bid against [REDACTED] in a Retail tender or Sensitivity only tender. Similarly, FNZ/JHC have only bid against [REDACTED]. There is no evidence of expansion by these competitors based on recent tender analysis.

(c) FNZ/JHC have bid against Pershing [REDACTED] in a Retail tender and [REDACTED] in a Sensitivity only tender. Pershing [REDACTED].

9.49 Regarding the ability of another firm to achieve scale in a timely manner, an FNZ presentation [REDACTED]. We consider that this demonstrates the significant time it took FNZ to achieve scale in the market.

9.50 FNZ told us that switching can and does happen. We found that switching occurs (albeit infrequently) and we agree with FNZ that the length of time it takes to switch does not automatically rule out entry or expansion being

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<sup>508</sup> These figures are those used in the Merger Notice. Figures used to produce our shares of supply analysis are broadly a similar size.

timely. However, we found that switching costs are high for Retail Platforms<sup>509</sup> and therefore that they increase barriers to entry.

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

- 9.51 The evidence we saw does not support entry and expansion as being timely, likely and sufficient to outweigh the SLC:
- (a) We investigated potential entry from suppliers of Non-Retail Platform Solutions. We have seen no evidence from suppliers to Non-Retail Platform that this is likely;
  - (b) We found evidence of expansion by smaller firms over recent years, but their expansion has been limited to date and the evidence suggests that their future expansion would not be of sufficient scale to constrain the Merged Entity in a timely manner; and
  - (c) We found no evidence of planned entry by larger suppliers to Non-Retail Platforms that would be timely to constrain the Merged Entity.
- 9.52 We found that there are material barriers to timely entry and expansion in the Retail Platforms market. In particular, internal documents from FNZ suggested that significant time is required to achieve scale in this industry and we found that switching costs are high.
- 9.53 We conclude that entry by new rivals or expansion by existing providers would not be timely, likely and sufficient to outweigh the SLC.

## **Buyer power**

- 9.54 In some circumstances, a customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. We refer to this as countervailing buyer power. The existence of countervailing buyer power may make an SLC less likely.<sup>510</sup>
- 9.55 The extent to which customers have buyer power depends on a number of factors. A customer's negotiating position will be stronger if it can easily switch away from the supplier or if it can otherwise constrain the behaviour of the supplier. Typically, a customer's ability to switch away from a supplier will be stronger if there are several alternative suppliers to which it can credibly

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<sup>509</sup> See Chapter 7.

<sup>510</sup> [MAGs](#), paragraph 5.9.1.

switch, or it has the ability to sponsor new entry or enter the supplier's market itself by vertical integration. Where customers have no choice but to take a supplier's products, they may nonetheless be able to constrain prices by imposing costs on the supplier, for example by refusing to buy other products produced by the supplier.<sup>511</sup>

### ***FNZ submissions***

9.56 FNZ submitted that customers have substantial power to constrain the Parties and will continue to do so for the foreseeable future. It said that 'customers are typically very large, sophisticated entities, with significant commercial power, in-house IT expertise, and access to advice and assistance from one of several major consultancy firms'.

9.57 FNZ gave the following reasons for customers having substantial power to constrain the Parties:

- (a) They control the tender process. Tenders are detailed and extensive, resulting in 'intense competition' amongst suppliers; tenders give customers a lot of information from potential suppliers which results in an information asymmetry;
- (b) Individual contracts are not tendered very frequently so the onus is on suppliers to compete fully for every opportunity; there is a strong incentive to reach an agreement with a customer, as failing to win a new contract presents a significant lost opportunity for revenue; and
- (c) Customers can, and do, review terms if business conditions have changed and they may renegotiate pricing mid-contract. Contracts often contain protections to ensure that customers are on the most advantageous pricing available.<sup>512</sup>

### ***Our assessment***

9.58 To assess buyer power, we used evidence from our tender analysis and from internal documents and third parties. We found that while customers use tenders to drive competition between suppliers, there are significant limitations on the extent that they can exploit this process to limit the ability of the Merged Entity to raise prices or otherwise worsen its offering.

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<sup>511</sup> MAGs, paragraph 5.9.3.

<sup>512</sup> FNZ submitted that [REDACTED].

9.59 The evidence we considered show that customers use tenders to drive competition between suppliers:

- (a) When tendering for a new supplier, customers are generally in control of the process. Our tender analysis shows that customers decide whether and when to start a tender process and how it should run.
- (b) When tendering, customers are able to drive competition amongst suppliers to obtain good terms on their contract. For example, a customer told us that: [REDACTED].
- (c) Customers may engage with other suppliers in order to create competitive tension between them and get better terms. This includes situations when a preferred supplier has been identified. For example, a consultant advising [REDACTED] in its tender process recommended progressing discussions with multiple suppliers to maintain competitive tension even though one supplier was better suited.
- (d) Customers whose contracts are due to expire may initiate a tender in order to get a better offer from their incumbent supplier. FNZ internal documents show that customers may consider the option of remaining with their current supplier or switching to an in-house solution.<sup>513</sup>
- (e) Customers may refer to other suppliers' terms in order to negotiate and improve contract terms. For example:
  - (i) An FNZ customer [REDACTED].
  - (ii) A GBST customer [REDACTED].
- (f) The frequency of tenders (especially for larger customers) is low. For these, there may be greater pressure on suppliers to try to win the contract by offering competitive terms, as it would account for a significant, and potentially long term, gain in revenue.

9.60 We also consider that the evidence indicates that some larger customers may have more negotiating power than smaller customers. Aegon told us that, because it may be GBST's largest customer in the UK, there might be reputational damage to the Merged Entity if it lost Aegon as a customer.

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<sup>513</sup> [REDACTED].

- 9.61 However, there are significant limitations on the extent that they can exploit this process to limit the ability of the Merged Entity to raise prices or otherwise worsen its offering.
- 9.62 First, customers' negotiating strength is significantly limited by there being only a few alternative suppliers to which they can credibly switch. As found in our competitive assessment, FNZ and GBST compete closely against each other and, with the exception of Bravura, other suppliers generally offer only a weak constraint.
- 9.63 Second, we found that switching costs are high (see Chapter 7) and the costs and difficulties involved in switching reduce the negotiating strength of a Retail Platform customer seeking to renew a contract with an existing supplier.
- 9.64 The Merger would reduce an already limited number of credible alternatives for the customers to choose from, significantly reducing the power that customers can exert. The removal of an important alternative for Retail Platforms in the UK reduces the buyers' ability to switch, or to threaten to switch, to a credible alternative supplier.
- 9.65 Customers, competitors and consultants have all commented that there are limited options available for Retail Platforms to choose from and note that the Merger has made this situation worse.
- (a) One consultant submitted that 'there is already a scarcity of credible suppliers for large organisations looking for stable, established partners to work with' and the 'merger would significantly reduce choice'.
- (b) A customer, [X], uses two software suppliers (GBST and JHC) because it is unable to get all of the functionality it needs from a single supplier. It considers that it is easier to move data between its two incumbent systems than it would be to switch to a new supplier. It told us that using two software suppliers has the advantage of creating commercial tension between the suppliers and to provide it with some operational optionality.
- 9.66 Third, even if some customers have greater leverage over the Parties due to their size, the limited options available to them significantly reduces their negotiating strength.
- 9.67 Also, any leverage that some customers may have, due to their size or because there are a wider range of alternatives that meet their requirements, would not protect other customers from price rises given that commercial terms vary with each customer.



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

### **Conclusion on buyer power**

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

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

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

(b) Our tender analysis and third party views indicate that Retail Platforms do not readily switch suppliers due to the high costs in doing so. The difficulty of switching puts customers in a weaker bargaining position with their suppliers.

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

9.72 The Merger will result in customers losing one of the few major suppliers which could credibly provide an alternative and hence they will have less negotiating leverage with their supplier. They will be in a weaker position following the Merger, whatever their negotiating strength previously.

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

### **Rivalry-enhancing efficiencies**

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

9.75 In order for any efficiency claimed to be considered a countervailing factor the evidence must demonstrate the following criteria is met: timely, likely, sufficient and merger-specific, and it should result in increased rivalry in the relevant market, that is, it should incentivise the merger parties to improve their offering.<sup>514</sup>

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<sup>514</sup> [MAGs](#), paragraph 5.7.4(a).

## ***FNZ submissions***

9.76 FNZ has not made any specific representations about rivalry-enhancing efficiencies.<sup>515</sup> It told us that the Merger will generate significant benefits and that there may be two key benefits to GBST's customers from the Merger:

- (a) [X] R&D spend, improving and enhancing GBST's software; and
- (b) An opportunity for GBST customers to transition from an on-site software model to a fully outsourced processing model, saving money in the process.

## ***Our assessment***

9.77 Efficiency claims can be difficult for the CMA to verify because most of the information concerning efficiencies is held by the merging firms. We therefore expect the Parties to provide sufficient evidence to demonstrate that rivalry enhancing efficiencies will arise as a result of the Merger.

9.78 Although FNZ has claimed that the Merger will give rise to benefits to GBST's customers, based on the evidence we saw, we do not consider that the two benefits set out above amount to rivalry-enhancing efficiencies.<sup>516</sup> We saw no evidence that any cost savings will be passed on to customers nor that improvements in quality, range, or service are offset by degradation in other parameters.

9.79 While access to FNZ technology might be attractive to some GBST customers if, as a result of the Merger, FNZ is able increase prices and/or invest less in future development, then there is effectively no pass-through of the benefits, and so no increase in rivalry.

9.80 In addition, the opportunity to have access to FNZ's technology and expertise is not Merger-specific. It is currently available to GBST's customers who could choose to switch to FNZ absent the Merger.

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

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

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<sup>515</sup> FNZ has submitted that there are RCBs. These are assessed in Chapter 11.

<sup>516</sup> [MAGs](#), paragraph 5.7.2.

## Conclusion on countervailing factors

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

## 10. Findings on SLC

10.1 As a result of our assessment, we have found that the Merger has resulted in the creation of an RMS.

10.2 We have concluded that the creation of that RMS has resulted, or may be expected to result, in an SLC, as a result of horizontal unilateral effects, in the supply of Retail Platform Solutions in the UK.

## 11. Remedies

### CMA remedies legal framework

11.1 Having concluded that a relevant merger situation has resulted, or may be expected to result, in an SLC (see paragraph 10.2 above), the CMA is required to decide whether action should be taken to remedy, mitigate or prevent the SLC or any resulting adverse effect.<sup>517</sup> The CMA must then state in its final report the remedial action to be taken.

11.2 The Act requires that the CMA, when considering possible remedial actions, shall 'in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it'.<sup>518</sup>

11.3 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects<sup>519</sup>. The effectiveness of a remedy is assessed by reference to its:<sup>520</sup>

- (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;

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<sup>517</sup> Merger remedies guidance CMA87, paragraph 1.2.

<sup>518</sup> The Act, section 35(4).

<sup>519</sup> [Merger remedies guidance CMA87](#).

<sup>520</sup> [Merger remedies guidance CMA87](#), paragraph 3.5.

- (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.

11.4 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’.<sup>521</sup>

11.5 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.<sup>522</sup> In this consideration, the CMA may also have regard, in accordance with the Act,<sup>523</sup> to the effect of any remedial action on any relevant customer benefits (RCBs) arising from the Merger.

## **FNZ’s and GBST’s submissions about the CMA’s approach to the evidence**

11.6 Below, we consider the views expressed by FNZ in relation to the CMA’s general treatment and reliance on GBST’s evidence, and by GBST in relation to the CMA’s general treatment and reliance on FNZ’s evidence. Other submissions made by FNZ and by GBST are considered in the appropriate sections in this chapter on the effectiveness and proportionality of the potential remedy options.

11.7 In the NoA, FNZ stated that ‘FNZ urged the CMA to seek to rely on hard data and evidence [redacted]<sup>524</sup> and that ‘The CMA’s reliance on [redacted] is irrational’.<sup>525</sup> The NoA also stated that ‘[the CMA] does not appear to have taken the reasonable step of reviewing whether [redacted], nor to have tested the evidence with an independent expert’.<sup>526</sup> 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 [redacted].

11.8 In response to the Remedies Paper<sup>527</sup>, GBST told us that ‘it is inconsistent and irrational for the CMA to disregard evidence provided by GBST’s

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<sup>521</sup> [Somerville PLC v Competition Commission \[2006\] CAT 4](#) (Somerville), paragraph 88.

<sup>522</sup> [Merger remedies guidance CMA87](#), paragraph 3.6.

<sup>523</sup> The Act, [section 35\(5\)](#). See also [Merger remedies guidance CMA87](#), paragraph 3.4.

<sup>524</sup> NoA, paragraph 95.

<sup>525</sup> NoA, paragraph 97.

<sup>526</sup> NoA, paragraph 98.

<sup>527</sup> Remedies Paper refers to the CMA provisional decision on remedies in relation to the case remitted to the CMA by the CAT on 21 January 2021 published on 16 April 2021.

customers, potential purchasers and other third parties in the market in favour of broad brush and unevidenced statements from FNZ on the ease of separating GBST's business divisions and the impact on GBST's customers.<sup>528</sup> GBST also submitted that particular weight should be given to customer perceptions' on the risks and unknowns of breaking up GBST and that these 'perceptions therefore are critical, regardless of whether those perceptions are verifiably "correct" or not'.

- 11.9 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 in the round 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.<sup>529</sup> Contrary to GBST's submission, the CMA has not 'disregarded' any evidence from third parties, including GBST's customers. The CMA has carefully considered all the submissions and evidence received from third parties during the Remittal and Phase 2 Inquiries in the way set out above. When assessing how much weight to place on such evidence, the CMA has taken into account, in particular, that (i) third parties will often have limited insight into the internal workings of GBST's business, including the level of operational and geographic integration within GBST (see paragraph 11.18 below); and (ii) that that views relating to a partial divestiture, as expressed by third parties during the course of the Phase 2 Inquiry do not take into account the detailed specification of the Global Wealth Management remedy, including the safeguards proposed by the CMA in the Remedies Paper.
- 11.10 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-

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<sup>528</sup> GBST response to the Remedies Paper, 30 April 2020, paragraph 5.12(iv).

<sup>529</sup> The steps we took during the Phase 2 Inquiry are outlined in the Phase 2 Report (see paragraphs 11.7 to 11.17).

separate measures that have been in place since the Merger, which have limited FNZ's access to information about GBST's business.<sup>530</sup> However, we did not unquestioningly rely on all evidence provided by GBST, either in the Phase 2 Inquiry or in this Remittal Inquiry, and sought to corroborate such evidence (including with evidence such as contemporaneous internal documents), wherever possible, against other relevant evidence alongside the other steps discussed in the Phase 2 Report.<sup>531</sup>

## Types of remedy

11.11 As set out in our guidance,<sup>532</sup> remedies are conventionally classified as either structural or behavioural:

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

11.12 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.<sup>533</sup>

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<sup>530</sup> 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.

