

**FNZ RESPONSE TO THE REMEDIES PAPER  
DATED 16 APRIL 2021**

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**Case No. ME/6866/19**

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

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SLAUGHTER AND MAY

WJT/JRQS/FXJ

30 April 2021

## 1. Introduction and executive summary

- 1.1 The CMA provisionally finds in its Provisional Report Remedies Paper, dated 16 April 2021 (**Remedies Paper**), that a divestiture of GBST with the right for FNZ to buy back certain Capital Markets (**CM**) assets (the **Buy Back Remedy**), would effectively and proportionately address the alleged SLC. While FNZ continues to disagree with the CMA's provisional conclusion that there is in fact an SLC (see FNZ's response to the Provisional Report), FNZ welcomes this finding and intends to work constructively with the CMA to implement the Buy Back Remedy, should a remedy ultimately be required.
- 1.2 FNZ is firmly of the view – and agrees with the CMA – that the Buy Back Remedy would be effective as:
- (A) The purchaser would receive all resources necessary to allow GBST's global wealth management (**GWM**) business to: (i) compete independently and effectively immediately following completion of the divestment of GBST (**Global Completion**); and (ii) service GWM customers without disruption - to the same standards, with the same staff and infrastructure, and under the GBST brand;
  - (B) The GWM business is financially viable on a standalone basis, and is a commercially attractive proposition to a range of potential suitable purchasers, including financial sponsors and trade buyers.
- 1.3 As explained in more detail in section 3, the Buy Back Remedy could be effected without material composition, asset, or consequential risks for the GWM business – to the extent that the CMA considers any such risks exist, these are assumed by FNZ. The purchaser will be able to take all GWM and shared assets required to preserve the GWM business' competitive potential, and [REDACTED] the transaction can be implemented in a reasonable timeframe without complexity. FNZ is committed to continued pragmatism and flexibility to accommodate the requirements of the CMA and potential purchasers, to ensure the effectiveness of the Buy Back Remedy.
- 1.4 That said, section 4 outlines some modest but important refinements and clarifications that FNZ considers would further optimise the effectiveness and proportionality of the Buy Back Remedy, to the benefit of the purchaser as well as CM and GWM customers. In particular, FNZ considers it important to clarify a (limited) list of core, proprietary assets belonging to the CM division which FNZ must receive as part of the buy-back to be able to maintain and develop the CM customer proposition.
- 1.5 The Buy Back Remedy is the least intrusive option to effectively address the alleged SLC. In contrast, a full divestment of GBST would impose disproportionate costs on both FNZ and CM customers. Requiring a more onerous remedy, when there is a less intrusive but equally effective alternative, would be unlawful and contrary to the CMA's Remedies Guidance.<sup>1</sup> This is explicitly recognised by the Remedies Paper, which identifies the Buy Back Remedy as *'the least onerous effective remedy'* (para 1.237).

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<sup>1</sup> CMA Guidance on Merger Remedies (CM87), 13 December 2018, paras 3.4 and 3.6.

## 2. The Buy Back Remedy would be an effective remedy

2.1 FNZ agrees with the CMA that the Buy Back Remedy '*would be an effective remedy*<sup>2</sup> that would address any SLC in the UK wealth management space. In particular, this remedy ensures that the GWM business will: (i) continue as an independent and effective competitor; (ii) remain financially viable; and (iii) as a result, be commercially attractive to a range of suitable purchasers.

*The GWM business will continue to operate as an independent and effective competitor*

2.2 Under the Buy Back Remedy, FNZ would retain only the following core CM assets:<sup>3</sup>

- (A) All CM customer contracts;
- (B) The following core proprietary CM software (source code and IP): [REDACTED]
- (C) Any other assets (including [REDACTED] that support CM customers) that the purchaser does not wish to retain.

2.3 All other assets (including all shared IT infrastructure and IP, [REDACTED] these, as well as all back-office functions, that the purchaser wishes to take) can be acquired, at the purchaser's option, to support the GWM business, which would therefore continue to operate, as it does today, as an independent competitive force in UK wealth management. Importantly, it will continue to be able to meet the service standards currently offered to GWM customers: customers will be served using the same GBST staff and infrastructure, under the same GBST brand - to which the purchaser will have exclusive, worldwide rights.<sup>4</sup>

*The GWM business will remain financially viable*

2.4 FNZ's pro forma financial analysis has demonstrated that the GWM business generates the majority of GBST's revenues and would remain profitable on a standalone basis even if it retained [REDACTED] of all costs not attributed by GBST to either the GWM or CM divisions.<sup>5</sup> The Remedies Paper also acknowledges, at paras 1.118 and 1.121, that this division is currently profitable.

2.5 Moreover, the purchaser will be able to determine the asset perimeter and cost base to tailor the package to its business model and requirements. This will allow the purchaser to maximise efficiencies and cost savings when integrating GWM, to further enhance the financial viability of the GWM business, which will not be left '*on a weaker financial footing relative to the pre-merger situation*' (para 1.120). The Remedies Paper rightly identifies, at para 1.122, that any financial risk of the Buy Back Remedy is mitigated by: (i) the ability of the purchaser to select those assets that best suit its infrastructure and business model,

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<sup>2</sup> Remedies Paper, para 1.200. FNZ also continues to believe that the sale of GWM (Option A in the Remedies Paper) would have been an equally effective remedy, but FNZ's response focuses on the Buy Back Remedy (Option B in the Remedies Paper).

