

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

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that (i) Caisse de dépôt et placement du Québec and Generation Investment Management LLP via their subsidiaries Kiwi Holdco CayCo, Ltd and FNZ (Australia) Bidco Pty Ltd and (ii) GBST Holdings Limited have ceased to be distinct;
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (**UK**);
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Kiwi Holdco CayCo, Ltd (**Kiwi Holdco CayCo**), FNZ (Australia) Bidco Pty Ltd (**FNZ (Australia) Bidco Pty**) and FNZ (UK) Ltd (**FNZ UK**) (together, **FNZ**), Falcon General Partner LLC, Falcon LP and Falcon Newco Limited (together, **Falcon**), Caisse de dépôt et placement du Québec (**CDPQ**) and Generation Investment Management LLP (**GIM**) (the **Order**).

Commencement, application and scope

1. This Order commences on the commencement date: 22 November 2019.
2. This Order applies to CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty or FNZ UK to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the FNZ and GBST businesses until determination of proceedings

4. Except with the prior written consent of the CMA, CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the GBST business with the FNZ business;
 - (b) transfer the ownership or control of the FNZ business or the GBST business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the GBST business or the FNZ business to compete independently in any of the markets affected by the transaction.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the GBST business is carried on separately from the FNZ business and the GBST business's separate sales or brand identity is maintained;
 - (b) the GBST business and the FNZ business are maintained as a going concern and sufficient resources are made available for the development of the GBST business and the FNZ business, on the basis of their respective pre-merger business plans;

- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the GBST business or the FNZ business;
- (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the GBST business and the FNZ business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the GBST business or the FNZ business are disposed of; and
 - (iii) no interest in the assets of the GBST business or the FNZ business is created or disposed of;
- (f) there is no integration of the information technology of the GBST or FNZ businesses, and the software and hardware platforms of the GBST business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the GBST business will be carried out by the GBST business alone and for the avoidance of doubt the FNZ business will not negotiate on behalf of the GBST business (and vice versa) or enter into any joint agreements with the GBST business (and vice versa);
- (h) all existing contracts of the GBST business and the FNZ business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the GBST business or FNZ business;
- (j) no key staff are transferred between the GBST business and the FNZ business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the GBST business and the FNZ business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the GBST business (or any of its employees, directors,

agents or affiliates) to the FNZ business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

6. CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
7. CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK and their subsidiaries with this Order. In particular, on 28 November 2019 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of each of Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK or other persons of FNZ UK, Kiwi Holdco CayCo and FNZ (Australia) Bidco Pty as agreed with the CMA shall, on behalf of Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order. On 29 November 2019 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of each of CDPQ, GIM and Falcon or other persons of CDPQ, GIM and Falcon as agreed with the CMA shall, on behalf of CDPQ, GIM and Falcon provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
8. CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK shall ensure that on 28 November 2019 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter), the person responsible for the management of GBST or other persons of GBST as agreed with the CMA shall, on behalf of GBST, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.

9. At all times, CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK shall, or shall procure that GBST shall, actively keep the CMA informed of any material developments relating to the GBST business or the FNZ business, which includes but is not limited to:
 - (a) details of key staff who leave or join the GBST business or the FNZ business;
 - (b) any interruption of the GBST or FNZ business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the GBST or FNZ business including any substantial changes in customers' demand; and
 - (d) substantial changes in the GBST or FNZ business's contractual arrangements or relationships with key suppliers.
10. If any of CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and/or FNZ UK may be directed to appoint under paragraph 11.
11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
12. CDPQ, GIM, Falcon, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

'business' has the meaning given by section 129(1) and (3) of the Act;

'commencement date' means 22 November 2019;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'CDPQ' means Caisse de dépôt et placement du Québec, a business with its head office at Édifice Price 65, rue Sainte-Anne, 14th Floor Québec, Québec G1R 3X5 with NEQ 8812257473 and its subsidiaries;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

'Falcon' means Falcon General Partner LLC, Falcon LP and Falcon Newco Limited;

'Falcon General Partner LLC' means a company incorporated in the United States of America, at registered address c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801 with file number 7081631;

'Falcon LP' means a partnership incorporated in Canada, at registered address 9 Wellington Street West, Toronto, Ontario, Canada, with registered number 281050625;

'Falcon Newco Limited' means a company incorporated in the Cayman Islands, at registered address 89 Nexus Way, Camana Bay, Grand Cayman Ky1-9009, Cayman Islands with registration number 343271;

'FNZ' means FNZ (Australia) Bidco Pty, FNZ UK and Kiwi Holdco CayCo collectively;

'FNZ (Australia) Bidco Pty' means FNZ (Australia) Bidco Pty Ltd, a company incorporated in Australia, with ACN number 635 824 636;

'the FNZ business' means the business of Kiwi Holdco CayCo and its subsidiaries (including FNZ (Australia) Bidco Pty and FNZ UK) but excluding the GBST business, carried on as at the commencement date;

'FNZ UK' means FNZ (UK) Ltd, a company incorporated in England and Wales, with company number 05435760;

'GBST' means GBST Holdings Limited, a company incorporated in Australia, with ABN number 85 010 488 874;

'the GBST business' means the business of GBST and its subsidiaries carried on as at the commencement date;

'GIM' means Generation Investment Management LLP, a partnership incorporated in England and Wales with company number OC307600 and its subsidiaries;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