<sup>531</sup> See, in particular, Phase 2 Report, Appendix B, which sets out our approach to evidence.

<sup>532</sup> [Merger remedies guidance CMA87](#), paragraph 3.34. Some remedies, such as those relating to access to IP rights may have features of structural or behavioural remedies depending on their particular formulation.

<sup>533</sup> [Merger remedies guidance CMA87](#), paragraph 3.46.

## Overview of the remedies process during the Remittal Inquiry

- 11.13 Our Remittal Inquiry has built on the work set out in the Phase 2 Report.<sup>534</sup>
- 11.14 Following the receipt of our provisional decision on remedies in Phase 2, 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. In particular, at that time, FNZ did not put forward detailed submissions and proposals addressing the risks of that remedy that had been identified by the CMA in the Phase 2 Report.<sup>535</sup>
- 11.15 During the Remittal Inquiry, FNZ has engaged constructively with exploring the potential effectiveness of a Global Wealth Management remedy. In FNZ's first submission on remedies, FNZ stated that FNZ submitted that it 'considers that the Global WM business can be easily separated on geographic lines into the UK WM and Australian WM businesses', but that [✂] and is therefore prepared to engage constructively with the CMA on the Global WM divestment option.' To this end, FNZ has made additional representations and made detailed proposals with a view to addressing the risks the CMA identified in the Phase 2 Report and its subsequent Remedies Paper, in relation to the Global Wealth Management remedy.
- 11.16 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.
- 11.17 During the Remittal Inquiry, as part of our evaluation of the Global Wealth Management remedy (see paragraphs 11.43 to 11.55 below), we received

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<sup>534</sup> [Phase 2 Report](#), Chapter 11.

<sup>535</sup> Following the Notice of Possible Remedies FNZ proposed a Source Code Licencing Remedy (SCLR) and latterly, following receipt of our provisional views on remedies [✂], FNZ dropped the SCLR and focused on a potential UK Wealth Management remedy.

further representations from FNZ<sup>536</sup>, GBST<sup>537</sup>, SS&C<sup>538</sup>, and two third parties with whom we had not engaged during the Phase 2 Inquiry.

- 11.18 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 identified by FNZ as being interested in acquiring a UK Wealth Management business.
- 11.19 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 not particularly well placed to provide specific insight into these issues.<sup>539</sup> Therefore, given the nature of the risks identified with this remedy option in the Phase 2 Report, during the remittal process we have focused on gathering further evidence from FNZ and GBST, in particular on the degree of interdependency between GBST's Global Wealth Management and Capital Markets divisions.
- 11.20 In the remainder of this chapter, we set out our views of each of the remedy options we 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 (see paragraph 11.258) and proportionality of the remedy options (see paragraph 11.297).

## **Effectiveness of remedy options**

### ***Full divestiture***

- 11.21 We found that the Merger has resulted, or may be expected to result, in an SLC, as a result of horizontal unilateral effects, in the supply of Retail Platform Solutions in the UK (see paragraph 10.2 above).
- 11.22 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

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<sup>536</sup> FNZ response to the Remedies Paper, 30 April 2021; and FNZ response to the GBST submission on the Remedies Paper, 12 May 2020.

<sup>537</sup> GBST response to the Remedies Paper, 30 April 2021; and GBST response to the FNZ submission on the Remedies Paper, 14 May 2021.

<sup>538</sup> SS&C comments on the Remedies Paper, 30 April 2021.

<sup>539</sup> Third parties were able to provide evidence concerning these types of separations more generally. However, because the evidence supports that the ease or difficulty of separation is largely dependent on the nature of the specific business(es) we have placed only limited weight on this third party evidence.



where we have found an SLC.<sup>540 541</sup> This would be a simple, direct and easily understandable approach to remedying the SLC in question.<sup>542</sup>

11.23 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.

11.24 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.<sup>543</sup>

11.25 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 conclude again that a full divestiture of GBST would be a comprehensive and effective remedy to the SLC and its resulting adverse effects.

11.26 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 the effectiveness of other options, such as partial divestitures.

### ***Partial divestiture options***

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

11.28 In defining the scope of a divestiture package that will satisfactorily address the SLC, the CMA will normally seek to identify the smallest viable, standalone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired.<sup>544</sup>

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<sup>540</sup> [Merger remedies guidance CMA87](#), paragraph 5.6: 'In identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business. This is because restoration of the pre-merger situation in the markets subject to an SLC will generally represent a straightforward remedy.'

<sup>541</sup> See [Ecolab Inc. v CMA \[2020\] CAT 12](#), paragraph 79.

<sup>542</sup> [Somerville PLC v Competition Commission \[2006\] CAT 4](#), paragraphs 98-99.

<sup>543</sup> [Phase 2 Report](#), paragraph 11.75.

<sup>544</sup> [Merger remedies guidance CMA87](#), paragraph 5.7.

11.29 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.

11.30 During the Phase 2 Inquiry we considered in detail two partial divestiture options:

(a) A UK Wealth Management divestiture (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).

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

#### *UK Wealth Management divestiture*

11.32 A full description of a UK Wealth Management remedy is set out in the Phase 2 Report.<sup>545</sup> 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.

11.33 FNZ offered to: [REDACTED].<sup>546</sup>

11.34 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 of the business functions and staff that would be required by a UK Wealth Management business are based outside the UK.

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<sup>545</sup> See paragraphs 11.92 to 11.96 of the Phase 2 Report.

<sup>546</sup> [REDACTED]

- 11.35 This means that a divested business would need to be ‘carved out’ of GBST to create a new commercial entity. This introduces additional risks, relative to the divestiture of a standalone business unit.<sup>547,548</sup>
- 11.36 In the Phase 2 Inquiry we identified many 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.
- 11.37 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.<sup>549</sup> A UK Wealth Management 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<sup>550</sup>; and
  - (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.
- 11.38 The CMA’s primary consideration is whether a proposed remedy would be effective at addressing the SLC. We found that sharing GBST’s 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

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<sup>547</sup> [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.

<sup>548</sup> [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.

<sup>549</sup> [Phase 2 Report](#), paragraph 11.172.

<sup>550</sup> [Phase 2 Report](#), paragraph 11.173.

regarding the ability and incentive of any divested UK Wealth Management business to compete effectively in the UK.<sup>551</sup>

11.39 We concluded that neither the identification of an upfront purchaser, nor 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. We also considered that [✂] did not adequately mitigate these risks, since that did not avoid the creation and transfer of a structurally weaker competitor, compared with GBST pre-merger.

11.40 During this Remittal Inquiry, we have found no reason to question the conclusions reached in the Phase 2 Report<sup>552</sup> on a UK Wealth Management divestiture, both in general and specifically in relation to the points set out above. We consider that there is no realistic prospect of finding this remedy to be effective and therefore we conclude again that a UK Wealth Management divestiture would not be an effective remedy to the SLC and its resulting adverse effects.

11.41 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 that such conduct would fall outwith the CMA's jurisdiction.<sup>553</sup> In particular, FNZ submitted that:

- (a) 'GBST could freely license a copy of its software for use by another entity in a market where it no longer competed' and 'this would not raise a competition concern which could justify the CMA's intervention'<sup>554</sup>; and
- (b) '[T]he 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.'<sup>555</sup>

11.42 However, FNZ's submissions misunderstand 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

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<sup>551</sup> [Phase 2 Report](#), paragraphs 11.182-11.84.

<sup>552</sup> [Phase 2 Report](#), paragraphs 11.220-11.230.

<sup>553</sup> NoA, paragraph 87. See also NoA, paragraphs 85 and 86.

<sup>554</sup> NoA, paragraph 86.

<sup>555</sup> NoA, paragraph 87.

reasonable and practicable.<sup>556</sup> 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.<sup>557</sup>

### *Global Wealth Management remedy*

#### *Description of remedy*

- 11.43 As noted in paragraph 11.15 above, FNZ has engaged constructively with various potential means of implementing a Global Wealth Management divestiture during the remittal process. Below we outline the proposals put forward by FNZ.
- 11.44 A Global Wealth Management remedy would entail FNZ divesting the entire Global Wealth Management division of GBST, while retaining or buying back assets from GBST 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 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 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.
- 11.45 FNZ submitted that the divestiture could be structured as a 'reverse carve out'.<sup>558</sup> 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 ultimately be able to retain, or have the option of buying back from the purchaser of GBST. FNZ proposed that, under a Global Wealth Management divestiture, it would have the right to retain, or buy back, as a minimum, certain assets that, in its view, were necessary to enable it to operate GBST's

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<sup>556</sup> The Act, sections 35(3) and (4).

<sup>557</sup> 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.

<sup>558</sup> A 'reverse carve-out' generally means the business is divested as a whole to a purchaser but the Merged Entity may retain, or buy back, one or more assets that are not necessary for the viability and competitiveness of the divested business.

Capital Markets business. FNZ submitted that this minimum set of assets would include the following ‘non-negotiable’ categories of core assets (along with any other assets used by the Capital Markets business that a purchaser did not wish to retain):

- (a) All Capital Markets customer contracts;
- (b) A defined list of core proprietary Capital Markets software<sup>559</sup>, including source code and IP of that software;<sup>560</sup> 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.

11.46 GBST raised concerns in relation to categories b) and c). We assess these concerns and FNZ’s response to them at paragraphs 11.178 to 11.193 below.

11.47 FNZ considers that there are 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 [REDACTED] these assets would only be included in the divestiture/sale back at the purchaser’s full discretion.<sup>561</sup>

11.48 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 [Capital Markets] 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 cooperation/support/services to be subject to negotiation with the purchaser able to decline any request at its complete discretion’.<sup>562</sup> In relation to the time period for such services, FNZ’s submissions do [REDACTED].’ 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

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<sup>559</sup> This list of software consists of: [REDACTED].

<sup>560</sup> [REDACTED].

<sup>561</sup> [REDACTED]. See also FNZ response to the Remedies Paper, 30 April 2021, paragraph 3.7.

<sup>562</sup> [REDACTED]. See also FNZ response to the Remedies Paper, 30 April 2021, paragraph 3.16.

Management business, including all shared assets and resources, there would be 'no need for any transitional services from FNZ' to the purchaser.

- 11.49 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 [...].'
- 11.50 FNZ told us that it considered it important that a purchaser [redacted]. Our assessment of these two implementation options is set out in paragraphs 11.194 to 11.201.
- 11.51 FNZ has noted that the sale of GBST to a purchaser would be expected to require approval of the Australian Foreign Investment Review Board (FIRB), with [redacted].
- 11.52 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, subject to CMA approval).
- 11.53 FNZ would [redacted]. Thus, by structuring the remedy as a 'reverse carve out' (see paragraph 11.45 above) , FNZ considers that it is FNZ, and not the divestiture business or the purchaser, that would be taking on the separation risks.
- 11.54 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. [redacted]. 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.'
- 11.55 FNZ also noted that [redacted].

11.56 We next assess the potential effectiveness of this Global Wealth Management remedy before concluding whether FNZ's proposal (in either its original or a modified form) would be effective at addressing the SLC.

*Assessment of the effectiveness of a Global Wealth Management remedy*

11.57 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<sup>563</sup> 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;<sup>564</sup> and
- (b) 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.<sup>565</sup>

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

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

11.59 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.

11.60 FNZ considers that under a 'reverse carve out' structure (see paragraph 11.45) 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).

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

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<sup>563</sup> Phase 2 Report, Chapter 11.

<sup>564</sup> Merger remedies guidance CMA87, paragraph 5.3.

<sup>565</sup> *Ecolab Inc. v CMA [2020] CAT 12*, paragraphs 83 to 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.



- 11.62 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 a ‘reverse carve out’ structure, the purchaser would own and have exclusive use of this common proprietary IP.
- 11.63 FNZ indicated that in addition to [REDACTED] noted in the Phase 2 Report (see paragraphs 11.205 to 11.206 of the Phase 2 Report) by January 2021 [REDACTED] it had [REDACTED].
- 11.64 In the Remedies Paper, the CMA set out its provisional views on the structure and safeguards that would be needed to sufficiently mitigate the risks of the Global Wealth Management remedy. The CMA provisionally concluded that a full divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business, with appropriate safeguards, would be an effective and proportionate remedy.
- 11.65 In response to the Remedies Paper, FNZ submitted that it agreed with the CMA that this remedy, which it described as the ‘Buy Back Remedy,’ would be effective and ‘was the least intrusive option to effectively address the alleged SLC’.<sup>566</sup> However, FNZ told us the following ‘modest but important refinements and clarifications’ should be included as part of the remedy to ‘optimise the effectiveness and proportionality of the Buy Back Remedy’<sup>567</sup>:
- (a) FNZ will have the right to buy back the core Capital Markets assets, including the core Capital Markets IP (ie the defined list of software referred to in paragraph 11.45 above).<sup>568</sup>
  - (b) FNZ and its advisors should have early access to ‘GBST systems and data to facilitate carrying out separation planning and preparation work prior to completion of the full sale of GBST – including preparation of ‘a separation blueprint’ that sets out the ‘transaction parameters (including the asset perimeter and timeline).’ FNZ noted that ‘any concerns about [FNZ] access to information prior to... [the completion of the full sale of GBST] can be addressed by ensuring that this process is led by external third-party advisers’<sup>569</sup>;
  - (c) The provisions governing the appointment of, and setting the mandate for, the ‘Divestiture Trustee’ and/or setting the ‘Initial Divestiture Period’

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<sup>566</sup> FNZ response to the Remedies Paper, 30 April 2021, paragraphs 1.2 and 1.5.

<sup>567</sup> FNZ response to the Remedies Paper, 30 April 2021, paragraph 1.4.

<sup>568</sup> This core IP consists of: [REDACTED].

<sup>569</sup> FNZ response to the Remedies Paper, 30 April 2021, paragraph 4.8.

recognise that ‘there may be delays outside of FNZ’s control.’<sup>570</sup>

Examples of such circumstances provided by FNZ were delays due to: (i) ‘outstanding regulatory approvals’ including by the FIRB; and (ii) [redacted];<sup>571</sup> and

(d) In the event a ‘Divestiture Trustee’ is appointed by the CMA, it should be required ‘in the first instance ...to pursue the’ Global Wealth Management remedy, as opposed to implementing a full divestiture of GBST without any ‘sale-back to FNZ’ of the Capital Markets business.<sup>572</sup>

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

11.66 GBST submitted ‘any form of partial divestiture would be insufficient’ to ‘achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it’ and would ‘present material asset and purchaser risk’.<sup>573</sup>

11.67 GBST considers that ‘a partial divestiture would give rise to significant asset and composition risks because of how GBST operates. GBST’s underlying core products in each operating segment 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 operating segments would present significant challenges in carving-out the UK or Wealth Management operating segment of GBST’.<sup>574</sup>

11.68 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’.