<sup>3</sup> FNZ's response to the RFI dated 3 March 2021, para 1.2.

<sup>4</sup> See, for example, page 1 of FNZ's clarifications to the GBST submission of 11 March, dated 30 March 2021.

<sup>5</sup> For further detail, see the transcript of the Oral Representations of 2 March 2021.

and control the business cost base; and (ii) the CMA approval requirement, which allows the CMA to veto any sale that would render GWM unprofitable.

*The GWM business will be commercially attractive to a range of suitable purchasers*

2.6 Given that the GWM business would remain an effective, independent, financially viable competitive force (including in the UK market), it would be an attractive asset for a range of suitable purchasers, such that purchaser risk does not arise. Indeed, FNZ [REDACTED] following publication of the CMA's final report in November – [REDACTED].<sup>6</sup> FNZ expects [REDACTED] high levels of interest in the GWM business if a sale process were formally launched (including [REDACTED] from trade buyers and financial sponsors):

- (A) *Trade buyers:* The Remedies Paper notes that the CMA had '*received some evidence during the Phase 2 Inquiry from [REDACTED] that suggest they would be interested in the global Wealth Management business*' (para 1.148). Further, in the week preceding the Oral Representations of 2 March 2021, FNZ [REDACTED] strategic buyers would be expected to generate substantial cost, revenue and technological synergies, meeting or exceeding current synergies between the GBST CM and GWM divisions.
- (B) *Financial sponsors:* FNZ [REDACTED]. Even those financial sponsors that do not yet possess '*complementary operations and capabilities*' (see para 1.154 of the Remedies Paper) can provide significant added value to the GWM business through their extensive transactional experience, a track record of accelerated, value-generating business transformation projects (in the UK market and internationally) and very substantial financial means. These resources and know-how would be as relevant as the expertise of a trade buyer in allowing the GWM business to invest in and enhance its customer proposition, reputation and brand (which will be transferred on an exclusive basis to the purchaser). This is illustrated by successful buy-outs by financial sponsors in the wealth management sector and wider fintech space in recent years. Examples include: (i) Allfunds, which was acquired by Hellman & Friedman and Singapore's GIC sovereign wealth fund from Santander and Intesa Sanpaolo in 2017 for €1.8 billion, and has recently executed an initial public offering valuing the company at c. €7.2 billion;<sup>7</sup> (ii) Avaloq, which was sold to NEC Corporation by Warburg Pincus in 2020 after successfully helping to fund and grow the business;<sup>8</sup> (iii) Equiniti, which was carved out from Lloyds bank by Advent International in 2007 and, following significant investment of c. £85 million, floated on the LSE in 2015 with a valuation of c. £600 million;<sup>9</sup> and (iv) Worldpay Group (a payments processor), which was acquired by Advent

<sup>6</sup> See slide 45 of the slide deck delivered to the CMA at the Oral Representations of 2 March 2021. [REDACTED]

<sup>7</sup> See <https://www.ft.com/content/b2f0b028-9f3d-4ccb-af92-70fe4ee9e7be>

<sup>8</sup> Following announcement of the NEC deal, the Avaloq team thanked Warburg Pincus '*for its valuable strategic advice and continued support during our successful partnership.*' See <https://www.privateequitywire.co.uk/2020/10/05/290440/nec-acquires-avaloq-warburg-pincus>

<sup>9</sup> See <https://www.ft.com/content/728ac1c4-723c-11e5-bdb1-e6e4767162cc>

International and Bain from RBS for c. £2 billion in 2010, and became the biggest UK IPO in 2015 with market capitalisation of c. £4.8 billion.<sup>10</sup>

2.7 In light of [REDACTED], FNZ agrees with the CMA's assessment (at para 1.151) that '*there are likely to be purchasers interested in acquiring the GWM business.*' For further reference, [REDACTED] are provided at **Annex 1**.

**3. The Buy Back Remedy would be relatively straightforward to implement, without material composition, asset or consequential risks to the GWM business**

3.1 The Remedies Paper considers concerns expressed by GBST and certain third parties with respect to potential composition, asset and consequential risks to the GWM business that might arise from an alleged '*material level of integration*' (para 1.113) between the CM and GWM divisions. The Remedies Paper also considers, at para 1.167, potential concerns over the '*feasibility and practicality*' of separating GWM and CM in a way that retains the GWM business' competitive capability. FNZ considers that these concerns are misplaced. [REDACTED],<sup>11</sup> FNZ expects the Buy Back Remedy to be relatively straightforward to implement in a way that protects the GWM business' competitive position - but most importantly, even if the CMA considers that there are implementation risks, the Buy Back Remedy ensures that these are held exclusively by FNZ. This is explained in more detail below.

*The Buy Back Remedy removes any composition risks for the GWM business: the transaction scope will allow the GWM business to continue as an effective competitor*

3.2 The Buy Back Remedy protects the ability of the GWM business to compete by ensuring that any composition risks fall solely on FNZ.

