

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 Limited of GBST Holdings Limited (the 'Acquisition')

We refer to your emails and accompanying notes on 25, 26, 28 and 29 November 2019 and discussions on calls on 26, 28 and 29 November 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.

We further refer to the derogation granted by the CMA on 29 November 2019 (the '**First Derogation**') and subsequent discussion on a call on 10 December 2019 and your correspondence on 3 February 2020 requesting amendments to the First Derogation. The First Derogation is now revoked and replaced by this derogation.

Under the Initial Order, save for written consent by the CMA, FNZ (UK) Ltd, Kiwi Holdco CayCo, Ltd and FNZ (Australia) Bidco Pty Limited (together, '**FNZ**'), 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 from the GBST business ('**GBST**') 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(c) and 5(i) of the Initial Order

In order to ensure the ongoing and independent operation of the GBST business, the CMA consents to the following derogation from paragraphs 5(c) and 5(i) of the Initial Order:

- (i) Each of [X], [X], [X] and [X] being provided by FNZ with all required powers and delegated authority to allow these individuals to severally take all necessary action in respect of the continued operation of the GBST business in respect of, but not limited to, the following matters:

- a. signature of new customer and supplier contracts;
 - b. changes to bank account signatories; and
 - c. signature of statutory accounts subject to statutory requirements.
- (ii) in parallel, the current FNZ-nominated directors may continue in their roles as statutory directors of the GBST group companies provided that:
- a. the current FNZ-nominated directors will not have any involvement in the day-to-day planning, management, strategic or financial decision making over the GBST group companies, except as expressly permitted by the CMA in other derogations to the Initial Order; and
 - b. the current FNZ-nominated directors will not receive access to any commercially sensitive information of GBST.

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

In order to ensure the effective maintenance of GBST as a going concern, FNZ has requested that GBST be required to seek approval from designated individuals within FNZ for a proposed course of action strictly in relation to:

- (i) approval of pre-budgeted capital and operating expenditures of GBST above a financial threshold of [X];
- (ii) approval of unbudgeted capital and operating expenditures of GBST above a financial threshold of [X];
- (iii) entering into a master service/licence agreement with a new client having financial value in excess of [X]; and
- (iv) approval of individual expenses of the CEO of GBST, in excess of [X],

(together '**Expenditure Approval Requests**') and to FNZ evaluating Expenditure Approval Requests and granting or declining the Expenditure Approval Requests as the case may be.

The CMA consents to a derogation from paragraphs 5(a), (c) and (l) of the Initial Order, strictly on the basis that:

- (i) Expenditure Approval Requests shall only be communicated [X], [X] and [X] ('**Derogation 2 Nominees**');
- (ii) Expenditure Approval Requests may only be accompanied by information which does not contain any commercially-sensitive information and is no more than strictly necessary to allow FNZ to take a decision on the Expenditure Approval Requests to calculate the cash resources required for GBST and the FNZ group as a whole ('**Derogation 2 Information**'), including:
 - a. the most recent completed cashflow template as agreed with the CMA, and

- b. confirmation that the GBST CEO has reviewed the above cashflow in light of the proposed payment request;
- (iii) the Derogation 2 Nominees enter into specific non-disclosure agreements in a form approved by the CMA ('**NDAs**');
- (iv) FNZ adopts physical and IT firewalls to prevent individuals other than the Derogation 2 Nominees from accessing the disclosed Derogation 2 Information;
- (v) The CMA will be notified of any requests made by GBST to FNZ and the CMA will be provided with a summary of the GBST information shared with FNZ in order to allow the Derogation 2 Nominees to reach a decision on the Expenditure Approval Request at hand;
- (vi) The CMA is notified of any proposed veto by FNZ and the reasons for this in advance of any such veto being exercised; and
- (vii) the Derogation 2 Nominees will not be involved in day-to-day commercial decision-making at FNZ in respect of its competing business, whilst the Initial Order is in place.

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

FNZ requests that GBST's (i) historical financial information and (ii) forecast cash flow information be made available to identified individuals within FNZ in order to allow FNZ to have high-level financial oversight of the GBST business to ensure that all necessary funding is made available to the GBST business.