11.69 GBST told us that, in relation to the Global Wealth Management remedy, it would be theoretically possible to split shared services, but that there were risks. GBST explained that its [redacted] will probably take [12-24 months].

11.70 During the Remittal Inquiry, GBST submitted that, a separation of the two divisions ‘is possible’, but it was dependent on how a reverse carve-out was to occur and the timeframe required, and that the same issues that applied to a

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<sup>570</sup> FNZ response to the Remedies Paper, 30 April 2021, paragraph 4.11.

<sup>571</sup> FNZ response to the Remedies Paper, 30 April 2021, paragraphs 4.11-4.13.

<sup>572</sup> FNZ response to the Remedies Paper, 30 April 2021, paragraphs 4.11-4.13.

<sup>573</sup> GBST response to the phase 2 Remedies Notice, paragraph 4.1.

<sup>574</sup> GBST response to the phase 2 Remedies Notice, executive summary.

Global Wealth Management remedy would apply even if it were structured as a 'reverse carve out', namely:

- (a) It will necessitate on-going links between FNZ and the divestment purchaser [redacted] 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; and
- (c) It will give rise to the risk of FNZ accessing GBST's commercially sensitive information which could negatively impact GBST's competitiveness.

11.71 GBST also considers that such a remedy would impose '[redacted]'.

11.72 In the Remedies Paper, the CMA provisionally concluded that a form of the Global Wealth Management remedy, specifically the 'divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business', was an effective and proportionate remedy. In response GBST submitted that this remedy 'carries material risk for GBST's business and its customers (both Wealth Management and Capital Markets) in its current form' and that 'the safeguards proposed by the CMA in the Remedy Paper, while directionally helpful and addressing some risks, would [not] sufficiently mitigate those and all risks.'<sup>575</sup> To address these remaining risks, GBST proposed the following two alternative options to 'mitigate against mistakes and/or compromises by the purchaser which harm the longer-run competitive integrity of the Wealth Management business and reduce the shorter-run disruption to the GBST business and, importantly, its customers'<sup>576</sup>:

- (a) Stagger the timing of full sale and reverse carve-out (buy-back). Under this 'staggered sale' structure, rather than a purchaser and FNZ agreeing the assets to be included in the carve-out to be sold back to FNZ upfront, there would only be an upfront 'agreement, enforceable by FNZ, regarding the mechanism for agreeing the precise perimeter and asset list of the carve-out.'<sup>577</sup> This mechanism would then be implemented by the purchaser after GBST had been transferred to it within a set timeframe of 'e.g. 3-6 months'<sup>578</sup>; or

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<sup>575</sup> GBST response to the Remedies Paper, 30 April 2021, Executive Summary, page 1.

<sup>576</sup> GBST response to the Remedies Paper, 30 April 2021, Executive Summary, page 1.

<sup>577</sup> GBST response to the Remedies Paper, 30 April 2021, Executive Summary, page 2.

<sup>578</sup> GBST response to the Remedies Paper, 30 April 2021, paragraph 6.1.1(i).

(b) Structure the remedy as a full divestiture of GBST to the purchaser with what GBST described as a ‘put option’ at the purchaser’s discretion to sell certain assets of the Capital Markets business back to FNZ (but, unlike a typical put option, subject to FNZ’s veto if it did not wish to acquire the relevant asset package).<sup>579</sup>

11.73 In addition to adopting one of the above structures, GBST also proposed that the remedy should include, inter alia, the following additional safeguards:

(a) Ongoing post-divestiture monitoring by the CMA and/or the Monitoring Trustee ‘for a sufficient period post-completion’ to ‘ensure that the separation of the assets to be bought back by FNZ and the implementation of the buy-back proceeds with minimal disruption to the GBST business, and at minimal risk to the purchaser of the business.’<sup>580</sup>; and

(b) In relation to the ‘staggered sale’ structure, that the CMA and Monitoring Trustee should be involved in any post-divestiture dispute resolution between FNZ and the purchaser eg in the event such a dispute was not resolved in a ‘timely fashion.’<sup>581</sup>

11.74 In relation to FNZ’s ability to serve Capital Markets customers, GBST also told us that ‘[redacted]. GBST is not aware that FNZ has any experience in Capital Markets and it is not clear on what basis [redacted]’.<sup>582</sup> While GBST’s Capital Markets business is not part of the market in which we have found an SLC (see paragraph 10.2 above), we have nevertheless considered FNZ’s capability to serve Capital Markets customers within our proportionality assessment, see paragraph 11.185 to 11.296 below.

11.75 In support of its submission on the risks of a ‘reverse carve out’ remedy structure, GBST referred to remedies studies from the European Commission and from the FTC.<sup>583</sup> While such studies are, of course, informative (and indeed the CMA has conducted its own evaluation of past UK merger remedies<sup>584</sup>), the assessment of merger remedies involves case-by-case assessment which depends on the facts and circumstances of each case. The CMA notes that while the studies cited by GBST identify the higher risk, in

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<sup>579</sup> GBST response to the Remedies Paper, 30 April 2021, Executive Summary, page 2.

<sup>580</sup> GBST response to the Remedies Paper, 30 April 2021, paragraphs 6.1.1(v)-(vi). See also paragraphs 6.1.2(iv), 7.1.2 and page 2.

<sup>581</sup> GBST response to the Remedies Paper, 30 April 2021, page 2. See also paragraph 6.1.1(iii).

<sup>582</sup> GBST response to the Remedies Paper, 30 April 2021, paragraph 5.18.

<sup>583</sup> FTC, ‘A Study of the Commission’s Divestiture Process, 1999, European Commission, ‘Merger Remedies Study’, October 2005 and FTC, ‘The FTC’s Merger Remedies 2006-2012: A Report of the Bureau of Competition and Economics’, January 2017.

<sup>584</sup> “[Merger remedy evaluations: report on case study research](#)”, CMA 2019.

principle, of remedies involving carve-outs, they do not take the position that such remedies are incapable of being effective where appropriate safeguards can be put in place to adequately manage those risks.<sup>585</sup> This is consistent with the CMA's own experience (as reflected in the CMA's remedies guidance), that partial divestiture remedies are generally higher risk than full divestitures, but can be effective provided the risks that they raise can be adequately managed.

- *Views of third parties on partial divestiture options*

11.76 Third party views on the effectiveness, in principle, of a partial divestiture remedy during the Phase 2 Inquiry are set out in the Phase 2 Report.<sup>586</sup>

11.77 As acknowledged in paragraph 11.19, we considered that third parties will have limited specific insight into the risks of a partial divestiture in this case, which relate largely to the extent of integration between GBST's operating divisions, and the associated challenges of separating them. In addition, unlike the submission made by SS&C during our Remittal inquiry, the third party comments on partial divestiture options received during the Phase 2 Inquiry do not take into account of the detailed specification of the Global Wealth Management remedy, including safeguards and details set out in relation to the Global Wealth Management remedy in the Remedies Paper.

11.78 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.

11.79 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<sup>587</sup>. 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) [redacted] told us that 'we can only see a full sale to a new and independent owner, and do not see how a partial sale would be possible'.

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<sup>585</sup> For example, the 'Mergers Remedies Study' of the European Commission, while highlighting the higher risks of carve out remedies, did not conclude that there was some inherent issue with carve outs, but highlighted certain safeguards that may help address such risks. The appropriate safeguards will depend on the facts of each case.

<sup>586</sup> [Phase 2 Report](#), paragraphs 11.110-11.113.

<sup>587</sup> This included GBST's three largest UK customers by AUA.

- (b) [REDACTED] told us that ‘our preference would be to divest the whole of GBST Holdings Limited from FNZ. We appreciate that this is costly to both parties but should be the cleanest way of separating them and allowing GBST an opportunity to find a new owner and focus on service delivery to its current clients. We did consider a partial divestment as an option but believe the best solution is to divest the whole of GBST to ensure there is a substantial business left that can be attractive to a new owner and have the cash flow to support its business currently and the development of the services that will be required to keep up with the competition’.
- (c) [REDACTED] 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) [REDACTED] told us ‘We do not believe a partial divestiture consisting of GBST’s Global Wealth Management business or GBST’s UK wealth management business or all of GBST’s UK business would be an effective remedy to the provisional SLC and we do not believe it would drive the right outcomes for our business as this would likely create a long period of uncertainty and distraction for GBST taking its attention away from looking after customers like us and developing the Composer platform.’
- (e) [REDACTED] told us that its main concern is that there would still be a well-resourced and developed end product so it would not have a fundamental problem with this remedy, but it thinks 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.

11.80 In response to the Remedies Paper, SS&C stated that it ‘believes a full divestiture with a buy back for FNZ of certain capital markets assets would be an effective and more proportionate remedy [than a full divestiture alone]’ so long as ‘the separation of the capital markets business is feasible and if the

wealth management business is sold to a suitable purchaser.’<sup>588</sup> In its submission, SS&C set out the features that it considers a suitable purchaser should possess,<sup>589</sup> noting that ‘this is consistent with the CMA’s conclusions [on purchaser suitability in the Remedies Paper] (which SS&C also endorses).’<sup>590</sup>

11.81 SS&C also emphasises the importance of a purchaser having sufficient access to GBST and its staff during the due diligence process: ‘it is important for the divestiture process to provide an appropriate framework for meaningful engagement between potential purchasers and GBST personnel, to allow effective diligence of the separation issues and risks and mitigation strategies.’ Its submission therefore ‘welcomes and supports the CMA’s commitment [in the Remedies Paper] to ‘seek to ensure that the due diligence process proposed by FNZ grants approved potential Purchaser(s) the level of necessary access.’<sup>591</sup>

11.82 We have not received any other third party views on the Global Wealth Management remedy set out in the Remedies Paper.

11.83 The third party comments described above, where relevant, are taken into account within our assessment below.

#### *Risks of a Global Wealth Management remedy*

11.84 We considered the risk profile of the Global Wealth Management remedy in light of GBST’s and FNZ’s more detailed representations on this remedy, in particular, on how it could be effectively implemented, that we received during 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; and
- (iii) Risks to financial resilience and incentives to invest.

(b) Asset risks:

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<sup>588</sup> SS&C comments on the Remedies Paper, 30 April 2021, paragraph 2.2.

<sup>589</sup> SS&C comments on the Remedies Paper, 30 April 2021, section 3.

<sup>590</sup> SS&C comments on the Remedies Paper, 30 April 2021, paragraph, 3.4.

<sup>591</sup> SS&C comments on the Remedies Paper, 30 April 2021, paragraph 2.4.

- (i) Risks of customer disruption; and
  - (ii) Risks associated with IP.
- (c) Purchaser risks; and
- (d) Consequential risks.

- *Composition risks*

11.85 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.<sup>592</sup>

11.86 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*

11.87 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 divided by geography or division but by a technology specialism (such as [X]) 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.

11.88 GBST told us how its technology resources are shared across the Wealth Management and Capital Markets parts of GBST's business:

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<sup>592</sup> [Merger remedies guidance CMA87](#), paragraph 5.3.



- (a) A large proportion of the technology team works across both parts of the business. [REDACTED];
- (b) Of approximately [REDACTED];
- (c) The [REDACTED], which is critical to product development, works across the entire group. Each has different skills so that the team has full coverage of required skills;
- (d) [REDACTED]; and
- (e) [REDACTED].

11.89 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 [REDACTED]. 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.<sup>593</sup>

11.90 In response to [REDACTED], FNZ noted that '[REDACTED]' 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 [REDACTED] 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 referred to [REDACTED].

11.91 GBST's description and evidence of its shared technology resources between the Global Wealth Management and Capital Markets divisions indicate that a Global Wealth Management divestiture would require the separation of some resources and expertise which are currently deployed across both the Wealth Management and Capital Markets divisions. 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.

11.92 However, as proposed by FNZ (see paragraph 11.49 to 11.47), 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

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<sup>593</sup> GBST told us [REDACTED].

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 largely transfer this form of composition risk to FNZ, as the prospective owner of the Capital Markets business. There would, however, remain an asset risk associated with achieving a separation in practice, see paragraphs 11.122 to 11.144.

- 11.93 GBST also told us that a ‘reverse carve-out’ structure would expose its Capital Markets customers, who are outside the relevant market, [REDACTED].<sup>594</sup>
- 11.94 In response to these concerns, FNZ expressed confidence that ‘the proposed ... remedy would not generate any material disruption to GBST’s existing CM [Capital Markets] customers, [REDACTED]. This is because...FNZ [REDACTED]. Any migrations and separation work streams would affect commoditised shared assets only (eg 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.’ [REDACTED].
- 11.95 Notwithstanding FNZ’s views, we acknowledge that a ‘reverse carve-out’ structure 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, as 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 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 11.61), 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 11.262 below).

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<sup>594</sup> GBST response to the FNZ Remittal Submission on remedies, 11 March 2021, paragraph 1.3.2.

- *Risks of separating shared infrastructure*

11.96 GBST told us that its infrastructure has been consolidated over the last 13 years including tools for manufacturing its software and those needed for source code control and its help desk.

11.97 GBST told us that the following areas of infrastructure are jointly utilised by both its Wealth Management and Capital Markets 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.<sup>595</sup>

11.98 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 GBST's Wealth Management and Capital Markets businesses.

11.99 The extent and materiality of the level of integration within GBST's business is difficult for the CMA to assess, or for GBST to quantify precisely. 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 demonstrates the risks of separating such infrastructure has been limited.

11.100 GBST gave the example of the [REDACTED] workflow application<sup>596</sup> – 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

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<sup>595</sup> [REDACTED]. It mentioned: (a) [REDACTED], (b) [REDACTED] (a [REDACTED]); (c) [REDACTED]; and (d) [REDACTED].

<sup>596</sup> [REDACTED] is a [REDACTED].

then doing a one-off migration; it would have two systems in use, both changing data'. [REDACTED].

- 11.101 GBST gave another example regarding separation of its servers. It 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 [REDACTED] 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.
- 11.102 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.
- 11.103 GBST told us that it has [REDACTED] 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.
- 11.104 During the Remittal Inquiry, GBST provided contemporaneous documents that show how the data centre hosting for Wealth Management and Capital Markets customers uses [REDACTED]. These documents support GBST's submissions regarding the integrated nature of its data centres.
- 11.105 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.
- 11.106 As set out in paragraphs 11.45 and 11.65(a), FNZ told us that it would only retain certain core, 'non-negotiable' categories of assets (including customer contracts and a defined list of proprietary IP and source code) of the GBST Capital Markets business (plus any other assets used wholly or predominantly by the Capital Markets business that a purchaser of GBST Wealth Management business did not wish to take), and the purchaser would [REDACTED], with FNZ bearing the associated composition risk. In addition, as set out in paragraph 11.48, any transitional services or separation support provided by GBST to FNZ would also be at the purchaser's discretion. The CMA would also need to be satisfied that the combined separation support provided by a

purchaser and FNZ to GBST was sufficient to minimise disruption to the GBST Global Wealth Management business.