3.3 First, a significant degree of separation in fact already exists between GBST's GWM and CM divisions. They offer distinct customer propositions to separate client bases, using different core software platforms and brands (*i.e.* Composer for GWM and Syn~ for CM), and are serviced by separate, dedicated organisational units.<sup>12</sup> This is set out clearly in the [REDACTED]

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<sup>10</sup> See <https://www.marketwatch.com/story/worldpay-prices-ipo-floats-in-biggest-london-listing-in-2015-2015-10-13>

<sup>11</sup> The CMA notes [REDACTED] at para 1.132 of the Remedies Paper, acknowledging that [REDACTED]

<sup>12</sup> The Remedies Paper notes that GBST's time sheets demonstrate that projects were staffed predominantly from personnel from one division with minimal cross over with the other division (see para 1.91).

- 3.4 This extensive degree of separation is also consistent with the [REDACTED].<sup>13</sup>
- 3.5 The Remedies Paper cites several examples where GBST has attempted to demonstrate that shared infrastructure exists as between the CM and GWM divisions. However, a proper analysis of these examples makes clear that these will not impede separation of the GWM and CM divisions (particularly where, as FNZ proposes, the separation will be implemented after appropriate separation planning by expert consultants). In particular:
- (A) GBST claims that there is shared IT infrastructure (including premises, data centres, servers, cloud services, internal business systems, project management systems, source code control and development environments – see paras 1.99 *et seq.* of the Remedies Paper). However these are clearly not core, proprietary assets that contribute to the competitive differentiation of GBST’s GWM or CM customer proposition. Rather, they make up a commoditised infrastructure base that is common to practically all software and (financial) technology firms.
  - (B) GBST also refers to (unspecified) ‘*layers of underlying software*’ (para 1.109) which are allegedly common across the GWM and CM divisions. FNZ has already described in detail the secondary role and auxiliary functionality of the software add-ons specifically cited by GBST in its submissions (i.e. [REDACTED]).<sup>14</sup> Similarly, [REDACTED] (cited at para 1.102) is a widely-used third-party agile and software development project management product. FNZ also has access to, and uses [REDACTED] throughout its software development life cycle, so there would be no need to ‘*split this application*’ or ‘*building a new system.*’
  - (C) [REDACTED] For example, [REDACTED] (cited at para 1.109) is one of the most common programming languages in the world, and is understood by hundreds of software engineers and developers employed by FNZ. Similarly [REDACTED] (cited at para 1.89(a)) are standard add-ons to any competitive software product in the wealth management platform sector; and [REDACTED] (cited at para 1.90 (c) and (d)) with transferrable skills are employed by every company in the wider tech industry, and widely available in the labour market. Indeed, GBST itself has outsourced a large proportion of its R&D activities to around 100 external contractors in Vietnam supplied by TMA Solutions (and has allocated this third-party ‘Offshore Development Centre’ a key role in Project E-volve).<sup>15</sup>
- 3.6 The examples to which GBST refers reflect common integrations and pooled resources that would be expected in any software or technology business that offers more than a single product or service. Separation of resources of this nature would not discourage (or impose disproportionate costs on) such firms when engaging in M&A activity.<sup>16</sup> Certainly,

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<sup>13</sup> For example, [REDACTED] that the GBST CM IP operated as standalone products, entirely separate from GBST’s wealth management software, serving very different customer requirements.

<sup>14</sup> See para 6.2 of FNZ’s response to the RFI dated 23 February 2021.

<sup>15</sup> GBST submission on remedies and the CMA’s emerging thinking paper, 11 March 2021, paras 5.1 – 5.2.

<sup>16</sup> FNZ has provided numerous examples of carve-outs in the software and technology space in recent years – please see slide 44 of the slide deck delivered at the Oral Representations of 2 March.

none of the examples raised by GBST suggests there is meaningful integration between any core assets of the CM and GWM divisions – in fact, if these are the only integrations that GBST has been able to identify, this supports FNZ's assessment that the separation would be relatively straightforward. FNZ (or the purchaser of the GWM business) could easily replace such supporting assets using in-house resources, or procure these externally, off-the-shelf from third parties. Indeed, the CMA has noted that it '*pressed GBST for specific examples [of the extent and materiality of the level of integration within GBST's business], and available supporting documentation to corroborate its assessment. GBST provided examples of shared infrastructure that would require separating but the evidence that demonstrates the risks of separating such infrastructure has, to date, been limited*' (para 1.101).

- 3.7 Second, even if there are shared resources, FNZ will not be able to determine the transaction perimeter - beyond a limited set of 'non-negotiable' CM-only assets identified by FNZ as necessary to maintain service levels for CM customers (**Core CM Assets**).<sup>17</sup> Instead, FNZ will provide a (necessarily sophisticated, well-resourced) purchaser full discretion to determine allocation of all GBST assets (including shared resources such as IP/IT infrastructure, [REDACTED] and corporate functions like HR, legal, finance) after appropriate due diligence - with the exception of the Core CM Assets. The CMA acknowledges that '*[t]his mitigates the risks associated with the potential loss of expertise for the purchaser to a material extent and would transfer this form of composition risk to FNZ, as owner of the Capital Markets business*' (para 1.94).
- 3.8 In addition, and as set out at para 1.183 of the Remedies Paper, CMA approval of the transaction structure and asset perimeter will be required, both at the Final Undertakings stage (which will delimit the permissible scope of commercial negotiations, early in the sale process) and at signing (when definitive terms, including a precise list of assets subject to the buy-back, will have been agreed between FNZ and a purchaser). The CMA (and the purchaser) will also be able to consult GBST management as well as independent separation consultants on the proposed transaction parameters, to ensure that the GWM business has everything needed to operate successfully. FNZ has assured the CMA that it intends only to retain the core assets necessary to operate the CM business. However, these additional checks and balances, effective throughout the divestment process, will: (i) ensure that FNZ is, in any case, unable to leverage the competitive dynamics of the auction to achieve disproportionately favourable commercial terms, to the detriment of the competitiveness of the GWM business; and (ii) simultaneously retain the flexibility afforded to the purchaser to tailor the transaction (including the asset and cost base) to its needs and business model.
- 3.9 In sum, the purchaser, GBST management and the CMA will together be able to determine exactly which shared assets the GWM business and the purchaser will receive as part of the Buy Back Remedy, effectively transferring any and all composition risk to FNZ (which FNZ is confident is not, in any event, material).<sup>18</sup> The CMA summarises the position well: '*Put simply, the proposed implementation of the remedy would not allow FNZ to leave the purchaser short of shared resources and infrastructure*' (para 1.111).

