

EXCERPT: CMA queries on its proposed remedies
“SLC” Substantial Lessening of Competition
Submission date 18th August 2020

23. The CMA invites views on:

(a) Whether a full divestiture of GBST would be an effective remedy to the provisional SLC;

To the extent the CMA have concluded that the Merger would result in an SLC, then a full divestiture is effectively a prohibition of the Merger, as the CMA acknowledges. Therefore, it would be an effective remedy, subject to whom the acquiring entity was, and whether they would also represent an SLC in the eyes of the CMA. Therefore, the effectiveness of this remedy will be dependent on the ultimate purchaser.

(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;

Given the CMA’s initial conclusion, this would need to include the UK wealth management operations. However, the carve-out of less than the entire business may create complexities and execution risk in terms of concluding a transaction, elongating timeframes and potentially complicating a sale process.

(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,

We do not have enough information to provide a view on this as it would require a more detailed assessment of where the R&D capability within the business currently resides. It also would depend on whether a potential purchaser has its own R&D capabilities (or not).

(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;

We are unable to provide a view on this.

(iv) the likely attractiveness of GBST’s global wealth management business to potential purchasers; and

The business should be saleable to selected acquirers, both trade and private equity. It participates in a sector that is generally considered attractive (financial services software), but its specific current competitive positioning and prospects within its chosen market niche will be a key driver of acquirer demand and valuation.

In assessing attractiveness, trade buyers will also consider the applicability of revenue synergies in respect of GBST’s propositions being saleable to their existing client base, and the ability to sell their propositions to GBST’s client base. .

(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.

Any separation has complexity and disruption, such as defining the exact perimeter of legal entities and operations to be sold, and then devising a detailed and granular separation plan to safely break up shared activities and services whilst ensuring operational continuity and service levels. In the immediate term, even the current CMA process will have acted as a brake on GBST’s ability to compete in the market and secure new contracts, as the uncertainty over the future ownership of GBST and its exact future proposition will have dissuaded some potential clients from selecting GBST. A separation will prolong this to an extent, but will at least create a timeline in which certainty should emerge.

We also note that GBST’s software proposition operates with a single code across all markets and in this scenario, there will be specific potential complexities around determining ownership or licensing of intellectual property. Additionally, assessing where the relevant development capability sits within the organisation and the extent to which it is practically separable will be important to determine when assessing separation issues. The sale of business segment which does not have IP rights and

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development capability over the software proposition, but simply sells and has an exclusive licence for it, may be less attractive to buyers and may not necessarily achieve the CMA’s intended objective.

(c) whether a partial divestiture consisting of all of GBST’s UK business would be effective and if so:

Please see comments to question 23(b) above. We do not have a view on wealth versus UK, however have provided comments on the issues associated with a partial separation of the business.

(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 GBSTs operations in the UK and its ability to compete effectively in the relevant market;

It is unclear to us whether FNZ would particularly wish to retain these businesses if it complicated the ease of a disposal of the whole. As stated above, the relevance depends on where R&D along with other aspects of leadership reside, and an analysis of the operating model of the different business units would be necessary (and not one we have undertaken).

(iv) the likely attractiveness of GBST’s UK business to potential purchasers; and

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;

Please see comments to question 23(b) above. We do not have a view on wealth versus UK, however have provided comments on the issues associated with a partial separation of the business.

(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;

As above, it is unclear to us whether FNZ would particularly wish to retain these businesses if it complicated the ease of a disposal of the whole. As stated above, the relevance depends on where R&D along with other aspects of leadership reside, and an analysis of the operating model of the different business units would be necessary (and not one we have undertaken).

(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;

For a full disposal, there should be reasonably suitable purchaser interest, noting the competing bidders when FNZ first acquired the business. FNZ will inevitably be incentivised to not sell to its

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strongest competitors, who, arguably and inter alia, might be seen as the bidders whom it beat to secure the GBST deal.

For a partial disposal, it is unclear whether FNZ would want to retain the remainder of the business in any case.

(ii) whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture; and

This risk exists to a degree around sales and pipeline already, as GBST will have struggled to secure new wins against a background of uncertainty around its ownership. A degree of R&D investment and development may also have been deferred.

(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

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;

If they are interested in entering the retail space, there is no reason for them to be “inappropriate” purchasers.

(b) whether private equity firms would be suitable purchasers;

Private equity will have interest, given the sector values fintech businesses with software subscription business models. Not being competitors to FNZ, they may also be their preferred bidders.

However, whether a private equity firm will be able to arrive at an attractive valuation, compared to strategic bidders, remains to be tested, and they may have concerns about the strength of the business on a standalone basis after the period of ownership uncertainty.

Additionally, private equity will have an eye on exit, and sale to a likely strategic bidder would be a typical option. If they believe the acquirer population will be very limited due to CMA concerns with multiple parties, rather than just one, in the future, this will be a factor for them to reflect in their valuation.

(c) whether a UK presence and understanding of the UK market is essential.

UK presence is not essential but an understanding of the market is naturally crucial for any acquirer, whether trade or private equity.

Effective divestiture process

26. The CMA invites views on the appropriate timescale for achieving a divestiture.

Sales processes are typically 3 – 9 months. Complex separations can then have transitional services agreements which operate subsequent to closing for a 6 – 18 month period, typically.

27. The CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture.

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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.

We are unable to provide a view on this.

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.

We are unable to provide a view on this.