The CMA consents to GBST providing the following information to FNZ:

- (i) GBST's consolidated profit and loss account information (which is limited to historic consolidated revenues and historic consolidated earnings before interest, tax, depreciation and amortisation (EBITDA)), in a template form as agreed with the CMA and to be made available to the CMA on request;
- (ii) GBST's historic and high-level consolidated balance sheets and cash flow information (e.g. which does not reveal a granular breakdown of capital expenditure), in a template form as agreed with the CMA and to be made available to the CMA on request; and
- (iii) Future cashflow information, in a template form as agreed with the CMA and to be made available to the CMA on request, (together, '**GBST Financial Information**').

The CMA consents to a derogation from paragraphs 5(a) and 5(l) of the Initial Order, strictly on the basis that:

- (i) The GBST Financial Information will only be made available to [X] and [X] so that these individuals may use the information provided for:

- a. governance in terms of regional sign-off from the respective FNZ regional boards in Asia-Pacific and the UK, and FNZ group boards;
 - b. High-level financial oversight of GBST; and
 - c. to ensure that the GBST business is provided with all necessary financial assistance from FNZ to ensure the GBST business is maintained as a going concern on the basis of its pre-merger business plans.
- (ii) In the event that funding needs to be made available to GBST, [X] may only be provided with GBST future cashflow information, as identified in paragraph 3(c) above;
 - (iii) [X], [X] and [X] will enter into NDAs in a form agreed with the CMA; and
 - (iv) FNZ adopts physical and IT firewalls to prevent unauthorised individuals from accessing the disclosed GBST Financial Information.

For the avoidance of doubt, in the event that FNZ requires further information from the GBST business in order to consider providing further funding to GBST, FNZ is required to specify such requests in writing to the CMA.

4. Paragraph 5(l) of the Initial Order

The CMA understands that prior to completion of the Acquisition, GBST drew down from its [X] Revolving Credit Facility ('RCF') to pay a special dividend to the outgoing shareholders of GBST. Following completion [X], FNZ is required to engage with [X] to discuss repayment of the RCF.

The CMA therefore consents to the following derogation from paragraph 5(l) of the Initial Order on the basis of:

- (i) certain individuals within FNZ's financial and legal teams and FNZ's legal advisers, communicating with both their counterparts at GBST and with [X] to the extent strictly necessary to discuss the potential for repayment of the RCF; and
- (ii) provided that:
 - a. The names of the FNZ individuals will be provided in advance to the CMA to be approved by the CMA before any communications take place with GBST or information is exchanged between FNZ and GBST;
 - b. The identified individuals enter into NDAs in a form agreed with the CMA;
 - c. Communications between the FNZ and GBST individuals and their advisors will not extend to the sharing of any GBST commercially-sensitive information with FNZ; and
 - d. FNZ adopts physical and IT firewalls to prevent unauthorised individuals from accessing any information disclosed pursuant to this derogation.

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

The CMA consents to:

- (i) FNZ putting in place a new Australian tax consolidated group ('**Consolidated Tax Group**') by Monday 2 December 2019 (in order to comply with Australian law and avoid substantial financial penalties which would adversely affect the financial viability of both FNZ and GBST) and undertaking such steps as may be strictly necessary to register the Consolidated Tax Group, including:
 - a. FNZ and GBST providing relevant notifications to the Australian Tax Office; and
 - b. the Australian FNZ entities and Australian GBST entities entering into reciprocal tax sharing and tax funding agreements with each other (in a standard form which will be provided to the CMA on request);
- (ii) [X], and the GBST tax and legal teams, and their tax and legal advisers, communicating with each other and with the Australian Tax Office only to the extent strictly necessary in connection with steps outlined at (i) and (ii) above as required to put in place the Consolidated Tax Group;
- (iii) Communications between the FNZ and GBST individuals and their advisors will not extend to the sharing of any GBST commercially-sensitive information with FNZ;
- (iv) [X] will enter into an NDA in a form agreed with the CMA; and
- (v) FNZ adopts physical and IT firewalls to prevent unauthorised individuals from accessing any information disclosed pursuant to this derogation.

6. Paragraphs 5(k) and 5(l) of the Initial Order

The CMA consents to FNZ sharing with GBST senior management information in relation to the director and officer ("**D&O**") insurance cover they have the benefit of while operating the GBST business. This information may include copies and/or extracts from or summaries of the terms of FNZ's applicable D&O policy or policies, but for the avoidance of doubt may not include FNZ commercially sensitive information.

The CMA consents to this derogation as it considers that such actions are necessary for the effective maintenance of GBST as a going concern.

Maria Duarte

Assistant Director, Mergers

5 February 2020