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<sup>17</sup> Please see para 1.2 of FNZ's response to the RFI dated 3 March 2021, and section 4 below.

<sup>18</sup> Remedies Paper, para 1.94.

*The Buy Back Remedy removes any separation or asset risks: the Buy Back Remedy will be relatively straightforward to implement without detrimental impact on the GWM business*

- 3.10 The Remedies Paper identifies, at para 1.126: (i) disruption of GBST staff and GWM customers and (ii) conflicting incentives on FNZ's part regarding setting up a strong wealth management competitor (and FNZ access to sensitive information relating to the GWM business), as sources of potential asset risk. [REDACTED]. The Buy Back Remedy can address each of these potential concerns.
- 3.11 First, the Buy Back Remedy will minimise disruption to GBST staff and GWM customers during the separation process, as follows:
- (A) GBST's resources will not be diverted in any material way from running the GWM business in order to implement the Buy Back Remedy.<sup>19</sup> Extensive separation support would be provided by external consultants, and paid for by FNZ, allowing GBST staff to continue to focus on day-to-day commercial responsibilities within the GWM business, and maintain GBST's current service standards.<sup>20</sup> The Remedies Paper itself acknowledges that third-party support '*may be important in limiting it [the burden from GBST], and thereby mitigating potential disruption*' (para 1.186). In any case, the Buy Back Remedy would not be materially more burdensome for GBST staff than a full sale – the Buy Back Remedy would, for example, require less extensive due diligence than a full sale (due to the narrower asset perimeter) to offset the additional (but still, in FNZ's view, limited) separation work.
  - (B) GBST's suggestion, at para 1.166, that separation would inevitably require specialist internal technical expertise is not credible given: (i) the limited interdependencies between the CM and GWM divisions;<sup>21</sup> and (ii) FNZ's offer to transfer these (limited) shared assets wholesale to the purchaser. Consultants like [REDACTED] and FNZ's in-house M&A team<sup>22</sup> are highly experienced in planning and preparing for business separation – GBST has provided no evidence that suggests the Buy Back Remedy will require complex division or restructuring of integrated proprietary assets and resources that is unusual in carve-out transactions, or could require specialist technical expertise outside the scope of [REDACTED] and FNZ's capabilities.<sup>23</sup> In reality, any migrations and separation work streams would only affect commoditised shared assets only (e.g. HR, payroll data, off-the-shelf third party IP).
  - (C) Further, as a result of the broad transaction perimeter around the GWM division (also including shared assets), GWM customers will continue to be served by the

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<sup>19</sup> Remedies Paper, para 1.136.

<sup>20</sup> For further detail, see for example FNZ's response to question 1 of the RFI dated 23 February.

<sup>21</sup> See paras 3.3-3.6 above.

<sup>22</sup> The CMA notes FNZ's extensive M&A capabilities and experience at para 1.132 of the Remedies Paper, acknowledging that FNZ's acquisitions in the wealth management sector (which include carve-outs similar to the Buy Back Remedy) '*have been successfully integrated into FNZ's wider business.*'

<sup>23</sup> For further detail on [REDACTED], see Annex 1 to FNZ's response to the RFI dated 23 February 2021.



same GBST staff using the same infrastructure, under the same GBST brand (to which the purchaser will have exclusive, worldwide rights). Therefore, there will be no change at all in the GWM customer proposition or experience – it will be business as usual throughout the Buy Back Remedy process and beyond.

3.12 As such there is no risk that the Buy Back Remedy will cause damage to the '*positive reputation and track record*' of GWM, which the CMA identifies as important considerations when competing for UK wealth management customers.<sup>24</sup>

3.13 Second, contrary to GBST submissions at para 1.80(c), FNZ would not gain access to any shared IP (or insight into commercially sensitive information relating to the GWM business) during separation planning and preparation, because the Interim Order would remain in place until Global Completion. FNZ plans to appoint external advisers (including financial, legal and separation advisers) to take charge of the separation planning and preparation, overseen by the Monitoring Trustee, removing any scope for FNZ to gain access to the GWM business' commercially sensitive information. Further, FNZ would not retain any IP or trade secrets relating to the GWM division (e.g. Composer, Catalyst) post-Global Completion – the purchaser would acquire these assets in their entirety. FNZ would simply not receive access to any commercially sensitive assets or information that could undermine the GWM business, during separation planning and preparation or subsequently. The Remedies Paper acknowledges that where the purchaser '*determines whether or not to retain any shared assets or people, this should mitigate this risk [sharing of commercially sensitive information] for the purchaser of the business*' (para 1.144).