11.107 GBST told us that the evolution of all products at GBST since 2007 has worked towards a [REDACTED]. 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. [REDACTED].

11.108 GBST submitted that there are Capital Markets customers that [REDACTED].<sup>597</sup> This raises the question of whether, without access to that software, FNZ will be able to fulfil the terms of the existing agreement with a GBST customer once that contract has been assigned to FNZ following the divestiture of GBST to a purchaser.<sup>598</sup> As noted at paragraph 11.186 below, FNZ has submitted that, provided that it can retain or buy back the core Capital Markets IP, it does not consider it strictly necessary for it to have access to any other GBST software, including shared software cited by GBST in order to service Capital Markets customers. In relation to obtaining any necessary Capital Markets customer consent to assignment [REDACTED] of their contracts ([REDACTED]), FNZ said that its 'priority would be to avoid any disruption to the customer experience. Appropriate due diligence and separation planning will ensure that FNZ is well-prepared to assume responsibility for providing [REDACTED] upon completion of the Buy Back Remedy.' FNZ would also be '[REDACTED].' Consequently, FNZ does not expect any material challenges in obtaining any customer consents for contract transfers [REDACTED], even if this is required<sup>599</sup> We consider the potential impact on Capital Markets customers of their agreements being assigned to FNZ at paragraph 11.187(b) below.

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

11.110 With the purchaser retaining control of the transaction perimeter, 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 11.44 to 11.54, and 11.94), we consider that 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

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<sup>597</sup> GBST response to the Remedies Paper, 30 April 2021, paragraph 5.12.

<sup>598</sup> This may be because [REDACTED], which FNZ would not have access to, and/or because providing the precise functionality that customer requires is dependent on the shared software. FNZ has told us that it does not expect such challenges to be material.

<sup>599</sup> FNZ response to the GBST submission on the Remedies Paper, 30 April 2021, paragraph 2.8.

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.

11.111 However, in practice, we expect that both the purchaser and FNZ would wish to be satisfied that they could effectively operate the parts of the GBST business that they respectively 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 11.204).

11.112 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, and with the external advisers (see paragraph 11.211(c)), to achieve an effective separation. This creates 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 11.194 and 11.253.

- *Financial risks*

11.113 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.

11.114 We concluded that the financial risks of a Global Wealth Management remedy were lower than the financial risks of 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.<sup>600</sup>

11.115 Given its focus on other remedy options, FNZ made only limited representations during the Phase 2 Inquiry on the financial implications of a Global Wealth Management remedy. FNZ did submit that a separate GBST

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<sup>600</sup> [Phase 2 Report](#), paragraphs 11.133-11.151.

UK Wealth Management business would be financially resilient because it is profitable at present and it represents [REDACTED] of GBST's Wealth Management revenues globally. FNZ also submitted that some fixed costs, [REDACTED].

- 11.116 In the NoA, FNZ stated that 'the assessment of [REDACTED] and lacks any reasonable basis, especially given [REDACTED].'<sup>601</sup>
- 11.117 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 [REDACTED]. 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'.<sup>602</sup>
- 11.118 In addition, FNZ submitted that [REDACTED].
- 11.119 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 note that if its profitability were materially lower than GBST Wealth Management division pre-merger it could put the divested business on a weaker financial footing relative to the pre-merger situation.
- 11.120 Having noted this risk, we also acknowledge that GBST's Global Wealth Management business represents approximately [REDACTED] of its current revenue. That is a clear majority of the company's revenues. We also know that this division is currently profitable.<sup>603</sup> As noted in paragraph 11.157 below, we also consider there is likely to be a suitable buyer for GBST's Global Wealth Management business.
- 11.121 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

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<sup>601</sup> NoA, paragraph 89 (c).

<sup>602</sup> Phase 2 Report, paragraph 11.145.

<sup>603</sup> GBST [ASX Announcement](#).

business (see paragraph 11.52). 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).

- *Asset risks*

11.122 Asset risks are risks that the competitive ability of a divestiture package will deteriorate before completion of the divestiture and so make the remedy ineffective.<sup>604</sup>

11.123 Three contextual aspects of this merger contribute to the asset risks associated with this remedy proposal:

- (a) GBST's Wealth Management customers are large financial services businesses that are themselves required to meet certain regulatory standards to offer a secure, stable and high standard of service to consumers of their investment and savings products. The software and associated services provided to these 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, since when 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 [✂]); and
- (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 interdependencies 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.

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<sup>604</sup> [Merger remedies guidance CMA87](#), paragraph 5.3(c).



11.124 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; and
- (b) the risk of compromising GBST's IP during the separation process.

- *Risks associated with customer disruption*

11.125 We found that a positive reputation and track record are important considerations for customers when selecting a Retail Platform Solutions provider.<sup>605</sup> GBST had these attributes pre-Merger, which in our view contributed to GBST being an effective competitor.

11.126 As set out in paragraph 11.79, 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.

11.127 Given these concerns, we sought to understand further the nature of any contractual obligations that GBST has towards its UK Wealth Management customers.<sup>606</sup> 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 [X]. [X].

11.128 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.

11.129 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

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<sup>605</sup> See Chapter 8.

<sup>606</sup> 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.

us that it has a well-resourced M&A team and has acquisition experience in this sector. Such experience [REDACTED]. Based on the evidence provided to us these acquisitions have been successfully integrated into FNZ's wider business. [REDACTED].

11.130 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 [REDACTED]. GBST also told us that 'various components within its software: [REDACTED] can be replicated but they are designed bespoke for the GBST products and there is complexity (and high cost) in replacing them'. In our view, separating the Global Wealth Management business from the Capital Markets business is likely to, in relative terms, be more straightforward 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 business, in addition to separating Wealth Management from the Capital Markets business.

11.131 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, [REDACTED] and [REDACTED]:

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

11.132 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.

11.133 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 by it to continue to operate the Wealth Management and Capital Markets businesses, 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 the oversight and resources of the purchaser to oversee this process. The diversion of GBST resources could 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 period in which the separation was being implemented.

11.134 As set out in paragraph 11.54, FNZ has offered 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<sup>607</sup> (examples include but are not limited to the [redacted]<sup>608</sup>, [redacted]<sup>609</sup>, [redacted]<sup>610</sup>, [redacted]<sup>611</sup> [redacted]<sup>612</sup> [redacted]<sup>613</sup>). This may risk leaving GBST without the resource it requires to serve customers and compete for new business.

11.135 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 UK Wealth Management customers.

- *IP*

11.136 GBST told us that it has common proprietary IP underpinning its products in Wealth Management and Capital Markets<sup>614</sup> to which FNZ would gain access

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<sup>607</sup> GBST response to the Remedies Paper, 30 April 2021. We note that GBST reiterates this concern noting at paragraph 5.5 that 'any remedy short of a full divestment will require significant management time and investment. Even with the assistance of third-party consultants.' We consider safeguards to address this risk below, see paragraph 11.225.

<sup>608</sup> [redacted].

<sup>609</sup> [redacted].

<sup>610</sup> [redacted].

<sup>611</sup> [redacted].

<sup>612</sup> [redacted].

<sup>613</sup> [redacted].

<sup>614</sup> [redacted].

under a Global Wealth Management remedy. In GBST's view this IP is competitively sensitive.<sup>615</sup>

- 11.137 By contrast, FNZ told us that these were [REDACTED].
- 11.138 GBST told us that access to [REDACTED] that is common across Wealth Management and Capital Markets would enable FNZ to [REDACTED] GBST to prospective and existing clients. [REDACTED]. GBST also told us that some IP was internally developed<sup>616</sup> and some was used in a bespoke way, such as its [REDACTED].
- 11.139 GBST confirmed to us that the defined list of core Capital Markets software specified by FNZ (see paragraph 11.145 above) are not used by its Wealth Management customers,<sup>617</sup> However, GBST told us that these products contain embedded common software/IP used by Wealth Management customers.
- 11.140 We understand from GBST that [REDACTED] common proprietary software/IP (that is embedded within FNZ's core list of software products) contained in the "buy back" products [REDACTED], without disclosing any competitively sensitive information about the Wealth Management business to FNZ.
- 11.141 However, GBST informed us that certain of these embedded common software/IP, such as [REDACTED], are constructed in such a way that it would not be possible to separate and provide a copy to FNZ of the relevant Capital Markets source code without divulging commercially sensitive information its Wealth Management business. For example, access to [REDACTED] would unavoidably provide FNZ with visibility into [REDACTED] because that delivery is common between the Wealth Management and Capital Markets businesses. Similarly and for the same reason, GBST told us that access to [REDACTED] would unavoidably provide insight into [REDACTED].
- 11.142 GBST told us that in order to build replacements for software like [REDACTED] and the [REDACTED], FNZ would need to conduct a GAP analysis<sup>618</sup> of [REDACTED]. As a high-level estimate, GBST thought it might take [REDACTED] months for FNZ to replace the Capital Market implementations using [REDACTED] and [REDACTED] months for it to replace the Capital Market implementations using the capability of the [REDACTED], if starting from scratch.

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<sup>615</sup> GBST response to the phase 2 Remedies Notice, paragraph 4.8.2.

<sup>616</sup> [REDACTED].

<sup>617</sup> These products are [REDACTED].

<sup>618</sup> A Gap analysis is a method of assessing the differences in performance between a business' information systems or software applications to determine whether business requirements are being met and, if not, what steps should be taken to ensure they are met successfully.

11.143 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 software (and corresponding source code IP) owned and operated by GBST, and the ease with which FNZ could replace or reproduce the functionality of them. It would appear that the IP and source code of the defined list of Capital Markets software products specified by FNZ (see paragraphs 11.45(b) and 11.65(a) above) can be isolated and transferred to FNZ without adversely impacting the GBST Wealth Management business, as these software products are used exclusively by GBST Capital Markets customers. It also appears that copies of certain underlying source code, ie parts of some of the embedded software relevant to the Capital Markets business, could be provided to FNZ without adversely impacting the GBST Wealth Management business, because doing so would not disclose any competitively sensitive information. However, there would remain a list of software (and corresponding source code IP) that is currently used to service Capital Markets customers by GBST, which it may not be possible to transfer or provide copies of to FNZ without unavoidably providing it with competitively sensitive information about the GBST Wealth Management business, and thus potentially adversely impacting the GBST Wealth Management business.

11.144 Under the remedy structure proposed by FNZ (see the description at paragraphs 11.145 to 11.148 above), FNZ would not be able to require a purchaser to sell back any assets beyond the minimum 'non-negotiable' categories (see paragraphs 11.45 and 11.65(a) above). This includes any of the shared software (and corresponding source code IP), described above, that is embedded within the core Capital Markets software specified by FNZ (for example, a purchaser could, instead, require FNZ to replace or replicate this shared software, rather than sharing it with them). We note that a purchaser of the Wealth Management business will have a strong incentive to avoid any adverse impact on that business, including by ensuring that competitively sensitive information is not provided to FNZ. In addition, as described in more detail at paragraph 11.211 below, the CMA will require a range of safeguards to be implemented, including the CMA and Monitoring Trustee having oversight over the negotiations between FNZ and a purchaser and the terms of any final sale agreement, in part, to ensure that no competitively sensitive information is being exchanged. In our view, the combination of these safeguards, the remedy structure and the purchaser's incentive adequately mitigates the residual risk to the GBST Wealth Management business of competitively sensitive information being disclosed to FNZ. However, to the extent it is not shared, as it may not be possible for all this shared embedded software (and corresponding source code IP) to be easily and quickly replaced or replicated by FNZ, there remains some residual

risk to FNZ, as the prospective owner, and to the customers, of the GBST Capital Markets business, if the temporary absence of this software causes disruption to and/or has an adverse impact on the Capital Markets business. FNZ, in proposing this remedy, is prepared to take this risk and such a risk to FNZ is not one that we take into account in assessing the effectiveness of a remedy. We do consider and take into account the potential adverse impact on GBST's Capital Markets customers in our proportionality assessment (see paragraphs 11.285 to 11.296 below).

- *Purchaser risk*

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

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

11.147 As part of the initial Phase 2 Inquiry, we spoke to three of these, [REDACTED], [REDACTED] and [REDACTED], 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, [REDACTED], told us that it was interested in the UK business and specifically mentioned Aegon and AJ Bell as important GBST customers. However, [REDACTED] said that it would need to carry out due diligence to assess the viability of a UK Wealth Management business and, at present, it had no knowledge what such a proposal would entail. [REDACTED] estimated it would take three to six months to complete its due diligence;
- (b) Another competitor, [REDACTED], told us that 'acquiring the UK business alone would be sub-optimal' and that 'it would be more interested if it included the appropriate supporting infrastructure'. However, [REDACTED] noted that 'dividing this team between the Wealth Management and Capital Markets businesses may create challenges and argues in favour of a complete divestment of the GBST business instead; and
- (c) [REDACTED] confirmed that it expressed its potential interest to FNZ in acquiring GBST's UK Wealth Management business, should it become available. [REDACTED] said it was not aware of the details of GBST's UK business set-up. [REDACTED] has no prior experience in acquisitions of other businesses.

- 11.148 We also received some evidence during the Phase 2 Inquiry from [REDACTED], [REDACTED] and [REDACTED] that suggest they would be interested in the Global Wealth Management business.
- 11.149 FNZ told us that in preparing for the sale of GBST after the Phase 2 Report, FNZ [REDACTED].
- 11.150 GBST has some large and [REDACTED] 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.
- 11.151 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, and therefore the specific elements of any divestiture (eg the split of resources and staff) are unlikely to be known, this view is consistent with the expressions of interest already received for various potential divestiture packages. In response to the Remedies Paper, FNZ provided the CMA with a table including the [REDACTED]. 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 [REDACTED], [REDACTED] and [REDACTED] that suggest they would be interested in the Global Wealth Management business.
- 11.152 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.<sup>619</sup>

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<sup>619</sup> [Merger remedies guidance CMA87](#), paragraph 5.21.

