

DEROGATION LETTER

IN RESPECT OF INITIAL ENFORCEMENT ORDER ISSUED PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002

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 15 January 2024

COMPLETED ACQUISITION BY SPREADEX LIMITED OF THE B2C BUSINESS OF SPORTING INDEX LIMITED (THE MERGER)

We refer to your email of 21 December 2023, 8 January 2024, 11 January 2024, and 15 January 2024 requesting that the CMA consents to derogations to the Initial Enforcement Order of 15 January 2024 (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, SpreadEx is required to hold separate the Target business from the SpreadEx business 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, SpreadEx may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 5(a), 5(f), 5(g) and 5(l) of the Initial Order

SpreadEx submits that Sporting Index Limited's parent company La Française des Jeux ('**FDJ**') decided to separate out the Business to Consumer ('**B2C**') Sporting Index brand and operations and continue with the Business to Business ('**B2B**') arm. SpreadEx submits that to achieve this, FDJ carved out the B2C business of Sporting Index Limited for the purposes of divesting it while retaining only the B2B arm of the business. Because the B2C and B2B arms of Sporting Index Limited were integrated and shared technology, employees, and operating systems, the resulting B2C carve out (which contained only those assets and employees exclusively allocated to the B2C business) comprised only the following:

- The Sporting Index Brand;
- IP;
- Domain names;

- Regulatory licences with the Financial Conduct Authority ('FCA') and Gambling Commission ('GC');
- Customer list (including all trading history to ensure SpreadEx could meet the FCA and GC requirements respectively);
- Unrecognised deferred tax losses;
- Trade debtors and trade creditors / accruals;
- Six employees (three in Customer services, two in Marketing and one in Customer Relations).

SpreadEx submits that the Target business lacks any technology platform, management, finance team, operations team, or any of the other assets, functions and employees necessary to operate a stand-alone business. As a result, SpreadEx fully integrated the Target business from the day it completed the Merger. SpreadEx and the Target business run from the same technology platform, as well as under the same policies, processes, procedures and management team. SpreadEx submits that it would not be feasible to operate the Target business separately from the SpreadEx business or to outsource any of its functions in the short term without imperilling the viability of the Target business.

SpreadEx also submits that both it and the Target business are regulated by the GC for the provision of fixed odds services, and by the FCA. It submits that in order to meet its regulatory requirements, it needs to ensure that its Compliance, Client Support, Customer Services and Sports Trading Teams (all of whom are employed by SpreadEx apart from three members of the Customer Services Team) continue to be able to access data for customers, for both SpreadEx and the Target business. SpreadEx also submits that all FCA senior management functions at the Target business are performed by SpreadEx directors or senior managers, and that given no risk management technology or staff members were purchased or transferred as part of the transaction, SpreadEx has been providing risk management services to the Target business since the acquisition so that it can effectively manage market risk and ensure that risk is maintained within FCA prescribed levels.

SpreadEx therefore requests a derogation from paragraphs 5(a), 5(f), 5(g), and 5(l) of the Initial Order in order to allow:

- (a) members of SpreadEx's Compliance, Client Support, Customer Services and Sports Trading Teams to continue to have access to the Target business' customer information in order to ensure that the Target business can continue to meet its FCA and GC regulatory obligations;

- (b) SpreadEx's directors and senior management to provide operational and regulatory oversight of the Target business while the Initial Order is in force in line with its FCA and GC regulatory responsibilities; and
- (c) SpreadEx to continue to provide risk management services to the Target business in order that the Target business can continue to provide betting services and manage risk in a manner which meets FCA regulatory requirements.

The CMA consents to SpreadEx's request for a derogation strictly on the basis that:

- (a) this derogation is strictly necessary in the short term to preserve the viability and competitive capability of the Target;
- (b) this derogation is strictly necessary to ensure the Target business can continue to meet its FCA and GC regulatory obligations;
- (c) only certain individuals, as defined in Annex 1 (the '**Regulatory Authorised Individuals**'), continue to have access to the Target business' customer information in order to ensure that the Target business can continue to meet its FCA and GC regulatory obligations;
- (d) it is strictly necessary for all Regulatory Authorised Individuals to have access to the Target business' customer information in order to ensure that the Target business can continue to meet its FCA and GC regulatory obligations;
- (e) the Regulatory Authorised Individuals will enter into non-disclosure agreements in a form agreed with the CMA, with a view to preventing the information they receive as part of their roles from being shared with any unauthorised SpreadEx individuals;
- (f) should remedial action be required by the CMA in relation to the Target business, any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the Target business for the purposes of this derogation will be returned to the Target business and any copies destroyed, except to the extent that record retention is required by law or regulation;
- (g) all electronic files and emails exchanged in the context of regulatory compliance support will be password protected, adequately ring-fenced, and only accessible to the Regulatory Authorised Individuals; and