3.14 [REDACTED]

*The Buy Back Remedy removes any consequential risks: no ongoing links between FNZ and the purchaser are contemplated*

3.15 The Buy Back Remedy would also resolve any potential consequential risks because any relationship, reliance or co-operation between the purchaser and FNZ flowing from the transaction would be of limited scope and duration.

3.16 First, as discussed above, the purchaser will receive all assets required to run the GWM business independently and effectively, without the need for any post-Global Completion transitional services from FNZ. Any such transitional services would be provided to FNZ by the purchaser (and not vice-versa), and only at the full discretion of the purchaser. This is because FNZ [REDACTED], without material disruption to CM customers.<sup>25</sup> The scope of any transitional services would be likely limited to supporting the transfer of data to FNZ's systems and shared corporate services such as HR / payroll support.<sup>26</sup> This would not

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<sup>24</sup> Remedies Paper, para. 1.128. The Remedies Paper (para 1.126) also notes concerns about the long period of uncertainty since the acquisition of GBST by FNZ. However, any uncertainty resulting from the GBST business operating subject to an Interim Order for 18 months is not increased by the Buy Back Remedy. If anything, successful implementation of the Buy Back Remedy – and transfer of the GWM business to a new purchaser – will resolve this uncertainty and allow GBST management to focus on GWM's continued success in the UK wealth management market.

<sup>25</sup> For further detail, please see FNZ's response to question 2 of the RFI dated 5 March.

<sup>26</sup> For further discussion, please see FNZ's responses to question 1(a) of the Remedies RFI dated 5 March 2021, question 4 of the Remedies RFI dated 23 February 2021, paras 1.15 *et seq.* of FNZ's response to the Remedies RFI dated 2 February 2021, and the transcript of the Oral Representations of 2 March 2021.

disrupt the GWM business, or distract GBST staff from servicing GWM customers to the required standards – any such support would be the same (or less) than is already being provided by GBST to its CM division.

- 3.17 Second, the separation planning, preparation and execution will be primarily carried out by FNZ's external advisers, such that separation support required from GBST management will be limited. Further, given that the purchaser will be acquiring a smaller proportion of the GBST business under the Buy Back Remedy than in the context of an outright sale, the degree of sale process support (e.g. facilitating due diligence; access to management and books and records *etc.*) required of GBST management would in fact be lower than in the case of a full divestment.
- 3.18 Provided that FNZ is able to commence appropriate separation planning and preparation during the sale process (see section 4 below), it expects that the time period between Global Completion and completion of the buy-back (and therefore the duration of any transitional services received by FNZ and ongoing separation support) will in any event be short.<sup>27</sup> Indeed, FNZ is incentivised to complete the buy-back, and move services supporting CM customers within the FNZ business, as soon as possible, in order to protect the value of the acquired CM customer assets.

Other FNZ observations on the implementation of the Buy Back Remedy

- 3.19 The CMA has invited views, at para 1.201 of the Remedies Paper, on certain discrete aspects of the implementation of the Buy Back Remedy – FNZ's responses to these queries are provided at **Annex 2**.

**4. Only modest refinements are required to ensure the success of the Buy Back Remedy**

- 4.1 FNZ is of the view that certain modest but important refinements and clarifications would enhance the effectiveness and proportionality of the Buy Back Remedy, and address the CMA's residual concerns as expressed in the Remedies Paper. These modifications will ensure that the Buy Back Remedy delivers the intended benefits to the purchaser, protects the competitive potential of the GWM business, and prevents any avoidable disruption to the CM customers.

Clarification of the CM IP asset perimeter

- 4.2 FNZ has previously identified to the CMA a list of core proprietary IP that FNZ would need to retain following the Buy Back Remedy to support CM customers (**Core CM IP**).<sup>28</sup> The Core CM IP includes: [REDACTED]. While FNZ has shown pragmatism and flexibility in giving the purchaser the option to take any other GBST assets, FNZ needs to acquire the legal title to the Core CM IP (including the source code) to be able to maintain service levels for CM customers, and further develop the CM division. As such, it represents the minimum

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<sup>27</sup> FNZ also expects that the separation planning and preparation work carried out pre-Global Completion will reduce the time period for any transitional services.

<sup>28</sup> FNZ response to the RFI dated 3 March, para 1.2.

asset perimeter required for the remedy to be viable and acceptable from FNZ's perspective.

