

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

Directions issued on 3 December 2019 pursuant to paragraph 11 of the Initial Enforcement Order imposed by the Competition and Markets Authority on FNZ, Falcon, CDPQ and GIM on 22 November 2019

On 5 November 2019, FNZ (Australia) Bidco Pty Ltd (**FNZ (Australia) Bidco Pty**) completed the acquisition of GBST Holdings Limited (**GBST**) (the **Merger**). FNZ (Australia) Bidco Pty is indirectly controlled by Kiwi Holdco CayCo Ltd (**Kiwi Holdco CayCo**) which is in turn indirectly controlled by Caisse de dépôt et placement du Québec (**CDPQ**) and Generation Investment Management LLP (**GIM**).

On 22 November 2019, the CMA made an Initial Enforcement Order (the **Order**) addressed to Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ (UK) Ltd (**FNZ UK**) (together, **FNZ**), Falcon General Partner LLC, Falcon LP and Falcon Newco Limited (together, **Falcon**), CDPQ and GIM, in accordance with section 72(2) of the Enterprise Act 2002 to prevent pre-emptive action. The Order is still in force.

The CMA now issues written directions under paragraph 11 of the Order that, for the purpose of securing compliance with the Order, FNZ must appoint a monitoring trustee in accordance with the terms provided for in this Annex and CDPQ, GIM, Falcon and FNZ must comply with the obligations set out in the Annex.

Signed

Maria Duarte
Assistant Director, Mergers
Competition and Markets Authority
3 December 2019

Annex

Directions to appoint a monitoring trustee

Interpretation

In these Directions:

'the Act' means the Enterprise Act 2002;

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

'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;

'CMA' means the Competition and Markets Authority;

'Derogations' means any derogations granted whether before or after the appointment of the MT by the CMA by which CDPQ, GIM, Falcon or FNZ may undertake certain actions that derogate from the Order;

'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 each of FNZ (Australia) Bidco Pty, FNZ UK and Kiwi Holdco CayCo;

'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 of the first initial enforcement order made by the CMA on 14 November 2019 and addressed to FNZ;

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

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

'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 of the first initial enforcement order made by the CMA on 14 November 2019 and addressed to FNZ;

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

'MT' means the monitoring trustee appointed in accordance with paragraphs 1 to 3 below;

'Order' means the initial enforcement order made by the CMA on 22 November 2019 and addressed to FNZ, Falcon, CDPQ and GIM;

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

'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.

Terms and expressions defined in the Order have the same meaning in these directions, unless the context requires otherwise.

Appointment

1. FNZ must appoint a MT in order to ensure compliance with the Order, in particular to:
 - a. monitor and report to the CMA on compliance by CDPQ, Falcon, GIM, Kiwi Holdco CayCo, FNZ (Australia) Bidco Pty and FNZ UK, and their subsidiaries with the Order; and
 - b. support the CMA taking any remedial action which may be required to maintain the GBST business and the FNZ business as going concerns.
2. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
3. FNZ must cooperate fully with the MT, in particular as set out below, and FNZ must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of FNZ as set out in these directions.

General

4. The MT must possess appropriate qualifications and experience to carry out his or her functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs his or her objectivity and independence in discharging his or her duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. FNZ shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.
7. FNZ must appoint the MT as soon as is reasonably practicable and in any event by **10 December 2019** and the MT will continue to act either until the CMA reaches a decision to clear the Merger or until the CMA directs that the MT is no longer required.
8. The appointment of a MT by FNZ is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
 - a. the name of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable and in any event by **5 December 2019**;
 - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **6 December 2019**; and
 - c. once the MT has been approved by the CMA and appointed, FNZ must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

9. The functions of the MT will be to:
 - a. ascertain and report to the CMA in relation to the current level of compliance by CDPQ, Falcon, GIM and FNZ, and their subsidiaries with the Order;
 - b. assess and report to the CMA in relation to the arrangements made by CDPQ, Falcon, GIM and FNZ, and their subsidiaries for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
 - c. identify and supervise if necessary the arrangements made by CDPQ, Falcon, GIM and FNZ for ensuring compliance with the Order;

- d. monitor compliance by CDPQ, Falcon, GIM and FNZ, and their subsidiaries with the Order; and
 - e. without prejudice to the right of FNZ (or GBST) to contact the CMA, respond to any questions which FNZ (or GBST) may have in relation to compliance with the Order, in consultation with the CMA.
10. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the GBST business and FNZ business, such as written and electronic communications, telephone conversations and meetings as may be required.
11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance with the Order.

Obligations of CDPQ, Falcon, GIM and FNZ

12. CDPQ, Falcon, GIM and FNZ and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
- a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the GBST business and the FNZ business as the MT may reasonably require; and
 - b. the provision of such office and supporting facilities as the MT may reasonably require.
13. If the FNZ business is in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification.
14. If CDPQ, Falcon, GIM and/or FNZ has any reason to suspect that the Order may have been breached, it must notify the MT and the CMA immediately.

Reporting functions

15. The MT is required to provide an initial report to the CMA no later than 5pm (UK time) on **20 December 2019**, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:
- a. details of the current extent of compliance with the Order;
 - b. a description of the current arrangements made for the operation of the GBST business and for the preservation of the assets required to operate the GBST business; and

- c. recommendations as to what changes to those arrangements, if any, are necessary.
16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in his or her view, CDPQ, Falcon, GIM and FNZ, and their subsidiaries have complied with the Order. At the same time, the MT must provide the CMA with a report setting out the following:
- a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:
 - i. anything has caused him or her to be concerned as to whether CDPQ, Falcon, GIM and FNZ, and their subsidiaries have complied with the Order, and if it has, whether those concerns have been resolved and why;
 - ii. he or she has any remaining doubts or uncertainties as to whether CDPQ, Falcon, GIM and FNZ, and their subsidiaries have complied with the Order; and
 - iii. anything that causes him or her to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
 - b. details of the performance of the GBST business, including any factors that might indicate asset deterioration;
 - c. whether appropriate steps are being taken to maintain the GBST business as a going concern;
 - d. the extent to which CDPQ, Falcon, GIM and FNZ, and their subsidiaries have cooperated with the MT in his or her task of monitoring its compliance with the Order and details of any aspects of the cooperation of CDPQ, Falcon, GIM and FNZ, or any of their subsidiaries that he or she considers could be improved;
 - e. the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of CDPQ, Falcon, GIM and FNZ, and their subsidiaries with the Order and if there is anything that the MT considers would assist him or her in monitoring compliance;
 - f. any current or anticipated requests for consent to vary the Order; and
 - g. the information he or she used to compile the report.
17. When providing reports to the CMA, the MT must ensure that he or she does not disclose any information or documents to the CMA which CDPQ, Falcon, GIM and FNZ, or any of their subsidiaries would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires CDPQ, Falcon,

GIM or FNZ to produce any information or documents to the MT which are privileged.

18. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Order has been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).
19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to CDPQ, Falcon, GIM and FNZ, or any of their subsidiaries, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.