- (h) this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

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

SpreadEx submits that as a MIFIDPRU investment firm¹ SpreadEx is subject to a number of reporting requirements under the FCA, designed to ensure the ongoing financial resilience and good health of the business, which are reported on a consolidated group basis, such as capital reporting requirements. SpreadEx submits that these are daily calculations that require visibility of the detailed financial records of both entities.

SpreadEx therefore requests a derogation from paragraphs 5(a) and 5(l) of the Initial Order in order to:

- (a) allow its financial team to continue to view detailed financial data of the Target business (the '**Detailed Financial Information**'), to enable SpreadEx to meet its regulatory reporting requirements to the FCA (the '**Detailed Financial Information Request**'); and
- (b) continue to present information to SpreadEx Directors and the Board, for both the SpreadEx and Target businesses, (the '**Financial Information Overview**') to ensure appropriate financial oversight at board level (the '**Financial Information Overview Request**').

The CMA consents to SpreadEx's request for a derogation strictly on the basis that:

- (a) the Detailed Financial Information Request is strictly necessary to allow SpreadEx to meet its regulatory reporting requirements to the FCA;
- (b) the Financial Overview Request is strictly necessary to ensure appropriate financial oversight at board level;
- (c) the Detailed Financial Information is shared only with certain individuals, as defined in Annex 2 (the '**Financial Information Authorised Individuals**');
- (d) it is strictly necessary for all Financial Information Authorised Individuals to have access to the Detailed Financial Information for the purpose of SpreadEx complying with its regulatory requirements and obligations;

¹ [MIFIDPRU investment firm - FCA Handbook](#)

- (e) the Financial Information Authorised Individuals will enter into non-disclosure agreements in a form agreed with the CMA, with a view to preventing the Detailed Financial Information from being shared with any unauthorised SpreadEx individuals;
- (f) the Financial Information Overview is shared only using the templates as agreed with the CMA;
- (g) should remedial action be required by the CMA in relation to the Target business, any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the Target business for the purposes of this derogation will be returned to the Target business and any copies destroyed, except to the extent that record retention is required by law or regulation;
- (h) all electronic files and emails exchanged in the context of the Detailed Financial Information Request will be password protected, adequately ring-fenced, and only accessible to the Financial Information Authorised Individuals; and
- (i) this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

3. Paragraphs 5(a), 5(b), 5(f), 5(g) and 5(l) of the Initial order

SpreadEx submits that the Target business is not capable of being operated on a standalone basis and that, for the reasons set out in Derogation (1), it requires extensive operational support from SpreadEx which could not feasibly be provided by a third party or parties.

SpreadEx therefore requests a derogation from paragraphs 5(a), 5(b), 5(f), 5(g), and 5(l) of the Initial Order in order to:

- (a) continue operating the Sporting Index brand;
- (b) allow the SpreadEx management team to continue to oversee operations and day-to-day work requirements of the Target business and Target business staff members;
- (c) allow certain individuals (as defined in Annex 3) (the '**Negotiations Support Authorised Individuals**') to continue to conduct any ongoing or existing negotiations with any existing or potential suppliers of the Target business;

- (d) continue to provide the Target business with ongoing odds compilation and trading services; and
- (e) continue to provide the Target business with ongoing back office and customer services support to ensure that it can remain operational.