- 4.3 The Remedies Paper refers to GBST's submission that *'the proprietary products listed by FNZ [i.e. the Core CM IP] are dependent on layers of underlying software which are common across GBST's Capital Markets and Wealth Management businesses'* (para 1.172). The Remedies Paper later states that *'FNZ have clarified that they are 'ready to leave any layers of underlying software which are common across the GWM and CM businesses with the purchaser, along with all SMEs servicing these.'* Given this clarification and GBST's concerns, we think that the proprietary Capital Markets software to be included in the perimeter of the carve-out should be limited to any proprietary Capital Markets software, including source code of and IP in that software, which is used exclusively by the Capital Markets division' (para 1.172).
- 4.4 First, FNZ has consistently maintained that the Core CM IP are 'non-negotiable' elements of the package that it must retain to protect the CM customer proposition. FNZ's offer to leave with the purchaser any layers of underlying software common across the GWM and CM businesses was expressly made on the basis that any such shared software was limited to *'generic and commoditised IP'* (easily replaceable by FNZ), which did not include the Core CM IP.<sup>29</sup>
- 4.5 Second, the Remedies Paper does not point to any credible evidence from GBST that demonstrates that the Core CM IP is in any way relevant to the GWM business. Indeed, this is contradicted by evidence in [REDACTED], which clearly shows that the GWM and CM divisions use distinct core technology, and that none of the Core CM IP overlaps with the technology stack that supports the GWM business.<sup>30</sup> Even if GBST has made additions to the CM Core IP since the 2019 workshops to introduce common software, FNZ does not expect any such components to be complex or to represent points of competitive differentiation for either the GWM or CM divisions, and believes any integrations can be addressed pragmatically – for example, by consulting an independent Java expert on replicating any such add-ons for FNZ.

[REDACTED]

- 4.6 Rather than relying on general, unsubstantiated statements from GSBT, it is incumbent on the CMA to adequately investigate the nature and implications of any IP interdependencies affecting Core CM IP, as follows:
- (A) First, the CMA must objectively verify and identify any alleged *'common layers of underlying software'*. For example, an independent expert could review the source

<sup>29</sup> See FNZ's clarifications to the GBST submission on remedies and the CMA's emerging thinking paper, dated 30 March, pp. 9 – 10: *'[...] any layers of underlying software which are common across the GWM and CM businesses are limited, generic and commoditised IP which FNZ is ready to leave with the purchaser, along with all SMEs servicing these. These include the API Services Framework, GEL Framework, Nebula, the BIR (i.e. Business Intelligence Reporting) tool, TaxIntell and Catalyst. To the extent used by the retained CM business, these resources can easily be duplicated or replaced by FNZ in-house or using off-the-shelf solutions from third party suppliers. Indeed, [REDACTED]*

<sup>30</sup> Although [REDACTED] form part of the CM technology stack and are required to service CM customers, FNZ has not included these products in the list of Core CM IP, and is happy to transfer these to the purchaser. This is because FNZ can replace these software without material difficulty and in an expedited manner using in-house resources or external procurement. FNZ is therefore willing, in the spirit of constructive engagement with the Buy Back Remedy, to provide the purchaser flexibility to take this IP, should it wish to do so. For the Core CM IP, this will not be possible – FNZ will require legal title to this software to be able to maintain CM customer service standards.

codes of the Core CM IP to make this determination. FNZ would be willing to assume the cost of any such assessment.

- (B) Second, even if, hypothetically, GBST's claim that some layers of underlying software were common to both sets of 'technology stacks' were objectively substantiated, the relevant question would be whether this was of sufficient importance that FNZ's ownership of products containing those layers of software could have a material impact on the competitiveness of the GWM business (e.g. due to its operational impact or commercial sensitivity). Only then, could this impact the effectiveness of the remedy.
- (C) Third, even if the first two tests were met, the CMA must consider whether there are any solutions, short of a transfer of Core CM IP to the purchaser that could mitigate the impact of any IP interdependencies for both the GWM and CM divisions. If the impact on the Core CM IP is limited, FNZ would be willing to forgo any rights or access to such shared underlying software. If this is not possible without undermining the CM customer proposition, there are other solutions: for example, any common underlying software could be licensed to FNZ from the purchaser with closely circumscribed use terms (e.g. NDAs and ring-fencing arrangements limiting visibility of, and access to, such IP to select FNZ individuals without commercial or strategic decision-making responsibilities).
- (D) Fourth, if the CMA is satisfied that there is a material layer of common underlying software affecting the Core CM IP, and there is no effective alternative to a full transfer of (some or all) Core CM IP to a purchaser to mitigate material risks to the competitiveness of the GWM business, the CMA must then consider whether such risks are sufficiently material to justify (and make proportionate) a more costly, intrusive divestment requirement also including Core CM IP.

- 4.7 In reality, there is nothing in GBST's submissions to indicate that there is any meaningful integration between any core IP assets of the CM and GWM divisions; all the evidence suggests that these are technologically distinct – or at most, that any common components could be easily replicated or replaced by FNZ.

*FNZ should have the opportunity to commence separation planning and preparation ahead of Global Completion*

- 4.8 The Remedies Paper quite rightly acknowledges that separation planning will need to take place prior to Global Completion.<sup>31</sup> FNZ notes that potential purchasers will expect to receive a separation blueprint early on in the sale process to consider alongside the due diligence information, to ensure they have clarity on transaction parameters (including the asset perimeter and timeline). Allowing FNZ's external advisers early access to GBST systems and data to facilitate preparation of such a blueprint will give comfort to bidders, improve the outcomes and efficiency of the sale process, and inform (rather than take away from) the purchaser's discretion to determine the asset perimeter later in the process. Any concerns about access to information prior to Global Completion can be addressed by

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<sup>31</sup> The Remedies Paper notes, at para 1.180, that Global Completion would occur after '*agreement over the perimeter of the assets that FNZ will buy back and the perimeter of any separation resource or transitional services that will be required from GBST (and how FNZ will support separation)*' (emphasis added).

ensuring that this process is led by external third party advisers – enabling the Buy Back Remedy to proceed quickly and more efficiently, while still ‘safeguard[ing] the competitive potential’ (see para 1.168 of the Remedies Paper) of the GWM business. This separation planning and preparation work would also not impose a material burden on GBST – see para 3.10(A) above.