- 11.153 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.<sup>620</sup>
- 11.154 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.
- 11.155 In its response to the Remedies Paper, SS&C submitted that a suitable purchaser must be a trade buyer: 'a suitable purchaser should have the necessary industry and M&A expertise and capability'.<sup>621</sup> On this question, FNZ submitted that 'financial sponsors can also have the necessary resources, know-how and track record to successfully deliver' the Global Wealth Management remedy.' Whilst, as noted in the previous paragraph, we consider a trade buyer would be well placed to be a suitable purchaser, we do not see any reason to rule out the possibility of a non-trade buyer as SS&C suggests. Instead we will consider each prospective purchaser on its merits based on the comprehensive criteria set out at paragraph 11.152, which we do not consider needs to be amended or circumscribed in this case.
- 11.156 One of these criteria is that a purchaser has the necessary capability to compete for UK Wealth Management customers. Part of this capability is having the necessary assets and resources to so compete. As such, the CMA will need to be satisfied that the assets that any prospective purchaser agrees to sell back to FNZ do not include any assets that a purchaser will need to operate the GBST Wealth Management Business (or the absence of which could otherwise have an adverse impact on the operation of that business). To this end, the CMA will, as set out below, use the purchaser assessment process to test the appropriateness of any Capital Markets assets to be bought back by FNZ, for example by requiring shortlisted purchasers to set out their preferred asset perimeter as part of the purchaser suitability assessment and probing any material differences in the asset packages sought by potential purchasers (see 11.211(a)).
- 11.157 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

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<sup>620</sup> Phase 2 Remedies Notice, paragraph 25.

<sup>621</sup> SS&C comments on the Remedies Paper, 30 April 2021, paragraph, 3.3.



complementary operations and capabilities could 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 for any purchaser.

- *Consequential risks*

- 11.158 A common concern for the CMA in relation to partial divestitures is the reliance on a remedy with 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 associated 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.
- 11.159 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.
- 11.160 The outcome of the negotiations between FNZ and any purchaser 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 11.229).
- 11.161 We will ensure that the key elements of the implementation of this remedy set out in paragraph 11.202 will enable GBST to continue to be an effective competitor and sufficiently mitigate any composition and asset risks. These elements are particularly important 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.
- 11.162 As proposed by FNZ, the purchaser would not be required to sell back any shared assets or personnel to FNZ, 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 11.172 to

11.258 below, is likely to mitigate this risk in terms of the remedy's effectiveness in addressing the SLC. This is because FNZ would not be able to oblige GBST or the purchaser to support 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.

11.163 In this context, FNZ told us that it may, for example, request that the purchaser provides 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 remedy. FNZ also [REDACTED] (see paragraph 11.54 above).

11.164 GBST took a different view, considering that a 'reverse carve-out' structure exposes its Capital Markets customers [REDACTED]. GBST's Capital Markets division is an important post-trade and settlement clearing system provider for equity trading in Australia. We spoke to the ASX, which, 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 by turnover value 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 the replacement of CHESSE<sup>622</sup> that would likely result from a divestment.

11.165 A third party in this market gave us an example of the issues that can arise in such a scenario: [REDACTED] told us that it had a 14-month transitional agreement for a recent acquisition. It acquired [REDACTED] from [REDACTED]. It estimates that it may have taken the vendor 12 months to align the business in order to separate it. [REDACTED] considered itself well placed to take on this asset and, at the point of the transaction, it signed a 12-month transitional support agreement. However, this ended with 14 months of transitional procedures, such as unpicking third party arrangements.

11.166 In response to the Remedies Paper, GBST told us that the above example supports the evidence provided by GBST in relation to the complexity of separation and the timeframe required.<sup>623</sup>

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<sup>622</sup> 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.

<sup>623</sup> GBST response to the Remedies Paper, 30 April 2021, paragraph 5.14.

- 11.167 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 commit to separation, and accordingly we cannot assess the level of separation support that GBST will require from FNZ and any purchaser. However, for the reasons set out in more detail in paragraphs 11.290 to 11.294, we expect that some, but limited, separation support will be required from GBST. In any event, FNZ would have the capability to operate the Capital Markets business without transitional services from GBST.
- 11.168 While it may be possible to structure the divestiture process to eliminate or minimise the extent to which any ongoing relationship impacts on the divested Wealth Management business (see paragraphs 11.194 to 11.218 about the sale structure), the potential need for ongoing cooperation post-divestiture represents a residual risk to be taken into consideration.

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

- 11.169 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 Wealth Management and Capital Markets divisions. Of these, we consider that the most material risks are:
- (a) Composition risks associated with separating GBST's shared IT infrastructure, and the related SMEs (see paragraphs 11.87 to 11.112 above), both of which are currently shared between GBST's Wealth Management and Capital Markets divisions; and
  - (b) The asset risks associated with disruption to GBST's 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 11.122 to 11.135 above).
- 11.170 An overarching factor common to both these sets of risks relates to the management and technical resources needed from within GBST to separate its Wealth Management and Capital Markets 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 11.79 above).

- 11.171 Our concerns about the risk profile of this remedy therefore relate primarily to the feasibility and practicality of separating GBST's Wealth Management and Capital Markets divisions in a way that retains the competitive capability of GBST's Wealth Management business, particularly as it impacts on UK customers. We are concerned that the separation process might affect GBST's ability to carry on business-as-usual Wealth Management operations, thereby disrupting key Wealth Management customer relationships, or otherwise causing reputational damage, which could in turn undermine 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.
- 11.172 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 ensure that they have the necessary capability to compete in the relevant market. Although sellers of a divestiture business typically have the incentive to maximise the disposal proceeds of a divestiture, they also have some incentive to limit the strength of the divestiture business if they compete with it so as to limit the competition that they will face in future.
- 11.173 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 design and effectiveness of this remedy we have considered below whether the risks summarised in paragraphs 11.169 to 11.172 can be addressed by safeguards in relation to:
- (a) The minimum assets, in principle, that FNZ may be entitled to retain or buyback;
  - (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 that this remedy will be subject to.

11.174 In the Remedies Paper, we provisionally proposed a number of safeguards in relation to the above categories to address the risks we had provisionally identified with this remedy. In response, as noted at paragraph 11.69 to 11.73 above, GBST has submitted that these safeguards did not sufficiently mitigate the risks of the Global Wealth Management Remedy. We assess these submissions below, including the additional safeguards proposed by GBST. We also assess below, the ‘refinements and clarifications’ to the remedy proposed by FNZ (see paragraph 11.65 above).

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

11.175 A key requirement of any divestiture in which FNZ is allowed to retain or buy back certain Capital Markets assets is that the assets retained or bought back by FNZ do not include assets that could have an adverse impact on the competitiveness of the divested Wealth Management business (composition risk).

11.176 FNZ’s proposal provides for a list of asset categories that it should be able to retain or acquire. These categories were:

- (a) All Capital Markets customer contracts;
- (b) A defined list of core proprietary Capital Markets software<sup>624</sup>, including the source code of and IP in that software<sup>625</sup>; and
- (c) Any other assets (including technical staff and SMEs), used by the Capital Markets division that a purchaser does not wish to retain.

11.177 In relation to category (a), we understand that while GBST’s Wealth Management and Capital Markets customer bases are distinct, [REDACTED]<sup>626</sup> are used by products, and therefore customers, of both divisions [REDACTED]. However, GBST raised concerns about categories (b) (Core proprietary Capital Markets software) and (c) (Other assets (including technical staff and SMEs) used by the Capital Markets division that a purchaser does not wish to retain). We assess these concerns below.

- *Core proprietary Capital Markets software*

11.178 GBST raised concerns about the scope of assets to be included in this category. It submitted that ‘the proprietary products listed by FNZ are

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<sup>624</sup> [REDACTED]

<sup>625</sup> FNZ would be willing to provide the purchaser with a mirror copy of the specific Capital Markets software source code under a licence if required.

<sup>626</sup> [REDACTED].

dependent on layers of underlying software which are common across GBST's Capital Markets and Wealth Management businesses,' (see also paragraphs 11.136 to 11.139 above).

- 11.179 In response to the Remedies Paper and follow-up questions from the CMA, GBST confirmed that [REDACTED]. Apart from certain common embedded software (and corresponding IP)(see paragraphs 11.140 to 11.142 above), GBST confirmed these software products are the key front-end products for Capital Markets customers that are not utilised by the Wealth Management business.
- 11.180 In relation to the common embedded software products, GBST told us that components/layers of software supporting the defined list of software products set out by FNZ are often based on common IP and that the common software/IP and components are [REDACTED].
- 11.181 In particular, among other interdependencies, GBST noted that [REDACTED].
- 11.182 GBST noted that it may be possible [REDACTED] is competitively sensitive information relating to the Wealth Management business. In particular, [REDACTED].
- 11.183 GBST also notes that if the source code of the common embedded software were to be transferred to FNZ, without GBST retaining a copy, this would mean that GBST would be unable to continue servicing a number of Wealth Management contracts and these customers would have to be assigned to FNZ.
- 11.184 GBST estimated that, depending on several factors, it might take up to [REDACTED] for FNZ to replicate some of the common embedded software mentioned above. When asked if it held any contemporaneous evidence that supported this position, GBST told us that '[REDACTED]'. GBST also told us that FNZ would need to conduct a Gap analysis on a customer by customer basis (see paragraph 11.142 above) in order to be able to [REDACTED].
- 11.185 We note that access to any proprietary IP or other software also used in GBST's Wealth Management business could potentially give FNZ a competitive advantage over GBST in Wealth Management. Consequentially, if GBST's submissions are correct, FNZ having access to some of the common embedded software discussed above would create a composition risk. We put these concerns to FNZ.

11.186 In response, FNZ submitted that any layers of underlying software which are allegedly common across the Global Wealth Management and Capital Markets divisions did not raise any composition risk. In relation to the common embedded software raised by GBST, FNZ expressly addressed each product, submitting that it could replace these software products without material difficulty:

- (a) In its view, [REDACTED], are 'limited, generic and commoditised IP which FNZ is ready to leave with the purchaser, along with all SMEs servicing these [...]. To the extent used by the retained CM business, these resources can easily be duplicated or replaced by FNZ in-house or using off-the-shelf solutions from third party suppliers. Indeed, [REDACTED].
- (b) In relation to [REDACTED], that 'Although ... [REDACTED] form part of the CM technology stack and are required to service CM customers, FNZ has not included these products in the list of Core CM IP, and is happy to transfer these to the purchaser. This is because FNZ can replace these software [programmes] without material difficulty and in an expedited manner using in-house resources or external procurement. FNZ is therefore willing, in the spirit of constructive engagement with the Buy Back Remedy, to provide the purchaser flexibility to take this IP, should it wish to do so.'

11.187 More generally, FNZ also submitted that:

- (a) Any shared layers of underlying IP are generic and commoditised, and can be replaced by FNZ using in-house resources or off-the-shelf from external providers (see also paragraphs 11.290 to 11.294 below in which we assess FNZ's capabilities);<sup>627</sup>
- (b) With regard to Capital Markets customers that have [REDACTED]:
  - (i) Appropriate due diligence and separation planning would ensure that FNZ is well-prepared to assume responsibility for providing [REDACTED] upon completion of the buy-back; and
  - (ii) FNZ would also be open to [REDACTED].<sup>628</sup>

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<sup>627</sup> FNZ response to the GBST submission on the Remedies Paper, 12 May 2021, paragraph 2.4.

<sup>628</sup> FNZ response to the GBST submission on the Remedies Paper, 12 May 2021, paragraph 2.8.

- 11.188 In light of GBST's confirmation that [X]. We would expect any Final Undertakings or Order to reflect this.
- 11.189 Given the submissions from FNZ about its ability to replace the common embedded software identified by GBST (see paragraph 11.186 above) and how it proposes to deal with Capital Markets customers that currently use such software (see paragraph 11.187 above), we do not consider it necessary for our remedy to require FNZ to have access to any software outside the defined list in category (b), whether by a copy or otherwise. We would be open to FNZ agreeing with a purchaser to acquire or be provided with a copy of software and source code beyond the minimum set out in category (b) so long as this did not adversely impact the Wealth Management business.
- 11.190 We acknowledge GBST's concerns that the existence of [X] as they are used currently to support both the Wealth Management and Capital Markets businesses. We have given further consideration to how the competitive integrity of the Global Wealth Management business might be safeguarded through the design of the divestiture process, particularly if the challenge of separation proves harder than FNZ expects (see paragraphs 11.194 onwards below).
- 11.191 As noted above in paragraphs 11.47 and 11.48, the purchaser has discretion over whether FNZ will be sold or licensed a copy of such common embedded software; if not, FNZ will be required to develop a replacement solution. Based on our assessment of the available evidence, we consider that this would be technically feasible, though it is important that any implementation risks associated with the development of such a solution fall to FNZ, rather than the purchaser of the Wealth Management Business. The CMA will be responsible for approving both the purchaser and the terms of the divestiture of GBST and the sale back of any assets to FNZ, and will not accept any agreement that could potentially undermine the effectiveness of the remedy including by adversely impacting the competitiveness of the Wealth Management business. The CMA expects to liaise closely with any prospective purchaser and the Monitoring Trustee before accepting any agreement: in its assessment of the transaction documents, the CMA will focus on ensuring that there is no adverse impact on the Wealth Management business (see also paragraphs 11.194 onwards below).
- *Other assets (including technical staff and SMEs), used by the Capital Markets division that a purchaser does not wish to retain*
- 11.192 In relation to category (c) [any other assets (including technical staff and SMEs), used by the Capital Markets division that a purchaser does not wish to retain], 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 composition risk arising from this concern would be borne by FNZ and, as such, would not undermine the effectiveness of the remedy.<sup>629</sup> We assess FNZ's capability to take on this risk as part of our proportionality assessment.

11.193 The purchaser will have the discretion to leave or sell back any assets in this category to FNZ as long as this does not include any assets that are necessary to the ongoing operation of, or the absence of which may have an adverse impact on, the Global Wealth Management business. The CMA, in conjunction with the Monitoring Trustee, will have full oversight over the sale of the divestment process, including by reviewing any Information Memoranda or related communications produced by FNZ for purchasers to ensure they are consistent with the principles set out above.

- *Transaction structure*

11.194 FNZ submitted to us that there are two main legal routes by which the divestiture and separation of GBST's Global Wealth Management and Capital Markets businesses can be implemented:

(a) 'Sale of [...] Global [Wealth Management business] to the purchaser – with the sale agreement defining the business to be acquired by the purchaser [...]' (which it terms '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 it terms 'Option B').

11.195 FNZ submitted that both Options A and B present an equal risk profile because, under either option, it is the purchaser who would determine which option to take and the scope of the carve-out. GBST also submitted that the difference in the 'substantive risk profile' between the two options proposed by FNZ was 'negligible,'<sup>630</sup> albeit, contrary to FNZ, this was in the context of its submissions that both options presented too much risk.

11.196 By contrast, we consider that the risk profiles of Options A and B differ materially in relation to the effectiveness of the remedy.

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<sup>629</sup> See financial risks section, paragraphs 11.113 to 11.121.

<sup>630</sup> GBST response to the FNZ submission on the Remedies Paper, 14 May 2021, paragraph 1.5.

