

**DEROGATION LETTER  
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED  
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002  
COMPLETED ACQUISITION**

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 22 November 2019**

**Completed acquisition by FNZ (Australia) Bidco Pty Ltd of GBST Holdings Limited**

We refer to your emails dated 25 and 29 November 2019 and 2 December 2019 requesting that the CMA consents to derogations to the Initial Enforcement Order of 14 November 2019, as re-issued on 22 November 2019 (the **Initial Order**). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, FNZ (UK) Ltd, Kiwi Holdco CayCo, Ltd and FNZ (Australia) Bidco Pty Ltd, together with Caisse de dépôt et placement du Québec, Falcon General Partner LLC, Falcon LP and Falcon Newco Limited and Generation Investment Management LLP are required to hold separate the FNZ business (**FNZ**) from the GBST business (**GBST**) (together, the **Parties**) and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, FNZ and GBST may carry out the following actions, in respect of the specific paragraphs:

**1. Paragraphs 5(a), (b) and (l) of the Initial Order**

In order to ensure that FNZ may comply with the terms of a senior facilities agreement (the **Senior Facilities Agreement**) and related finance documents (together with the Senior Facilities Agreement, the **Finance Documents**), the CMA consents to:

- a. FNZ disclosing the Finance Documents to GBST;

- b. FNZ (and its advisers) explaining the terms of the Finance Documents to GBST and answering any questions that GBST may have in respect of the terms of the Finance Documents;
- c. FNZ requiring GBST to undertake to FNZ (and GBST making and complying with such undertaking) to:
  - i. confirm that the members of the GBST group are in compliance with the terms of the Finance Documents in so far as they relate to them, including by delivering a monthly compliance certificate to FNZ and its advisers to this effect; and
  - ii. notify FNZ promptly after becoming aware of any non-compliance with the terms of the Finance Documents as a result of action taken by any member of the GBST group together with details of such non-compliance and the steps being taken to remedy such non-compliance.

## 2. Paragraphs 5(a), (b) and (l) of the Initial Order

Under the Senior Facilities Agreement, FNZ is required to deliver to the agent, [X], certain statements, including an annual financial statement, quarterly financial statement, monthly financial statement and a budget for that financial year (**Budget**).

In order for FNZ to comply with the obligations outlined above, the CMA consents to:

- a. FNZ requiring GBST, and GBST undertaking, to deliver financial information to FNZ where that information is strictly necessary to ensure that FNZ is able to comply with its obligations under the Senior Facilities Agreement in respect of the delivery and content of financial statements and Budgets), within:
  - i. in the case of annual financial statements, [X] of the end of each financial year;
  - ii. in the case of quarterly financial statements, [X] of the end of each financial quarter;
  - iii. in the case of monthly financial statements, [X] of the end of each month; and
  - iv. in the case of the next Budget due, by [X].

- b. FNZ requiring GBST, and GBST undertaking, to deliver promptly to FNZ information only to the extent that it is strictly necessary to ensure that FNZ is able to comply with its obligations under the Senior Facilities Agreement in respect of the delivery and content of other information, namely:
  - i. details of any material litigation, action, arbitration or administrative proceedings (current or pending);
  - ii. such other information as any finance party under the Finance Documents may reasonably request regarding the financial condition, assets or operation of the combined FNZ group which is necessary to determine compliance by the obligors with the terms of the Finance Documents; and
  - iii. such information as may be required by applicable banking supervisory laws and regulations.
- c. FNZ requiring GBST, and GBST undertaking, to deliver a compliance certificate together with all information delivered by GBST to FNZ in accordance with the consent listed above certifying that such information complies with the requirements and related representations under the Senior Facilities Agreement,

(all information together the **SFA GBST Information**) to [X] (**SFA Nominees**) so that the SFA Nominees may use the SFA GBST Information to ensure FNZ's compliance with the Finance Documents (**Authorised Purposes**).

This consent is provided strictly on the basis that:

- a. no SFA GBST Information will be provided by GBST to FNZ prior to the monitoring trustee that will be appointed pursuant to directions issued to FNZ on 3 December 2019 assessing that that information is strictly necessary for the relevant purpose and contains no GBST commercially sensitive information. For the avoidance of doubt, whilst the monitoring trustee may assist with this assessment, it is for the CMA to grant derogations and ultimately to assess whether information is strictly necessary in this context;
- b. for the avoidance of doubt, no information which may identify information in respect of individual GBST customers will be provided as part of the SFA GBST information;
- c. the SFA Nominees enter into non-disclosure agreements (**NDA**s) prior to receiving any SFA GBST Information in a form to be agreed in advance

with the CMA pursuant to which:

- i. the SFA Nominees are prevented from sharing the SFA GBST Information with any individual at FNZ (or third party);
  - i. the use to which the SFA GBST Information may be put is limited to the Authorised Purposes;
  - ii. the restrictions set out in the NDAs will remain in place until the Initial Order is revoked; and
  - iv. in the event that the transaction is prohibited or remedies accepted, any records or copies (electronic or otherwise) of information that have passed, wherever they may be held, will be returned to the GBST business to which they relate and/or copies destroyed.
- d. FNZ adopts physical and IT firewalls to prevent unauthorised individuals from accessing the disclosed SFA GBST Information, namely:
- i. data (including emails received from, and exchanged with, GBST) in connection with the Authorised Purposes will be stored on ring-fenced IT infrastructure, with access restricted only to the SFA Nominees;
  - i. all files and documents containing SFA GBST Information will be password-encrypted; and
  - ii. separate physical storage and printing facilities will be allocated for the SFA GBST Information.

The CMA reserves the right to amend the identified individuals listed in this derogation should the Parties make such a request, via written consent (including email).

### **3. Paragraphs 5(a) and (l) of the Initial Order**

In order to support the effective maintenance of GBST as a going concern, the CMA consents to:

- a. [X], and [X] providing legal services and support (including continuing to provide instructions to the Herbert Smith Freehills Sydney office and counsel) to GBST in connection with an ongoing [X] litigation matter ("**Ongoing Litigation**");
- b. [X] and [X] being provided with information by GBST in relation to the Ongoing Litigation (**Litigation Information**) only to

the extent this information is strictly necessary in order to provide legal services and support in connection with the particular Ongoing Litigation (**Ongoing Litigation Purposes**), provided that:

- i. [X] and [X] enter into NDAs prior to receiving any Litigation Information in a form to be agreed in advance with the CMA pursuant to which:
  1. [X] and [X] are prevented from sharing the Litigation Information with any other individual at FNZ;
  2. the use to which the Litigation Information may be put is limited to the Ongoing Litigation Purposes;
  3. the restrictions set out in the NDAs will remain in place until the Initial Order is revoked; and
  4. in the event that the transaction is prohibited or remedies accepted, any records or copies (electronic or otherwise) of information that have passed, wherever they may be held, will be returned to the GBST business to which they relate and/or copies destroyed.
  
- ii. FNZ adopts physical and IT firewalls to prevent unauthorised individuals from accessing the disclosed Litigation Information, namely:
  1. data (including emails received from, and exchanged with, GBST) in connection with the Ongoing Litigation Purposes will be stored on ring-fenced IT infrastructure, with access restricted only to [X] and [X];
  2. all files and documents containing Litigation Information will be password-encrypted; and
  3. separate physical storage and printing facilities will be allocated for the Litigation Information.

The CMA reserves the right to amend the identified individuals listed in this derogation should the Parties make such a request, via written consent (including email).

Yours sincerely

Maria Duarte

Assistant Director, Mergers

3 December 2019