- 4.9 FNZ also intends to begin internal preparatory work as soon as possible, to ensure its systems are ready to receive Core CM IP, data, systems and contracts at, or as soon as possible after, Global Completion, to ensure minimal disruption for CM customers. Given that [REDACTED], putting FNZ in a position to assume responsibility for these as early as possible after Global Completion will be the most effective way to protect the CM customer proposition. In order to be in a position to complete the buy-back soon after Global Completion, it is important that FNZ (through its external advisers) is able to commence appropriate planning, and access information relevant to, transferring the CM customers, IP and data. As indicated above, this will also minimise the scope and duration of any transitional support received by FNZ post-completion of the buy-back.
- 4.10 The proposed Buy Back Remedy transaction process and timeline is set out in Figure 5 below.

[REDACTED]

Appointment and mandate of the Divestiture Trustee

- 4.11 First, while FNZ is confident that the sale can be completed in a reasonable timeframe, as during the original Phase 2 process, it is important that the ‘Initial Divestiture Period’ (identified at para 1.191 of the Remedies Paper) recognises that there may be delays outside of FNZ’s control due to regulatory conditions - in particular, reviews by the Australian Foreign Investment Review Board (**FIRB**). It would not be appropriate for the Divestiture Trustee to assume responsibility for the sale if the only delay to Global Completion was due to outstanding regulatory approvals. The Initial Divestiture Period should therefore apply subject to any mandatory regulatory approvals, including FIRB. FNZ expects that, as before, this issue could be addressed through the inclusion of appropriate wording in the Final Undertakings.
- 4.12 Second, the CMA has indicated (at paras 1.193 – 1.194) that, in the (unlikely) event that a Divestiture Trustee was required, its mandate would be to immediately sell the entire GBST business, with no provision for a sale-back to FNZ of the CM division – effectively a ‘crown jewels’ provision. Given that the CMA accepts, at para 1.237, that the Buy Back Remedy would be as effective but less costly and more proportionate than a full sale, any Divestiture Trustee should in the first instance be required to pursue the Buy Back Remedy.
- 4.13 This would:
- (A) Be in line with the CMA’s Remedies Guidance (which indicates that the default role of a Divestiture Trustee is to dispose of the remedy package that was the subject of the initial divestiture period)<sup>32</sup> and CMA precedent - FNZ has not identified any

<sup>32</sup> See para 5.43 of the Remedies Guidance, which provides that ‘if the merger parties cannot procure divestiture to a suitable purchaser within...the specified divestiture period at Phase 2, then, unless this period is extended by the CMA,

CMA merger reviews where a partial divestment remedy was found to be effective, but a ‘crown jewels’ divestiture by a Divestiture Trustee was immediately mandated upon expiry of the initial divestiture period for the partial divestment;<sup>33</sup>

- (B) Mitigate the risk that [REDACTED]; and
  - (C) Allow Global Completion to occur in a shorter timeframe, as the Divestiture Trustee could simply pick up where FNZ had left off in the sale process, as opposed to having to reset and restart the auction (e.g. by developing a new due diligence package; drafting revised transaction documents; and (likely) having to address a different purchaser pool) – which would be required to reflect the new transaction perimeter.
- 4.14 Any potential concern that this could hinder timely implementation of an effective remedy by the Divestiture Trustee (e.g. due to difficulties encountered in separating the GWM and CM assets) is effectively mitigated by the wide discretion afforded to the Divestiture Trustee and the purchaser to determine and adjust the asset perimeter (only excluding the Core CM Assets).
- 4.15 FNZ also notes that the Remedies Guidance makes clear that the ‘*divestiture [by an independent divestiture trustee] will be at the best available price in the circumstances*’ (para 5.43) – FNZ expects that this stipulation would form part of the Divestiture Trustee’s mandate.

## 5. Requiring a full divestment would be wholly disproportionate

- 5.1 As well as being fully effective in addressing any SLC, the Buy Back Remedy is also clearly less onerous and so more proportionate than a full divestment.<sup>34</sup>
- 5.2 The Remedies Paper notes that certain third parties have argued in favour of a full sale of GBST due to concerns in relation to the effectiveness and costs of the Buy Back Remedy. FNZ agrees with the CMA’s view that ‘*only limited weight [should be placed] on this third party evidence*’ not only because (as the CMA acknowledges) ‘*third parties are not particularly well placed to provide specific insight into these [separation] issues*’ (para 1.31

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*the CMA may require the parties to appoint an independent divestiture trustee to dispose of the package within a specified period.’*

<sup>33</sup> For example, under the Final Undertakings in the viagogo/StubHub review, the Divestiture Trustee would be required to effect the final disposal of the StubHub International Business (i.e. the partial divestment) upon expiry of the Divestiture Period, rather than immediately and automatically reverting to a full divestment – see the Final Undertakings given by the StubHub Group to the CMA, dated 9 April 2021, para 10. This is despite the fact that the partial divestment in that case is more complex, and the integrations that must be unwound are more extensive, than in the case of GBST. For more detail, see page 12 of FNZ’s clarifications to GBST’s submission on remedies and the CMA’s emerging thinking paper, dated 30 March 2021.