11.197 A key difference between Options A and B relates to the ownership of GBST at the time the separation of GBST's Capital Markets and Wealth Management divisions takes place and, thus, who formally controls and oversees that process. Under Option A this will be FNZ, whereas under Option B this will be the purchaser as it acquires the entire GBST business prior to any buy back of assets by FNZ. We consider this makes Option A materially riskier than Option B because:

- (a) Under Option A, the agreement in relation to the content of the carve-out and the implementation of the carve-out would both occur within the Initial Divestiture Period<sup>631</sup>. FNZ would own GBST during this period and would be able to influence how the separation is implemented. This increases the risk of this option, as FNZ's incentives are to prioritise executing the separation over any potential disruption to GBST's Wealth Management business. In addition, carrying out separation steps within this time limit could put additional pressure on GBST management, potentially harming the Wealth Management business. By contrast, under Option B, although separation planning may take place, no steps to implement the separation will be completed during the Initial Divestiture Period, ie while GBST is under FNZ's ownership; and
- (b) Under Option A, if difficulties arise with the separation of the Wealth Management and the Capital Markets assets acquired by FNZ, 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 incentive as a purchaser to maintain the competitive strength of the GBST Wealth Management business and minimise disruption to its 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 that there is an increased risk, under Option A, that decisions on how to resolve any separation difficulties could have an adverse impact on GBST's Wealth Management business.

11.198 GBST does not accept that the differences between FNZ's Option A and Option B, set out above result in Option B having a lower risk profile than Option A. This is because, under both options, 'the legally binding agreement to separate GBST's assets occurs while FNZ owns GBST.'<sup>632</sup> We agree that under both structures a legally binding agreement to separate the identified Capital Markets assets would be executed prior to the divestiture of GBST.

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<sup>631</sup> The period (to be specified by the CMA) between accepting Undertakings or imposing an order and the final disposal to a prospective purchaser.

<sup>632</sup> GBST response to the FNZ submission on the Remedies Paper, 14 May 2021, paragraph 1.5.

We also agree that it is important that this agreement does not commit a purchaser to selling back any assets that could adversely impact the Wealth Management business. However, we think this risk is adequately addressed by the combination of safeguards we set out in this chapter, including the CMA and Monitoring Trustee's oversight over, and the requirement for the CMA to consent to, the terms of the divestiture and any sale back to FNZ.

- 11.199 As noted at paragraph 11.50 above, FNZ submitted that it was important that any purchaser should have the [✂].
- 11.200 We acknowledge the considerations highlighted by FNZ as potentially being relevant to potential purchasers. However, we also note that the choice of transaction structure could also be influenced by the proposed purchase price – for example, a purchaser may be prepared to take some of the risks to the competitive capability of the Wealth Management business, highlighted above, in exchange for a lower purchase price. This is a particular concern with Option A, where the risks to the competitive capability of the divested Wealth Management business are greater. 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. Given FNZ's incentives, we cannot rely on Option A to lead to an outcome in relation to the implementation and conditions of the 'reverse carve-out' that would sufficiently protect competition in the supply of Retail Platform Solutions.
- 11.201 For the reasons set out above, we have found that Option A, under which FNZ would implement the agreed separation and divest only the assets that were outside the 'reverse carve-out' to a purchaser, would not support an effective disposal. By contrast, we have significantly fewer concerns with Option B, in which the GBST business would be divested in full to a purchaser within the Initial Divestiture Period, with the separation and acquisition of the agreed Capital Markets assets taking place following the divestiture. This structure avoids the asset risks that arise from separation being implemented under FNZ's ownership, as GBST would be under independent ownership when any separation occurs. The purchaser will be in control of the implementation process and manage resource prioritisation and timing according to its incentives to preserve the competitive capability of and avoid any adverse impact on the GBST Wealth Management business. Furthermore, the buy-back structure of Option B means that any residual risk associated with any interdependency between the Wealth Management and Capital Markets businesses would be taken by FNZ, rather than by the purchaser. Option B is therefore less risky than Option A in terms of remedy effectiveness, albeit there remains the residual risk of adverse impact on the Wealth Management business from any diversion of resources from

GBST/purchaser from the Wealth Management business to separation implementation, to be taken into consideration.

11.202 In our view, the Option B structure set out above, together with the additional safeguards summarised below in paragraph 11.211, will sufficiently mitigate any composition and asset risks (including the residual risk identified above) in relation to the following key elements of the implementation of this remedy and will, thus, enable GBST to continue to be an effective competitor post-divestiture:

- (a) The terms of the divestiture including the agreed assets to be sold back to FNZ;
- (b) The scope and amount of any resource to be committed by GBST/ a purchaser to the separation implementation process;
- (c) The scope and amount of any transitional services to be provided by GBST/ a purchaser to FNZ; and
- (d) The level and nature of separation support to be provided by FNZ to the GBST business and the purchaser.

11.203 All these elements will be closely scrutinised by the CMA and by the Monitoring Trustee and all the agreements governing the sale and buy-back (see paragraph 11.218) would be subject to the CMA's approval (see paragraph 11.211). Under this structure, FNZ rather than the purchaser (or by implication UK Wealth Management customers), would bear the risks arising from any interdependency between the assets of GBST's Capital Markets business it would be acquiring and the remainder of GBST.

11.204 As noted at paragraph 11.72 above, in response to the Remedies Paper, GBST submitted two alternative transaction structures to further mitigate the risks of this remedy.

11.205 In relation to the first such alternative structure, which GBST describe as a 'put option', we note that this structure is substantively similar to a full divestiture remedy, because there would be no obligation on a purchaser, having acquired the whole of GBST, to sell back anything to FNZ. As noted above, and in the Phase 2 Report, in our view a full divestiture remedy would be effective. For the same reasons, a 'put option' structure would also be effective. We consider the proportionality of a full divestiture remedy below (see paragraph 11.263) and our conclusions on that apply equally to the 'put option' structure.

11.206 In relation to the second alternative structure ie a ‘staggered sale’ structure, we note that the main practical difference between this structure and the Option B structure proposed by FNZ relates to the point to be reached through negotiation between FNZ and a purchaser prior to the divestiture of GBST. FNZ’s Option B structure envisages that the list of assets to be sold back to it would be (largely or fully) agreed upfront, prior to the divestiture, whereas under GBST’s ‘staggered sale’ structure only an enforceable ‘mechanism’ for generating those assets would be agreed prior to the divestiture. This mechanism would then be implemented by a purchaser post-divestiture to generate the assets that would be sold back to FNZ.

11.207 GBST submitted that the CMA should require a ‘staggered sale’ structure on the basis that having a gap between the divestiture and the determination of the detailed list of assets to be sold back to FNZ will reduce the risks of the remedy. This is because, with a ‘staggered sale’, a purchaser would be likely to have [✂] <sup>633</sup> of the interdependencies that exist within the current integrated structure of the GBST business before the final list of assets to be sold back to FNZ was determined, as it would have owned and operated GBST for some months by that point. Based on GBST’s submissions, we understand that the aim of this structure would be to:

- (a) reduce the risk of ‘good faith mistakes and mis-judgments’ <sup>634</sup> by the purchaser about the scope and separation of the carve out to be sold back <sup>635</sup>; and
- (b) reduce FNZ’s ability to leverage negotiation pressure between purchasers to negotiate a broader carve-out perimeter. <sup>636</sup>

11.208 We note that a ‘staggered process’ for agreeing the scope of assets to be sold back to FNZ would have some drawbacks itself: eg it would commit a purchaser to a longer process without a defined carve-out being agreed and might not be attractive for potential purchasers (as FNZ submits, under a ‘staggered sale’ proposed by GBST as its ‘Option (1)’, the commercial uncertainty over the transaction timetable and the perimeter of the assets to be sold back to FNZ for a longer period could, among other things, make financing more difficult to obtain (or result in more onerous borrowing terms and conditions) and require the purchaser to finance the purchase of the

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<sup>633</sup> GBST response to the Remedies Paper, 30 April 2021, page 4.

<sup>633</sup> GBST response to the Remedies Paper, 30 April 2021, page 2.

<sup>634</sup> GBST response to the Remedies Paper, 30 April 2021, page 1.

<sup>635</sup> GBST’s submissions suggest that the complexities and ‘interdependencies’ of between the Capital Markets and Wealth Management make the risk of such mistakes greater in the case and this cannot be mitigated by a ‘standard arms-length due diligence process. GBST response to the Remedies Paper, 30 April 2021, page 2.

<sup>636</sup> GBST response to the Remedies Paper, 30 April 2021, page 1.

entire GBST business, as opposed to just those parts it was retaining)<sup>637</sup>. We are also mindful, again as FNZ submits, that a longer, less certain, process may increase asset risks.<sup>638</sup> However, we would [✂].

- 11.209 In our view, it is essential to ensure that GBST is divested to a suitable purchaser and that any assets sold back to FNZ do not adversely impact the competitive capability of the Wealth Management business. Provided these two aims can be achieved, then divestiture along the lines of the Option B structure proposed by FNZ, or the ‘staggered sale’ structure proposed by GBST, should be effective at addressing the SLC.
- 11.210 We consider that the purchaser will have a strong incentive, as the acquirer of the Wealth Management business, to ensure it has the assets it needs to operate the business and that the assets it sells back to FNZ will not have an adverse impact on the Wealth Management business. For the reasons set out on in paragraph 11.151 above, we consider that there are likely to be purchasers interested in acquiring the Global Wealth Management business. [✂], set out by FNZ in its response to the Remedies Paper, we agree with FNZ’s submission that the purchaser to be approved by the CMA is likely to be a ‘sophisticated undertaking that can be trusted to protect the interests of the acquired business and its customers through due diligence and commercial negotiations, because these are aligned with their own interests’.<sup>639</sup>
- 11.211 While the risks raised by GBST cannot be fully eliminated – buyers can make ‘mistakes’ in any transaction structure – in our view, these risks are adequately mitigated by the combination of the following safeguards:
- (a) In order to ensure that the purchaser is appropriately committed to competing in the relevant market, and that the agreed asset perimeter provides the purchaser with the necessary capability to compete, the CMA and the Monitoring Trustee will actively oversee FNZ’s negotiations with purchasers, including by:
- (i) Testing the appropriateness of any Capital Markets assets to be bought back by FNZ with prospective purchasers;
- (ii) Requiring shortlisted purchasers to set out their preferred asset perimeter as part of the purchaser suitability assessment; and

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<sup>637</sup> FNZ response to the GBST submission on the Remedies Paper, 12 May 2021, paragraph 3.3-3.8.

<sup>638</sup> FNZ response to the GBST submission on the Remedies Paper, 12 May 2021, paragraph 3.6-3.8.

<sup>639</sup> FNZ response to the GBST submission on the Remedies Paper, 12 May 2021, paragraph 2.12.

- (iii) Seeking to understand any material differences in the asset package perimeter of potential purchasers (see paragraph 11.154).
- (b) Close oversight by the CMA and by the Monitoring Trustee to ensure that potential purchasers have sufficient access to information about the GBST business (including ensuring that there is no material asymmetry of information between FNZ and prospective purchasers) including sufficient access to GBST staff (see paragraph 11.219); and
- (c) Any Final Undertakings or Order providing that, without prejudice to the CMA's statutory powers, any separation consultant appointed by FNZ (whether mandated by CMA or otherwise) will assist and cooperate with the CMA and the Monitoring Trustee in relation to the implementation of an effective remedy process. At this stage, and subject to the consultation on the terms of a Final Order or Undertaking, we consider that it may be necessary to require, for example, that:
  - (i) Any agreements between FNZ and the separation consultant(s), in relation to this remedy, be shared with the CMA and Monitoring Trustee and be subject to CMA approval;
  - (ii) Any analysis and advice prepared by FNZ's separation consultant(s) about the separation process and the specification of assets to be sold back to FNZ be provided to the CMA and Monitoring Trustee in parallel;
  - (iii) Any separation consultant(s) appointed by FNZ should be subject to appropriate contractual restrictions to protect GBST's commercially sensitive information; and
  - (iv) Any agreements between FNZ and the separation consultant(s) will recognise the CMA's right, subject only to statutory limits and considerations, to share any analysis or advice prepared by FNZ's separation consultant(s) with third parties (including prospective purchasers), where the CMA considers it appropriate to do so.

11.212 These safeguards and the mechanisms for their implementation will be set out in more detail in the Final Undertakings or Order to be adopted by the CMA.

11.213 On balance, we consider these safeguards sufficiently mitigate the risks raised by GBST without the need for the CMA to mandate a 'staggered sale' transaction, which would have the drawbacks highlighted above (see paragraph 11.208 above).

11.214 As noted at paragraph 11.65(b) above, FNZ submitted that the CMA's transaction structure should enable FNZ's external advisers and the separation consultant to have early access to GBST systems and data so that it can produce a 'separation blueprint,' for purchasers.<sup>640</sup> In response, GBST has submitted that allowing such early access 'increases the risks associated with the reverse carve-out as it could undermine negotiations with and due diligence by potential purchasers because FNZ would be able to access GBST's confidential information and influence the process before the purchaser is allowed to assess the separation risks.'<sup>641</sup>

11.215 We do not agree that permitting such early access will necessarily increase the risks of the remedy so long as:

- (a) FNZ does not have [significantly] greater access to GBST than any prospective purchaser to avoid FNZ having an advantage in negotiations;
- (b) GBST's commercially sensitive information is protected through appropriate interim measures (see the safeguards set out at paragraphs 11.249 to 11.256 below); and
- (c) It is made clear that any such blueprint is not binding on purchasers, so as to allow them their freedom to negotiate.

11.216 Subject to these provisos and the safeguards set out in paragraph 11.211, we think that the 'blueprint' that FNZ proposes to create could be helpful in ensuring negotiations between FNZ and potential purchasers are able to proceed expeditiously, mitigating any asset risk.

11.217 Below we set out further aspects of the implementation of this remedy, consistent with the Option B structure, 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*

11.218 The CMA would approve both the Purchaser and transaction documents, including: (i) as with any divestiture remedy, the terms of the divestiture including the agreed assets to be acquired by FNZ, (ii) the scope and amount of any resource to be committed by GBST/Purchaser to the separation process; (iii) the scope and amount of any transitional services to be provided

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<sup>640</sup> FNZ response to the Remedies Paper, 30 April 2021, paragraph 4.8 and Annex 2.

<sup>641</sup> GBST response to the FNZ submission on the Remedies Paper, 14 May 2021, paragraph 1.6.2



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.

11.219 In order for any potential purchaser to reach an informed agreement on these matters with FNZ, it will need sufficient access to information and to individuals from the GBST business. The CMA will require that the due diligence process proposed by FNZ grants prospective purchaser(s) a sufficient level of such access. To achieve this, the CMA will ensure that the Monitoring Trustee has comprehensive oversight over the provision of information to prospective purchasers during the due diligence process, including appropriate access to GBST staff. The CMA will intervene to ensure purchasers have sufficient access to such information and GBST individuals should that be needed.