The CMA consents to SpreadEx's request for a derogation strictly on the basis that:

- (a) this derogation is strictly necessary in the short term to preserve the viability and competitive capability of the Target business;
- (b) no joint negotiations will be undertaken, and all contracts will be signed on a statutory entity (and not Group) basis;
- (c) SpreadEx will not enter into any new contracts to offer additional services and products to the Target business customer base that are not available as at the date the CMA imposes the Initial Order;
- (d) the Negotiations Support Authorised Individuals will enter into non-disclosure agreements in a form agreed with the CMA, with a view to preventing the information they receive as part of any negotiations from being shared with any unauthorised SpreadEx individuals;
- (e) should remedial action be required by the CMA in relation to the Target business, any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the Target business for the purposes of this derogation will be returned to the Target business and any copies destroyed, except to the extent that record retention is required by law or regulation;
- (f) all electronic files and emails exchanged in the context of negotiations will be password protected, adequately ring-fenced, and only accessible to the Negotiations Support Authorised Individuals; and
- (g) this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

4. Paragraphs 5(a), 5(b), 5(f), 5(g), and 5(l) of the Initial order

SpreadEx submits that Target business customers have been serviced from a white label version of the SpreadEx website since completion of the acquisition, which is hosted on the underlying proprietary SpreadEx technology. SpreadEx also submits that the Target business website is now, in effect, a mirror image of the SpreadEx

website, automatically offering an increased number of products and markets as compared to those offered by the pre-Merger Sporting Index business.

SpreadEx further submits that it operates only one database and its technology stack is fully integrated. It submits that its systems and sites are all interlinked and run from SpreadEx proprietary systems as opposed to any third-party hardware or software.

SpreadEx therefore requests a derogation from paragraphs 5(a), 5(f), 5(g), and 5(l) of the Initial Order in order to:

- (a) continue offering the additional products, services and markets that the white label version of the SpreadEx website offers the Target business' customers;
- (b) allow the Target business to be run on the same underlying technology stack and the same operational applications as SpreadEx; and
- (c) allow the Target business to continue to be run from the same underlying database and to allow existing reports to continue accessing this database as they currently do.

The CMA consents to SpreadEx's request for a derogation strictly on the basis that:

- (a) It is strictly necessary in the short term to maintain the viability and competitive capability of the Target business;
- (b) It is not feasible in the short term to operate the Target business from a separate database, technology stack or website;
- (c) there is no viable third-party alternative capable of offering the entire infrastructure to operate the Sporting Index brand in the way currently offered by SpreadEx;
- (d) the technology stack used by the Target business does not become degraded, and where any improvements to the SpreadEx technology stack and operational applications are made, these improvements apply the same level of additional support, resilience or benefit to the Target business;
- (e) SpreadEx will update the CMA on a fortnightly basis of all updates to the underlying database system in the past fourteen days, with accompanying description of the release and the benefit to the customer;
- (f) this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

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

SpreadEx submits that in order to comply with its regulatory requirements with the FCA and GC, it must complete certain IT projects to allow customer information to be shared between companies, where it relates to the same individual. SpreadEx submits that this will ensure that SpreadEx and the Target business can continue to meet their FCA and GC regulatory obligations in relation to ensuring that vulnerable customers are given appropriate protection from potential harm, and retail clients experience good outcomes in line with the principles of the FCA's Consumer Duty.

SpreadEx further submits that there are Licence Conditions and Codes of Practice requirements which stipulate that:

- (a) 'Where licensees allow customers to hold more than one account with them, the licensee must have and put into effect procedures which enable them to relate each of a customer's such accounts to each of the others and ensure that individual financial limits can be implemented across all of a customer's accounts'; and
- (b) 'Where licensees allow customers to hold more than one account with them, the licensee must have and put into effect procedures which enable them to relate each of a customer's such accounts to each of the others and ensure that all of a customer's accounts are monitored and decisions that trigger customer interaction are based on the observed behaviour and transactions across all the accounts'

SpreadEx therefore requests a derogation from paragraphs 5(f) and 5(l) of the Initial Order in order to:

- (a) apply deposit limits across both accounts by amending the deposit limit calculation code so that the calculations can account for deposits made by the customer from either account; and
- (b) apply behavioural health algorithms across both SpreadEx and the Target business' accounts by updating the calculations for this algorithm, such that where clients have accounts with both companies, the algorithm can look at data across both accounts, to identify potential markers of harm more accurately.