<sup>34</sup> A full divestment would also impose significant additional costs on: (1) FNZ – including the loss of the opportunity to develop its Australian (CM) business, which was [REDACTED], when the CMA’s SLC finding relates solely to the UK wealth management market; and (2) the merged entity’s CM customers globally - comprising lost customer benefits resulting from the merger. In particular, a full divestiture would deprive Australian CM customers of cost reductions from synergies generated by [REDACTED].

and footnote 19) but also because their views must be considered in the context of [REDACTED]

- 5.3 First, FNZ has explained that [REDACTED] Third, [REDACTED]<sup>35</sup> – as FNZ has noted, due to the CMA's Interim Order, it has not had the opportunity to explain its CM strategy to customers in order to alleviate any such concerns. FNZ intends to begin working closely with CM customers as soon as possible to ensure continuity of service and improvements to GBST's existing offering, at or soon after Global Completion.
- 5.4 In conclusion, as the CMA acknowledges, the Remedies Guidance requires the CMA to accept the least intrusive, most proportionate and fully effective remedy available.<sup>36</sup> It is therefore incumbent on the CMA to accept the Buy Back Remedy, should the CMA confirm its finding of an SLC in its Final Report.

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<sup>35</sup> GBST also raised the post-closing impact of the Buy Back Remedy on CM customers, arguing (at para 1.161 of the Remedies Paper) that it *'exposes its Capital Markets customers [REDACTED] FNZ agrees with the CMA's assessment (in para 1.226 of the Remedies Paper) that, because FNZ has [REDACTED], it will be 'able to continue to service such customers effectively...As such, in our view, to the extent that such risks arise they are likely to be low. They may also be further reduced by the nature and scope of any agreed (subject to CMA approval) transitional services and/or separation resource/support committed/provided by GBST, the purchaser and/or FNZ in connection with separation.'* Further, addressing specifically the concerns expressed by the ASX at para 1.161 of the Remedies Paper, the CHESSE programme (which aims to adopt blockchain technology for ASX's equity clearing and settlement system) will not be implemented until 2023 due to delays unconnected with GBST's CM services – see <https://www.afr.com/companies/financial-services/asx-delays-chess-blockchain-reboot-another-year-20201028-p56985>. Therefore, the Buy Back Remedy will have no impact on CHESSE's delivery timeline. [REDACTED]. For further detail on FNZ's [REDACTED], see FNZ's response to question 2 of the RFI dated 5 March.

<sup>36</sup> Remedies Guidance, paras 3.4 and 3.6.

## **Annex 1**

[REDACTED]



## Annex 2

## Other FNZ observations on the implementation of the Buy Back Remedy

1. The CMA has invited views, at para 1.201 of the Remedies Paper, on the following:<sup>37</sup>
  - (A) *'What, if any, further monitoring and enforcement processes the CMA should put in place to oversee the separation process, noting that GBST would be under independent ownership at such a point?'* FNZ considers that this will be unnecessary, as the CMA will have the opportunity to review and approve the separation blueprint and transaction documents, which will contractually govern separation work, including any required post-Global Completion. Until Global Completion, the Interim Order and the Monitoring Trustee will ensure that the competitiveness and integrity of the GWM business is protected. The Purchaser will also be incentivised to ensure the GWM business has sufficient resource to remain competitive.
  - (B) *'Are there areas where further, or less, discretion should be given to a purchaser in relation to (a) the assets to be sold back, and (b) the scope and amount of any (i) separation support; and (ii) transitional services provided to FNZ?'*
    - (i) FNZ has offered to give the purchaser full discretion to determine the assets to be sold back (with the exception of limited, Core CM Assets, which will be agreed with the CMA), and the scope and amount of transitional services provided to FNZ. This will ensure that any composition, asset and consequential risks are held by FNZ, such that:
      - (i) the divestment package will be commercially attractive to buyers; and
      - (ii) the GWM business will remain an independent, effective competitive force in the UK wealth management sector.
    - (ii) GBST should provide reasonable separation support to facilitate the transaction process – as is customary in any transaction (e.g. reasonable access to books and records for FNZ's external advisers, population of the data room etc.). The due diligence requirements for the Buy Back Remedy would be less than for a full divestment (given that it would focus on only the GWM business), which will materially offset the additional separation work involved in a Buy Back Remedy. The separation planning and preparation will also primarily be carried out by FNZ's external advisers, such that the burden on GBST management will be limited.
  - (C) *'Aside from prohibiting re-acquisition as is typical with merger remedies, are there any other post completion conditions that should be imposed on FNZ?'* The SLC provisionally identified by the CMA relates to the UK wealth management sector; post-Global Completion, FNZ will have no influence over the GBST GWM business, such that there should be no need for any further post-completion conditions.

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<sup>37</sup> N.B. Other requests in para 1.201 are addressed elsewhere in this response.

- (D) *‘What criteria the CMA should use in evaluating the sale and purchase agreement and related support/service agreements between FNZ and a prospective purchaser?’* FNZ suggests that (per the Remedies Guidance and the Enterprise Act 2002), the key factors are whether the Buy Back Remedy effectively addresses the SLC identified, whilst also being the least costly and intrusive, and most proportionate remedy.