

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

Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups¹

Introduction

1. On 8 April 2020, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed merger between FNZ (Australia) Bidco Pty Limited (**FNZ**) and GBST Holdings Limited (**GBST**) (**the Merger**), for further investigation and report by a group of CMA panel members (**the Inquiry Group**).
2. The CMA imposed an Interim Order (**IO**) on 13 May 2020 requiring FNZ and GBST to remain independent during the inquiry to ensure that no action is taken pending final determination of the Reference which might prejudice the 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.
3. In its provisional findings on the reference notified to FNZ and GBST (**the Parties**) on 5 August 2020, the CMA, among other things, provisionally concluded that the Merger has resulted in the creation of a relevant merger situation, and that the creation of that situation 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.
4. This Notice sets out the actions which the CMA considers it might take for the purpose of remedying the SLC and/or any resulting adverse effects identified in the Provisional Findings Report.²
5. The CMA invites comments on possible remedies by 17.00hrs, BST on 18 August 2020.³

¹ CMA Rules of Procedure for Merger, Market and Special Reference Groups (CMA17, 2014).

² See Provisional Findings Report published on [case page](#).

³ Date: Responses to the Notice of Possible Remedies are typically requested within 14 days of publication of the Notice (and in any event, no less than seven days) so that they can be considered before response hearings (CMA 2 Mergers: guidance on the CMA's jurisdiction and procedure, paragraph 13.1)

Criteria

6. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.⁴
7. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective.
8. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁵

Possible remedies on which views are sought

9. In merger inquiries, the CMA will generally prefer structural remedies, such as divestiture or prohibition, rather than behavioural remedies because:
 - (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring the rivalry that would be lost as a result of the merger;
 - (b) behavioural remedies may not have an effective impact on the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes; and
 - (c) structural remedies do not normally require ongoing monitoring and enforcement once implemented.⁶
10. At this stage, the CMA has identified the following potential structural remedies:
 - (a) Requiring the full divestiture of GBST.
 - (b) Requiring a partial divestiture of GBST.
11. A full divestiture would require the sale of the whole issued share capital of GBST, as acquired by FNZ on 5 November 19.
12. The CMA considers that a full divestiture of GBST would be similar to a prohibition of the Merger as it would prevent an SLC from resulting in any relevant market. The CMA therefore takes the preliminary view that, subject to

⁴ Sections 35(4) and 36(3) of the Act.

⁵ *Merger Remedies: CC8* (November 2008), paragraph 1.7. This has been adopted by the CMA board.

⁶ *Merger Remedies: CC8* (November 2008), paragraph 2.14. This has been adopted by the CMA board.

implementation considerations, a full divestiture of GBST would represent a comprehensive and effective remedy to all aspects of the SLC it has provisionally found, and consequently any resulting adverse effects.

13. A partial divestiture of GSBT would involve a divestiture of of GBST subsidiaries and/or assets. Given the internal structure of GBST and the need for any divestiture to provide the basis for restoring competition lost as a result of the Merger, the CMA considers a split by geography and / or operating segment to be the only plausible options. These would be one of:
 - (a) Divestiture of GBST's global wealth management business (ie split by operating segment);
 - (b) divestiture of all of GBST's UK operations (ie split by geography); or
 - (c) divestiture of GBST's UK wealth management business (ie split by geography and operating segment).
14. The CMA would only accept a partial divestiture if it could be demonstrated that it could be appropriately configured to allow a purchaser to operate as an effective competitor in the relevant market and to attract a suitable purchaser.
15. Moreover, with any partial divestiture of GBST, the CMA would need to be confident that it remedied the SLC in its entirety and had an acceptable risk profile. The CMA currently has reservations with regards to the effectiveness of a partial divestiture and would need to ensure that any remedy of this type had an acceptable risk profile, in particular in relation to:
 - (a) Weakening the competitive capability of the GBST business in the UK, including the additional asset risks and ongoing uncertainty that may be associated with implementing any separation of GBST prior to a partial divestiture
 - (b) material costs and risks imposed on customers, such as those associated with re-platforming;
 - (c) disruption to current GBST partnerships that could adversely affect its competitiveness in the UK; and
 - (d) Weakening the ability of the divested entity to execute the appropriate R&D to remain competitive in the medium term by reducing the revenue base over which the R&D cost is spread.
16. At this stage, the CMA has not identified any partial divestiture option involving FNZ operations that would be likely to be an effective remedy.

However, the CMA will consider any divestiture remedies put forward as part of this consultation.

17. The CMA's current view is that a behavioural remedy is very unlikely to be an effective remedy to the SLC or any resulting adverse effects that it has provisionally identified. However, the CMA will consider any behavioural remedies put forward as part of this consultation.
18. The CMA will consider any other practicable remedies put forward as part of this consultation.
19. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC or any resulting adverse effects that have been provisionally identified.
20. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the SLC or any resulting adverse effects it has provisionally found.