The CMA consents to SpreadEx's request for a derogation strictly on the basis that:

- (a) this derogation is strictly necessary to ensure that the Target business is maintained as a going concern and is able to continue to operate in a manner in which it meets its FCA and GC regulatory responsibilities;
- (b) the changes will limit the sharing of data to those individuals who have been identified as having accounts with both SpreadEx and the Target business;
- (c) SpreadEx will not complete any other IT projects without first seeking consent from the CMA (which can be given via email);
- (d) the shared data will be used for no other purpose than those already declared;
- (e) this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

6. Paragraph 5(g) of the Initial Order

SpreadEx submits that for the reasons set out in Derogation (1), the Target business has no appropriate level of management to undertake negotiations with a data supplier, [X] ('[X]'), for data rights to allow the continued provision of existing betting services on certain sports and additional services (such as streaming) that improve the customer experience, without additional cost to the customer. SpreadEx submits that [X] provides data feeds to both SpreadEx and the Target business which are used by their traders to offer both advance and in-play betting services, and that their contracts with [X] expired on 31 December 2023.

SpreadEx therefore requests a derogation from paragraph 5(g) of the Initial Order in order to allow certain individuals (as defined in Annex 4) (the '[X] **Authorised Individuals**') to conduct negotiations with [X] for the Target business.

The CMA consents to SpreadEx's request for a derogation strictly on the basis that:

- (a) this derogation is strictly necessary in order to preserve the viability and competitive capability of the Target business;
- (b) no contracts will be signed without prior consent from the CMA (which can be given via email);
- (c) the [X] Authorised Individuals will enter into non-disclosure agreements in a form agreed with the CMA, with a view to preventing the information they receive as part of any negotiations from being shared with any unauthorised SpreadEx individuals;

- (d) should remedial action be required by the CMA in relation to the Target business, any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the Target business for the purposes of this derogation will be returned to the Target business and any copies destroyed, except to the extent that record retention is required by law or regulation;
- (e) all electronic files and emails exchanged in the context of negotiations will be password protected, adequately ring-fenced, and only accessible to the [X] Authorised Individuals; and
- (f) this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

Yours sincerely,

Rachel Allen

Assistant Director, Mergers

15 January 2024

Annex 1 – the Regulatory Authorised Individuals

The Target business' customer information will be shared only with the following individuals, due to the below reasons.

Reason 1 - To provide operational and regulatory oversight of the target business while the initial order is in force in line with our FCA and GC regulatory obligations.

Reason 2 - To ensure the target business can continue to meet its FCA and GC regulatory requirements, given this role has direct dealings with customers via Live Chat, phone and email.

Reason 3 – To provide IT support with regards to any electronic files shared pursuant to this derogation.

Department Name	Employee	Reason for inclusion
Director	[X]	Reason 1
Director	[X]	Reason 1
Director	[X]	Reason 1
Client Support	[X]	Reason 2
Client Support	[X]	Reason 2
Client Support	[X]	Reason 2
Client Support	[X]	Reason 2
Client Support	[X]	Reason 2
Client Support	[X]	Reason 2
Client Support	[X]	Reason 2
Client Support	[X]	Reason 2
Compliance	[X]	Reason 2
Compliance	[X]	Reason 2
Compliance	[X]	Reason 2
Compliance	[X]	Reason 2

Annex 2 – the Financial Information Authorised Individuals

The Detailed Financial Information is shared only with:

- [X] (SpeadEx CFO)
- [X] (SpeadEx Financial Controller)
- [X] (SpeadEx Financial accountant)
- [X] (SpreadEx Financial accountant)
- [X] (SpeadEx CEO)
- [X] (SpreadEx CDO)
- [X] (SpreadEx Managing Director Financial Trading)

Annex 3 - the Negotiations Support Authorised Individuals

Only the following individuals will continue to conduct any ongoing or existing negotiations with any existing or potential customers and suppliers of the Target business:

- [REDACTED] (SpreadEx CFO) - for central contracts
- [REDACTED] (SpreadEx Head of Marketing) – for affiliate and marketing related contracts
- [REDACTED], [REDACTED], and [REDACTED] (SpreadEx Head(s) of Engineering) - for IT related contracts
- [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (SpreadEx Sports Managers) - for data and streaming related contracts

Annex 4 – the [REDACTED] Authorised Individuals

Only the following individuals will be able to conduct negotiations with [REDACTED] for the Target business:

- [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (SpreadEx Sports Managers) - for data and streaming related contracts