11.220 As part of the approval process, the CMA would expect to liaise closely with prospective purchaser(s) to ensure that the transfer of any assets to be acquired by FNZ (to the extent they go beyond the minimum identified in paragraphs 11.176) would not adversely impact the competitiveness of the GBST Wealth Management business and conforms to the principles and parameters set out in any undertakings offered by FNZ<sup>642</sup> or in a Final Order made by the CMA<sup>643</sup>. Similarly, the CMA would also seek to ensure that any GBST resources that a purchaser agrees 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 acquired by FNZ.

- *Support provided to and by GBST*

11.221 As set out in paragraph 11.54, 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. [✂].

11.222 We consider that the provision of such third-party separation support would be helpful on a number of levels. Any Final Undertaking or Final Order will therefore require such support to be provided. In addition to providing its expertise to the process, the CMA will seek to ensure that the involvement of any third-party separation consultants will help, so far as possible, to:

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<sup>642</sup> Section 82 of the Act.

<sup>643</sup> Section 84 of the Act.

- (a) Reduce the burden on GBST employees, especially during the separation planning phase prior to divestiture;
- (b) Protect the integrity of the hold separate arrangements (with appropriate non-disclosure agreements approved by the CMA); and
- (c) Provide clarity and transparency about separation issues to all relevant stakeholders, including the CMA, the Monitoring Trustee and potential purchasers (see, in particular, the safeguard set out at paragraph 11.211(c) above).

11.223 In our view, FNZ's offer to provide such support is unlikely to remove all the burden from GBST but is likely to help limit it, and would thereby mitigate potential disruption to GBST's Wealth Management operations. In addition, the purchaser is also likely to need to commit some of its own resources to supporting the separation process within GBST post-acquisition. The support and arrangements for the implementation of the separation would be agreed commercially between FNZ and the purchaser. However, as noted at paragraph 11.220 above, the CMA will need to satisfy itself that (i) the level of GBST resource committed; and (ii) the combined resources provided by the purchaser and FNZ, to support separation will be at a sufficient level so as to not adversely impact the competitiveness of, and minimise any disruption to, the GBST Wealth Management business.

11.224 In response to the Remedies Paper, GBST told us that 'The disruption and fundamental change to the nature of the GBST business as a result of the Reverse Carve-Out Remedy could give rise to [redacted].<sup>644</sup>

11.225 Whilst such asset risk cannot be eliminated completely, we consider the structure of the remedy, including the additional safeguards outlined in this chapter, materially address the asset risk. Relevant safeguards include the purchaser having ownership of GBST during separation and significant influence over the scope of the assets to be sold to FNZ and the level of separation support provided to FNZ, as well the CMA having oversight of the divestiture and separation-planning process and related agreements.

11.226 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 be required to provide some transitional services to FNZ, after the divestiture of GBST to a purchaser.

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<sup>644</sup> GBST response to the Remedies Paper, 30 April 2021, paragraph 5.1.2 (i), page 6.

11.227 The provision of such services raises a risk of disruption to the GBST Global Wealth Management business, following divestiture, 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 doing so may risk adversely impacting FNZ's ability to serve Capital Markets customers. In this situation, there may 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 11.95 above, for the purposes of the assessment of the extent to which this remedy would be effective in remedying the SLC we have found, we give greater weight to the former risk.

11.228 In our view, it is important that a purchaser has full discretion to not provide any transitional services to FNZ, post-divestiture, should this be its preference. As with separation support, although the transitional service arrangements would be agreed between FNZ and the purchaser, the CMA would seek to ensure that the level of GBST resource committed to providing transitional services to FNZ, will not adversely impact the competitiveness of the GBST Wealth Management Business.

- *Other safeguards to ensure an effective disposal*

11.229 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;
- (b) Provision for the CMA, at its discretion, to appoint a Divestiture Trustee, including in the circumstances set out in paragraph 11.237, in order to ensure the timely completion of the divestiture; and
- (c) Appropriate interim measures in place until completion of the divestiture of GBST to an approved purchaser.

- *Timescale*

11.230 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 then to 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).

11.231 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.

11.232 As set out in the Phase 2 Report for a full divestiture, we concluded that [redacted] divestiture period should be sufficient.<sup>645</sup> In its response to the Remedies Paper, GBST submitted that a ‘short initial divestiture period’ was ‘unrealistic’ 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.<sup>646</sup> However, as noted in the Remedies Paper, given that under Option B, the separation and acquisition 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 [redacted] divestiture period. In this context, we note that FNZ told us that [redacted] would appear sufficient time for FNZ to identify a purchaser and negotiate a full divestiture that included a subsequent acquisition by FNZ of an approved asset package and/or an enforceable mechanism by which those assets will be determined, including agreement of 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 [redacted] (see paragraph 11.169(a) above). FNZ will be required to provide a timetable for the agreement of the divestiture and buy back, allowing sufficient time for the CMA to assess, for instance, if the assets/mechanism to determine the assets to be bought back by FNZ do not raise any risks to the competitiveness of the Global Wealth Asset Management business of GBST.

11.233 In response to the Remedies Paper, FNZ told us that it is important that the Initial Divestiture Period takes into account the potential for delays outside of FNZ’s control, such as the need to secure approval from the Foreign and

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<sup>645</sup> Phase 2 Report, paragraph 11.73.

<sup>646</sup> GBST response to the Remedies Paper, 30 April 2021, paragraph 5.6. In line with the CMA’s usual practice, the initial disposal period has only been disclosed to FNZ.

Investment Review Board (FIRB).<sup>647</sup> Following the accepting of Final Undertakings or imposition of a Final Order, the CMA would retain the power to extend the Initial Divestiture Period should there be a reasonable and compelling case to do so. Delays outside of FNZ's control, such as those relating to the FIRB approval process, are likely to be reasonable grounds for extending the Initial Divestiture Period.

11.234 As part of the approval of the transaction documents, including the terms of any GBST and / or additional resources committed by the purchaser and FNZ to achieve separation, and any transitional services provided to FNZ, the CMA will seek to 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*

11.235 The CMA's standard practice is to provide for the appointment of a Divestiture Trustee to dispose of the divestiture package in the circumstances set out at paragraph 11.237 below, this includes where 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.

11.236 The task and mandate of a Divestiture Trustee, if appointed, would be to complete an effective divestiture to a potential purchaser approved by the CMA in a timely manner, [✂].

11.237 To ensure a timely completion of this remedy, we will 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
- (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.

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<sup>647</sup> FNZ response to the Remedies Paper, 30 April 2021, paragraph 4.11.

11.238 In response to the Remedies Paper, GBST told us that the CMA should also include a condition for the appointment of the Divestiture Trustee, whereby the ‘right to appoint a [Divestiture Trustee] is reserved where the CMA reasonably believes that the negotiations between the purchaser and FNZ’ are such that the ‘separation will give rise to material and unacceptable risks’.<sup>648</sup> We do not agree that any such additional criterion is justified given the CMA’s discretion to appoint a Divestiture Trustee.

11.239 In response to the Remedies Paper, FNZ told us that any Divestiture Trustee should ‘in the first instance be required to pursue’ the divestiture of GBST with the right to buy back certain assets of the Capital Markets business, as opposed to a full divestiture without any sale back of assets to FNZ, as the CMA had found that remedy to be effective and more proportionate. FNZ submit that doing so would:

(a) Be ‘in line with the CMA’s Remedies Guidance...and CMA precedent’;

(b) [redacted]; and

(c) Allow the remedy to ‘occur in a shorter timeframe, as the Divestiture Trustee could simply pick up where FNZ had left off’.<sup>649</sup>

11.240 GBST disagreed with FNZ’s proposal in this regard and submitted that it would introduce ‘further unnecessary risk’, noting that ‘if a remedy package comprising the reverse carve-out remedy cannot proceed to the CMA’s satisfaction during the initial divestiture period and a Divestiture Trustee is appointed, then the sale must comprise an alternative divestiture package of a full divestment of GBST in order to mitigate [redacted]’.<sup>650</sup>

11.241 We carefully considered both FNZ and GBST’s submissions on this point.

11.242 On FNZ’s submission at paragraph 11.239(a) the CMA does not agree that requiring a Divestiture Trustee to implement a full divestiture, without any agreement regarding the sale back of specified assets to FNZ, would be inconsistent with its Remedies Guidance. The CMA’s Remedies Guidance<sup>651</sup> (at paragraphs 5.18 and 5.19) expressly contemplates a Divestiture Trustee being appointed to sell a more extensive divestiture package see eg: ‘the CMA may require that, in the event that the merger parties’ preferred divestiture does not proceed to its satisfaction within the timescales set out in

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<sup>648</sup> GBST response to the Remedies Paper, 30 April 2021, paragraph 7.1.3.

<sup>649</sup> FNZ response to the Remedies Paper, 30 April 2021, paragraphs 4.12-4.13.

<sup>650</sup> GBST response to FNZ submission on the Remedies Paper, 14 May 2021, paragraph 1.7.

<sup>651</sup> [Merger remedies guidance CMA87](#).

the UILs, Final Undertakings or Final Order, a divestiture trustee may be appointed to ensure the sale of an alternative package'.<sup>652</sup>

- 11.243 On FNZ's submission at paragraph 11.239(b), we acknowledge FNZ's concern with regards to the potential for [X]. While the CMA will have the discretion to appoint a Divestiture Trustee if the circumstances outlined in 11.237 are met, it will not exercise that discretion unreasonably. In particular, in exercising its discretion to appoint a Divestiture Trustee, the CMA will have regard to all the relevant circumstances, including [X]. The CMA is also unlikely to appoint a Divestiture Trustee if the completion of the divestiture is imminent and sufficiently certain shortly after the Initial Divestiture Period.
- 11.244 As noted above in paragraph 11.211, we have decided to require enhanced oversight to, among other things, monitor both FNZ's and GBST's conduct during the divestiture process. Consequently, the CMA will have oversight over GBST's actions through the Monitoring Trustee and will be able to take account of them when deciding whether to exercise its discretion to appoint a Divestiture Trustee and the scope of the Divestiture Trustee's mandate. As noted in paragraph 11.233, the CMA also has the discretion to issue directions as to the steps to be taken by any of the parties and extend the Initial Divestiture Period where, acting reasonably, this appears to be the more appropriate step.
- 11.245 In our view, the CMA's discretion to give FNZ more time to implement a divestiture of GBST with the right to buy back certain assets of the Capital Markets business, informed by the CMA's monitoring of the divestiture process, including GBST's conduct, sufficiently mitigates FNZ's concerns. In addition, implementing FNZ's proposal to *require* a Divestiture Trustee to first seek to implement a divestiture of GBST with the right of FNZ to buy back certain assets of the Capital Markets business, in our view, raises new concerns. For example, where FNZ fails to implement this remedy because agreeing the separation of the Wealth Management and specified Capital Markets assets proves too complex or impractical, in our view, it would not be appropriate or reasonable to expect a Divestiture Trustee, who will understand GBST's business less well than FNZ, to successfully agree such

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<sup>652</sup> [Merger remedies guidance CMA87](#), paragraph 5.18.

<sup>653</sup> GBST response to FNZ submission on the Remedies Paper, 14 May 2021, paragraph 5.3.

separation terms. In such circumstances, requiring a Divestiture Trustee to try to do so will increase the asset risk of the remedy by requiring the Divestiture Trustee to take more time to implement a transaction that is unlikely to succeed.

- 11.246 On the other hand, we recognise that there might be circumstances in which it would be appropriate for a Divestiture Trustee to seek, in the first instance, to implement the divestiture of GBST with the right of FNZ to buy back certain assets of the Capital Markets business.
- 11.247 In light of this, rather than setting out the mandate of a Divestiture Trustee in any Final Order or Undertakings, the mandate of a Divestiture Trustee, if appointed, will be determined by the CMA at the time of appointing a Divestiture Trustee. This decision will take into account all the relevant circumstances, including the circumstances that had led up to this appointment and having regard to the need to give effect to the divestiture promptly to address the SLC arising from the Merger. To assist with this, the CMA may seek, and take into account, the advice of the Monitoring Trustee. In addition or alternatively, the CMA may include, in the mandate of any Divestiture Trustee, provision for the Divestiture Trustee to initially advise the CMA on the appropriate course of action for it to pursue, which the CMA would then take into account in making its decision. Depending on these circumstances and any advice the CMA receives, the CMA may require the Divestiture Trustee to implement a full divestiture, or alternatively to implement a divestiture of GBST with the right to buy certain assets of the Capital Markets business.
- 11.248 In relation to FNZ's submission at paragraph 11.239(c), we do not agree that this presents a particularly compelling practical reason to require a Divestiture Trustee to implement the divestiture of GBST with the right to buy back certain assets of the Capital Markets business in the first instance. FNZ's suggestion that this would be quicker seems speculative, given the more complex nature of the sale and buyback process of this remedy compared with a simple sale of GBST in full to a purchaser. We note that, by this stage, the CMA would have decided whether it was appropriate to appoint a Divestment Trustee rather than extending the Initial Divestiture Period to allow FNZ to complete the sale and buyback process. If, as FNZ claims, the circumstances at the time indicate that it would be more efficient for a Divestiture Trustee to implement the divestiture of GBST with the right to buy back certain assets of the Capital Markets business, this would be a relevant factor the CMA would take into account at the time when deciding what the mandate of a Divestiture Trustee would be.



- *Interim Measures and role of the Monitoring Trustee*

11.249 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’.<sup>654</sup>

11.250 We therefore 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.

11.251 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 Undertaking or Final Order setting out the terms and conditions of this remedy and to ensure an efficient divestiture process. In particular, in this case, we will require the Monitoring Trustee to assist us in maintaining enhanced oversight of FNZ’s interactions with potential purchasers and, for this purpose, to incorporate in-house M&A expertise into its team.

11.252 The Monitoring Trustee’s enhanced role will include, but not be limited to:

(a) Assisting the CMA in:

- (i) Testing the appropriateness of any Capital Markets assets to be bought by FNZ with prospective purchasers to ensure that any assets to be sold back to FNZ would not adversely impact the Wealth Management business;
- (ii) Seeking to understand any material differences in the asset packages sought to be sold by potential purchasers and the extent of any GBST resource required or committed to separation and/or transitional services, and its impact on the Wealth Management business; and

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<sup>654</sup> [Merger remedies guidance CMA87](#), paragraph 5.4.