Issues to be considered in relation to a full or partial divestiture

21. In evaluating possible divestitures as a remedy to the provisional SLC it has found, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, the CMA will have regard to the following critical elements of the design of divestiture remedies:

The scope of the divestiture package

22. At this stage the divestiture options under consideration are:
 - (a) A full divestiture of GBST.
 - (b) A partial divestiture of GBST. The three potential permutations of this are:
 - (i) Divestiture of global wealth management business;
 - (ii) divestiture of all of GBST's UK business; or
 - (iii) divestiture of GBST's UK wealth management operations.
23. The CMA invites views on:

- (a) Whether a full divestiture of GBST would be an effective remedy to the provisional SLC;
- (b) whether a partial divestiture consisting of GBST's global wealth management business would be an effective remedy to the provisional SLC and if so:
 - (i) the scope of the business and assets that would need to be divested in order for this remedy option to be effective;
 - (ii) whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to allow a purchaser to operate as an effective competitor in the market now and in the medium term and maintain competitive pace of R&D,
 - (iii) the relevance and importance of GBST's Capital Markets business – which could be retained by FNZ under this option - to the viability and competitiveness of GBST's wealth management operations;
 - (iv) the likely attractiveness of GBST's global wealth management business to potential purchasers; and
 - (v) how easy or difficult it would be to implement the separation required to implement this remedy and the extent to which this would result in ongoing disruption to GBST and deterioration in its competitive capabilities.
- (c) whether a partial divestiture consisting of all of GBST's UK business would be effective and if so:
 - (i) the scope of the business and assets that would need to be divested in order for this option to be effective;
 - (ii) whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to allow a purchaser to operate as an effective competitor in the market now and in the medium term and maintain competitive pace of R&D;
 - (iii) the relevance and importance of GBST's Australian operations – which could be retained by FNZ under this option - to the viability and competitiveness of GBST's operations in the UK and its ability to compete effectively in the relevant market;
 - (iv) the likely attractiveness of GBST's UK business to potential purchasers; and

- (v) how easy or difficult it would be to implement the separation required to implement this remedy and the extent to which this would result in ongoing disruption to GBST and deterioration in its competitive capabilities.
- (d) whether a partial divestiture consisting of GBST's UK wealth management business would be effective;
- (i) the scope of the business and assets that would need to be divested in order to be effective;
 - (ii) whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market now and in the medium term and maintain a competitive pace of R&D;
 - (iii) the relevance and importance of GBST's Australian business and its UK Capital markets business – which could be retained by FNZ under this option - to the viability and competitiveness of GBST's wealth management operations in the UK;
 - (iv) the likely attractiveness of GBST's UK wealth management business to potential purchasers; and
 - (v) how easy or difficult it would be to implement the separation required to implement this remedy and the extent to which this would result in ongoing disruption to GBST and deterioration in its competitive capabilities.
- (e) for both a full and partial divestiture:
- (i) whether there are risks that a suitable purchaser is not available or that FNZ will divest to a weak or otherwise inappropriate purchaser;
 - (ii) whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture; and
 - (iii) any other elements that may be required for an effective divestiture remedy, or risks that the CMA should be aware of.

Identification of a suitable purchaser

24. The CMA will wish to be satisfied that a prospective purchaser:

- (a) Is independent of the main parties;

- (b) has the necessary capability to compete;
 - (c) is committed to competing in the market for Retail Platform Solutions excluding in-house software in the UK; and
 - (d) will not create further competition concerns.⁷
25. The CMA invites views on whether there are any specific factors to which the CMA should pay particular regard in assessing purchaser suitability, e.g.:
- (a) Whether non-retail platform solutions providers would be appropriate purchasers;
 - (b) whether private equity firms would be suitable purchasers;
 - (c) whether a UK presence and understanding of the UK market is essential.

Effective divestiture process

26. The CMA invites views on the appropriate timescale for achieving a divestiture.
27. The CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture.
28. The CMA invites views on whether FNZ should be required to alter the functions of the current monitoring trustee to oversee the divestiture(s) and to ensure that the business to be divested is maintained during the course of the process.
29. The CMA will have the power to mandate an independent divestiture trustee to dispose of the divestiture package if:
- (a) FNZ fails to procure divestiture to a suitable purchaser within the initial divestiture period; or
 - (b) the CMA has reason to expect that the FNZ will not procure divestiture to a suitable purchaser within the initial divestiture period.
30. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. The CMA invites views on whether the circumstances of this Merger necessitate such an approach.

⁷ [Merger Remedies: CC8](#) (November 2008), paragraph 3.15 ff.

Cost of remedies and proportionality

31. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction. In relation to 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.⁸
32. The CMA invites views on what costs are likely to arise in implementing each remedy option.

Relevant customer benefits

33. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.⁹
34. Relevant customer benefits are limited by the Act to benefits to customers in the form of:
 - (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or
 - (b) greater innovation in relation to such goods or services.'¹⁰
35. The Act provides that a benefit is only a relevant customer benefit if:
 - (a) it accrues or may be expected to accrue to relevant customers within the UK within a reasonable period as a result of the creation of that situation; and
 - (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.¹¹
36. The CMA welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options we are considering.

⁸ [Merger Remedies: CC8](#) (November 2008), paragraph 1.10. This has been adopted by the CMA board.

⁹ Section 36(4) of the Act, see also [Merger Remedies: CC8](#) (November 2008), paragraph 1.14.

¹⁰ Section 30(1)(a) of the Act, see also [Merger Remedies: CC8](#) (November 2008), paragraph 1.14.

¹¹ Section 30(3) of the Act, see also [Merger Remedies: CC8](#) (November 2008), paragraph 1.16.

Next steps

37. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by 17.00hrs BST on 18 August 2020 (see Note (i)).

A copy of this notice will be posted on the CMA website [case page](#).

(signed)

Martin Coleman

Group Chairman

5 August 2020

Note

- (i) This notice of possible actions to remedy, mitigate or prevent the SLC or any resulting adverse effects is made having regard to the Provisional Findings announced on 5 August 2020. Parties have until 25 August 2020 to respond to the Provisional Findings. The CMA's findings may alter in response to comments it receives on its Provisional Findings, in which case the CMA may consider other possible remedies, if appropriate.