'Kiwi Holdco CayCo' means Kiwi Holdco CayCo Ltd, a company incorporated in the Cayman Islands, with company number 219450;

'the ordinary course of business' means matters connected to the day-to-day supply of goods and/or services by GBST or FNZ and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of GBST and FNZ;

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the transaction' means the transaction by which Caisse de dépôt et placement du Québec and Generation Investment Management LLP via FNZ and GBST have ceased to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the FNZ business and the GBST business;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Signature:

Maria Duarte

Assistant Director, Mergers

ANNEX

Compliance statement for [FNZ UK / Kiwi Holdco CayCo / FNZ (Australia) Bidco Pty / Falcon / GIM / CDPQ]

I [insert name] confirm on behalf of [FNZ UK / Kiwi Holdco CayCo / FNZ (Australia) Bidco Pty / Falcon / GIM / CDPQ] that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
 - (a) [FNZ UK / Kiwi Holdco CayCo / FNZ (Australia) Bidco Pty / Falcon / GIM / CDPQ] has complied with the Order made by the CMA in relation to the transaction on 22 November 2019 (the **Order**).
 - (b) [FNZ UK / Kiwi Holdco CayCo / FNZ (Australia) Bidco Pty / Falcon / GIM / CDPQ]'s subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by [FNZ UK / Kiwi Holdco CayCo / FNZ (Australia) Bidco Pty / Falcon / GIM / CDPQ] that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the GBST business with the FNZ business;
 - (ii) transfer the ownership or control of the FNZ business or the GBST business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the GBST business or the FNZ business to compete independently in any of the markets affected by the transaction.
 - (b) The GBST business has been carried on separately from the FNZ business and the GBST business's separate sales or brand identity has been maintained.
 - (c) The GBST business and the FNZ business have been maintained as a going concern and sufficient resources have been made available for the development of the GBST business and the FNZ business, on the basis of their respective pre-merger business plans.

- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the GBST business or the FNZ business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the GBST business and the FNZ business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the GBST business and the FNZ business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the GBST business or the FNZ business have been disposed of; and
 - (iii) no interest in the assets of the GBST business or the FNZ business has been created or disposed of.
- (g) There has been no integration of the information technology of the GBST or FNZ businesses, and the software and hardware platforms of the GBST business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the GBST business have been carried out by the GBST business alone and, for the avoidance of doubt, the FNZ business has not negotiated on behalf of the GBST business (and vice versa) or entered into any joint agreements with the GBST business (and vice versa).
- (i) All existing contracts of the GBST business and the FNZ business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the GBST business or the FNZ business.

- (k) No key staff have been transferred between the GBST business and the FNZ business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the GBST business and the FNZ business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the GBST business (or any of its employees, directors, agents or affiliates) to the FNZ business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
 - (i) key staff that have left or joined the GBST business or the FNZ business;
 - (ii) interruptions of the GBST business or the FNZ business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the GBST business or the FNZ business; or
 - (iv) substantial changes in the GBST or FNZ business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. [FNZ UK / Kiwi Holdco CayCo / FNZ (Australia) Bidco Pty / Falcon / GIM / CDPQ] and its subsidiaries remain in full compliance with the Order and will, or will procure that GBST, continue actively to keep the CMA informed of any material developments relating to the GBST or the FNZ business in accordance with paragraph 9 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

5. it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fin**es, **imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)
6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF [FNZ UK / Kiwi Holdco CayCo / FNZ (Australia) Bidco Pty / Falcon / GIM / CDPQ]

Signature

Name

Title

Date

Compliance statement for GBST

I [insert name] confirm on behalf of GBST that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
 - (a) GBST has complied with the Order made by the CMA in relation to the transaction on 22 November 2019 (the **Order**).
 - (b) GBST's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by GBST that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the GBST business with the FNZ business;
 - (ii) transfer the ownership or control of the GBST business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the GBST business to compete independently in any of the markets affected by the transaction.
 - (b) The GBST business has been carried on separately from the FNZ business and the GBST business's separate sales or brand identity has been maintained.
 - (c) The GBST business has been maintained as a going concern and sufficient resources have been made available for the development of the GBST business, on the basis of its pre-merger business plans.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within the GBST business, except in the ordinary course of business.
 - (e) The nature, description, range and quality of goods and/or services supplied in the UK by the GBST business have been maintained and preserved.

- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the GBST business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the GBST business have been disposed of; and
 - (iii) no interest in the assets of the GBST business has been created or disposed of.
- (g) There has been no integration of the information technology of the GBST or FNZ businesses, and the software and hardware platforms of the GBST business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the GBST business have been carried out by the GBST business alone and, for the avoidance of doubt, the FNZ business has not negotiated on behalf of the GBST business (and vice versa) or entered into any joint agreements with the GBST business (and vice versa).
- (i) All existing contracts of the GBST business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the GBST business.
- (k) No key staff have been transferred between the GBST business and the FNZ business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the GBST business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the GBST business (or any of its employees, directors, agents or affiliates) to the FNZ business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

(i) key staff that have left or joined the GBST business;

(ii) interruptions of the GBST business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;

(iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the GBST business; or

(iv) substantial changes in the GBST contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. GBST and its subsidiaries remain in full compliance with the Order and will, continue actively to keep the CMA informed of any material developments relating to the GBST in accordance with paragraph 9 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

5. it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finer, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)
6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF GBST

Signature

Name

Title

Date