- (iii) Otherwise overseeing negotiations between FNZ and potential purchasers to the extent necessary.
- (b) Monitoring FNZ's progress in relation to the divestiture process;
- (c) Monitoring the due diligence process generally and reporting any concerns about potential purchasers not having sufficient access to GBST information or staff to the CMA;
- (d) Overseeing the operation of any data room and clean teams to ensure that robust controls and safeguards are put in place and complied with to ensure GBST's proprietary, confidential and commercially sensitive information is appropriately protected during any due diligence process;
- (e) Supporting the CMA in assessing both purchaser suitability and the transaction documents; and
- (f) Monitoring any separation planning activity that takes place ahead of completion; and
- (g) Overall monitoring both FNZ's and GBST's conduct during the divestiture process.

11.253 Whilst the hold separate arrangements prevent the sharing of confidential information between the Parties, with the Parties' cooperation, some initial planning and preparation for the sale process may be permitted to occur following the publication of the final report. Such planning and information sharing would be likely to involve an important role for any separation consultants (see paragraph 11.222) and would be controlled through the issuing of a derogation from the Interim Order, which may be subject to appropriate conditions such as non-disclosure agreements.

11.254 We will adjust the Monitoring Trustee's mandate to reflect these new functions as part of any Final Undertaking or Final Order. Once GBST is under independent ownership we would envisage the Monitoring Trustee's Mandate ceasing.

11.255 In response to the remedies paper, GBST told us that the remedy would transfer the risk to the purchaser and without on-going monitoring by the CMA post-completion there will be increased composition and implementation risks.<sup>655</sup>

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<sup>655</sup> GBST response to the Remedies Paper, 30 April 2021, paragraph 5.12 (ii).

11.256 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. 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 and/or the mechanism by which the asset package will be determined, the levels of separation support and the scope and amount of any transitional services, which would all be set out in the transaction documents. Following the completion of the divestiture of GBST to a purchaser, we consider that compliance with the transaction documents and the terms of any Final Undertaking or Final Order will be adequately safeguarded by the purchaser. We would expect any dispute between FNZ and the purchaser, at that stage, to be dealt with primarily as a contractual matter through the dispute resolution mechanisms set out in the agreement(s) to be approved by the CMA. The CMA retains its ability to act in the event of a breach of the Undertaking or Order.

#### *Conclusion on effectiveness of proposed remedy*

11.257 We have 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, provided FNZ can secure such a deal on terms acceptable to the CMA with a suitable purchaser. The remedy would be subject to the conditions and protections set out above, which in our view will ensure that the remedy has an acceptable risk profile.

#### *Conclusions on remedy effectiveness*

11.258 Based on our assessment of the effectiveness of each remedy option, we 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.

### **Relevant customer benefits**

11.259 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.<sup>656</sup> RCBs that will

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<sup>656</sup> The Act, [sections 30](#) and [36\(4\)](#).

be foregone due to the implementation of a particular remedy may be considered as costs of that remedy.<sup>657</sup>

11.260 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.

11.261 During the Remittal Inquiry, FNZ made no further submissions on RCBs. Accordingly, we have not reopened our inquiry into RCBs and therefore 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**

11.262 We set out below our assessment of and conclusions on the proportionality of the two effective remedy options, which we have identified: 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***

11.263 For the reasons set out above, 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.

11.264 Consistent with the CMA's Guidance<sup>658</sup> and relevant case law,<sup>659</sup> 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.

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<sup>657</sup> [Merger remedies guidance CMA87](#), paragraph 3.16.

<sup>658</sup> [Merger remedies guidance CMA87](#), paragraph 3.6.

<sup>659</sup> 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.

11.265 Therefore, to reach a 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.

11.266 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***

11.267 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 [§] <sup>660</sup> 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) '[T]he 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' <sup>661</sup>; and
- (c) '[W]hen considering whether a remedy is proportionate, the extraterritorial effect of any remedy is clearly a highly relevant consideration' <sup>662</sup> 'and it was incumbent upon the CMA specifically to consider the nature and extent of any extraterritorial effect of any remedy.' <sup>663</sup>

11.268 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', <sup>664</sup> as it is 'for the merger parties to assess whether there is a risk that a completed merger

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<sup>660</sup> NoA, paragraph 82.

<sup>661</sup> NoA, paragraph 80(a).

<sup>662</sup> NoA, paragraph 81.

<sup>663</sup> NoA, paragraph 81.

<sup>664</sup> [Merger remedies guidance CMA87](#), paragraph 3.8.

would be subject to an SLC finding, and the CMA would expect this risk to be reflected in the agreed acquisition price'.<sup>665</sup>As noted by the CAT, in completing a transaction, merging parties take a foreseeable risk that the CMA may order a divestiture.<sup>666</sup> 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 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, ie effectively addressing the SLC we 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.<sup>667</sup> In this case, as noted above, we identified two remedies as effective and, having done so, therefore compared the proportionality of them; and
- (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 jurisdiction if it impacts the CMA's ability to achieve an effective remedy in the relevant market<sup>668</sup>), and (ii) the principle noted at paragraph 11.71 above about costs to the Parties. We have applied this principle as part of our assessment of which remedy is effective and proportional to the SLC we have identified.

### **CMA's assessment**

11.269 We have assessed below the proportionality of the remedies that we found to be effective to address the SLC by reference to the framework set out above in paragraph 11.264.

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<sup>665</sup> [Merger remedies guidance CMA87](#), paragraph 3.9.

<sup>666</sup> [InterContinental Exchange, Inc. v Competition and Markets Authority \[2017\] CAT 6](#), paragraphs 100-101.

<sup>667</sup> [Merger remedies guidance CMA87](#), paragraph 3.6.

<sup>668</sup> [Akzo Nobel N.V. v Competition Commission & ORS Metlac Holding S.R.L. \[2014\] EWCA Civ 482](#). In its judgment in [Sabre Corporation v Competition and Markets Authority \[2021\] CAT 11](#), paragraphs 86 and 87, the CAT confirmed that considerations of territoriality (and thus comity) are addressed within the jurisdictional tests set out in the Act and that the territorial connections established by these tests are sufficient as the basis for the exercise of the CMA's statutory powers. We consider that issues of comity do not affect the CMA's statutory powers, including in relation to remedies, where jurisdiction over a merger has been established.

*Effective to achieve the legitimate aim in question*

11.270 As noted above, we have 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.

11.271 For the reasons set out in this chapter (see paragraphs 11.21 to 11.258) 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*

11.272 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 found only the two remedies set out above to be effective in comprehensively addressing the SLC and the resulting adverse effects that we found. Individually and collectively the other remedies proposed by FNZ were found to not be effective in comprehensively addressing the SLC we have found.

11.273 We have therefore 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.

*Identification of the least onerous equally effective measure*

11.274 Having identified two effective remedies we assess below the relevant costs and level of intrusiveness associated with each remedy.

11.275 The first remedy - a full divestiture of GBST - would restore competition in the market where we 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 could 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.<sup>669,670</sup>

- 11.276 The second remedy - a divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business - would involve the entire GBST Wealth Management business being independent of FNZ. As a consequence, it will also restore competition in the market where we found an SLC to pre-Merger levels. With appropriate safeguards built into the design of the remedy and sales process to avoid any adverse impact on the competitiveness of the GBST Wealth Management business, we consider that it would not lead to material distortions in outcomes for GBST's Wealth Management customers. 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 view, this remedy would not require any ongoing monitoring by the CMA and it would not result in the loss of any RCBs.
- 11.277 Under this remedy, following the divestiture of GBST to a suitable 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 aspect of the remedy would not give rise to relevant additional costs to FNZ, as it would have chosen to incur such extra costs. (We consider potential risks to Capital Markets customers in the following sub-section.)
- 11.278 As a divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business would result in FNZ being able to retain part of

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<sup>669</sup> [Merger remedies guidance CMA87](#), paragraph 3.9.

<sup>670</sup> 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](#) at 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.'



the GBST business that it has chosen to acquire, we consider that it is likely to be the least onerous effective remedy from FNZ's point of view.<sup>671</sup>

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

11.279 Having 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 adverse effects disproportionate to the aim of effectively addressing the SLC we have found, such as incurring costs or a loss of RCBs, such that it would not be proportionate to impose that remedy. Specifically, we consider below: (i) any overall costs or loss of RCBs; and (ii) any other relevant adverse effects, in particular to Capital Markets customers.

*Overall costs or loss of RCBs*

11.280 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 found our SLC. Given the safeguards built into the remedy, there is no material risk of distortions in market outcomes and our view is that there would be no ongoing compliance or monitoring costs in that market once GBST is under independent ownership.

11.281 We note that 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 unwinding integrated infrastructure or transferring customers.

11.282 The post-divestiture 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.

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<sup>671</sup> As discussed in paragraph 11.205, we consider that a remedy consisting of the full divestment of GBST with a 'put option' at the purchaser's discretion to sell certain assets of the Capital Markets business back to FNZ is substantively similar to a full divestiture (without a buy back) remedy. We have concluded that a full divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business is effective, subject to the safeguards we have identified. As such, our finding that the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business would be the least onerous effective remedy compared to a full divestment remedy also applies, for the same reasons, to the full divestment of GBST with a 'put option'.

- 11.283 Any RCBs foregone as a result of this divestiture would constitute a relevant cost of the remedy. However, we considered at paragraphs 11.259 to 11.261 above if there were any RCBs that would be lost as a result of this divestiture and found there were none.
- 11.284 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 from GBST, FNZ or third parties, aside from in relation to Capital Markets customers, the potential adverse impact on which we have assessed below. In accordance with our guidance and the case law referenced at paragraph 11.264 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.

*Any relevant adverse effects to Capital Markets customers*

- 11.285 As noted above (see paragraph 11.108), we recognise that there is a risk of some adverse impact on Capital Markets customers. In particular, in its response to the Remedies Paper, GBST stated that it ‘is not aware that FNZ has any experience in Capital Markets and it is not clear on what basis [redacted].’<sup>672</sup> We consider below the likelihood that this risk is capable of being effectively managed by FNZ.
- 11.286 First, as the ultimate owner of the Capital Markets business, FNZ has a strong incentive to ensure there is no disruption or adverse impact on this business or its customers. FNZ would be highly motivated to manage these risks effectively in order to secure the value of the Capital Markets assets and customer relationships that it would be buying-back.
- 11.287 Second, the extent of these risks may also be further reduced by the nature and scope of any agreed (subject to CMA approval) transitional services and/or separation resource/support committed or provided by GBST, the purchaser and/or FNZ in connection with separation.
- 11.288 Third, irrespective of the precise package of assets being bought by FNZ, FNZ has assured us that it will be able to continue to service such customers effectively (see paragraph 11.61 above). We found these assurances to be credible. FNZ has made detailed submissions on the extent of its relevant experience and expertise (see below) and based on this and public information, FNZ appears to a large and well-resourced entity capable of managing such risks. We also note that the minimum set of assets that FNZ

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<sup>672</sup> GBST response to the Remedies Paper, 30 April 2021, paragraph 5.18.

told us it needs to support the Capital Markets customers were all assets confirmed by GBST as ones that Wealth Management customers do not utilise, albeit there is likely to be a need to replicate some of the underlying software that support these assets, to avoid FNZ having access to competitively sensitive information of the Wealth Management business (see paragraph 11.186 to 11.189).

- 11.289 FNZ has made a number of submissions on the extent of its relevant expertise. We have set these out below.
- 11.290 FNZ told us that it already has the commercial and technical resources and expertise to fully support the GBST Capital Markets business on closing. FNZ told us that ‘in the UK, FNZ’s products already have the full breadth of functionalities offered by GBST’s CM solutions. [REDACTED]:
- (a) [REDACTED];
  - (b) [REDACTED]; and
  - (c) [REDACTED].
- 11.291 FNZ considers that as a result, the ‘capabilities and resources [...] needed to understand, service and develop FNZ’s existing products and GBST’s CM solutions are very similar, and already substantially present within FNZ’.
- 11.292 FNZ informed us that it has ‘dedicated technical teams and SMEs, who have the necessary skills to be able to fully support GBST proprietary CM IP (and the customers that use it). These include:
- (a) Solution consultants and SMEs ([REDACTED]) who understand the functionality and user experience requirements of CM solutions.
  - (b) Software engineers and developers ([REDACTED]) who have worked on CM-based solutions.
  - (c) Operations staff ([REDACTED]) who are experienced in trade processing for CM.
- 11.293 FNZ also told us that it has ‘a large global shared resource pool of software architects, product solution consultants, product managers, release/DevOps engineers, security engineers, testers, technical authors and digital designers who can provide general technical / IT support’.
- 11.294 Further, FNZ stated that it is ‘committed to investing further in global CM capabilities. These investments can be used to further develop GBST’s CM proposition, and improve the customer experience for its existing customers into the future’. FNZ [REDACTED].

11.295 Overall, the detail in these submissions supports the view that FNZ has significant relevant expertise and resources to manage any adverse impact on Capital Markets customers. It has a strong incentive to ensure there is no disruption or adverse impact on the Capital Markets customers and assets which it will be acquiring. In addition, the shared assets that a purchaser can withhold from FNZ (ie beyond the 'non-negotiable' categories – see paragraph 11.45) seem capable of adequate mitigation by FNZ's own resources:

- (a) We understand from FNZ that shared software assets are commoditised and therefore can be obtained from third-parties or FNZ's in-house experts (eg most programmes are written in the Javascript a common software language FNZ is experienced in);
- (b) The non-software assets (physical assets/people) are more fungible, the only potential exception would be Subject Matter Experts, however such experts would either be transferred across (if agreed by the purchaser) or could be obtained by FNZ through recruitment/internal expertise; and
- (c) Based on its experience, if necessary, FNZ has told us that it should be able to readily provide the back office support needed to service the CM customers.

11.296 For the reasons set out above, we consider that any impact on Capital Markets customers is likely to be capable of being effectively managed by FNZ and we, therefore, do not consider the risk of this impact materialising to be disproportionate to the aim of effectively addressing the SLC we have found.

### ***Conclusion on proportionality***

11.297 We 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 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 relevant costs of the remedy are likely to be outweighed by its benefits.

11.298 We therefore 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

safeguards outlined in this section, would be a proportionate remedy to the SLC and its adverse effects.

## Decision on remedies

- 11.299 We have concluded that the divestiture of GBST with the right for FNZ to buy back certain assets of the Capital Markets business and subject to the safeguards outlined above would be an effective and proportionate remedy to the SLC and its adverse effects.
- 11.300 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. The CMA will publicly consult on the draft Undertakings or Order.<sup>673</sup>
- 11.301 Once this remedy has been fully implemented (or the alternate remedy of a full divestiture of GBST should it be necessary), we 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 prohibition to a period of 10 years.<sup>674</sup> We find no compelling reason to depart from the guidance in this case by imposing a shorter or longer prohibition period.

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<sup>673</sup> The Act, [section 82](#) (final undertakings) and [section 84](#) (final order). See also the Act, [schedule 10](#).

<sup>674</sup> [Merger remedies guidance CMA87](#), paragraph 5.10.