

COMPLETED ACQUISITION BY SPREADEX LIMITED OF THE B2C BUSINESS OF SPORTING INDEX

Issues statement

16 May 2024

The reference

1. On 17 April 2024, 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 acquisition (the **Merger**) by Spreadex Limited (**Spreadex**) of the business-to-consumer (**B2C**) business of Sporting Index Limited (**Sporting Index**) (together, the **Parties** or, for statements referring to the situation after the Merger, the **Merged Entity**) for further investigation and report by a group of CMA panel members.
2. In exercise of its duty under section 35(1) of the Act, the CMA must decide:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.

Purpose of this issues statement

3. In this issues statement, we set out the main issues we are likely to consider in reaching a decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation, and further evidence that will be obtained during our phase 2 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.

4. The CMA's phase 1 decision (the **Phase 1 Decision**)¹ contains much of the detailed background to this issues statement. We are publishing this statement to assist parties submitting evidence to our phase 2 investigation.
5. As noted above, this issues statement sets out the issues we are likely to consider in our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

Background

The Parties

6. Spreadex provides online sports betting services, primarily to customers based in the UK. Spreadex offers both fixed odds and spread betting services, covering a range of sports including football, F1 motor racing, rugby, rowing, golf and greyhound racing. It also provides financial spread betting and casino betting services. The turnover of Spreadex in FY2022 was approximately £71 million worldwide, almost all of which (over £70 million) was earned in the UK.² In 2023, Spreadex earned around £[~~XX~~] million turnover from the sports spread betting part of its business and almost £[~~XX~~] million from the fixed-odds betting part of its business.
7. Sporting Index provides online sports betting services primarily in the UK, with minimal sales to customers in Ireland and Gibraltar. Sporting Index offers both spread and fixed odds betting services. The turnover of Sporting Index Limited in FY2022 was around £9.7 million worldwide, almost all of which was earned in the UK. In 2023, Sporting Index Limited had around £[~~XX~~] million turnover from the spread betting part of its business and almost £[~~XX~~] million from the fixed-odds betting part of its business.³

The transaction

8. Spreadex acquired Sporting Index from Sporting Group Holding Limited (**Sporting Group**), a subsidiary of La Française des Jeux (**FDJ**). The Merger completed on 6 November 2023. The Merger did not include the purchase of the business-to-business activities of Sporting Index Limited (**Sporting**

¹ [Decision on relevant merger situation and substantial lessening of competition \(Phase 1 Decision\)](#), 4 April 2024.

² [Phase 1 Decision](#), paragraph 22.

³ [Phase 1 Decision](#), paragraph 23. These turnover figures relate to the pre-Merger entity, Sporting Index Limited, which held additional assets not acquired as part of the Merger (as explained in paragraph 8 below).

Solutions), which were retained by FDJ following a corporate restructure implemented in advance of the Merger.⁴

Our inquiry

9. Below we set out the main areas of our intended assessment in order to help parties who wish to make representations to us.

Jurisdiction

10. We shall consider the question of jurisdiction in our inquiry. In the case of a completed merger, a relevant merger situation exists where the following conditions are satisfied:⁵
- (a) Two or more enterprises⁶ have ceased to be distinct; and
 - (b) Either:
 - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year; or
 - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the **share of supply test**).
11. In its Phase 1 Decision, the CMA found that it had jurisdiction to review the Merger on the basis that it believed that it is or may be the case that:⁷
- (a) Each of Spreadex and Sporting Index is an enterprise, and that these enterprises have ceased to be distinct as a result of the Merger; and
 - (b) The share of supply test is satisfied on the basis that Spreadex and Sporting Index have a combined share of supply of more than 25% by revenue, with an increment, in the supply of licensed online sports spread betting services in the UK.

⁴ Spreadex gained control over Sporting Index Limited which, following the corporate restructure, owned the Sporting Index Brand, IP, domain names, regulatory licences, customer lists, deferred tax losses, trade debtors and trade creditors/approvals and six employees. The assets, technology and employees comprising Sporting Solutions were carved out and moved to Sporting Solutions Limited.

⁵ [Section 23](#) of the Act.

⁶ An enterprise is defined under [section 129\(1\)](#) of the Act as the activities, or part of the activities, of a business. A business includes a professional practice and any other undertaking which is carried on for gain or reward, or which supplies goods or services otherwise than free of charge.

⁷ [Phase 1 Decision](#), paragraphs 31 to 35.

Counterfactual

12. We will compare the prospects for competition resulting from the Merger against the competitive situation without the Merger: the latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.⁸
13. In relation to completed mergers, the counterfactual may consist of the pre-merger conditions of competition, or conditions of competition that involve stronger or weaker competition between the parties to a merger than under the pre-merger conditions of competition.⁹ At phase 2, to help make its assessment on whether an SLC has occurred or is likely to occur, the CMA will select the most likely conditions of competition as its counterfactual against which to assess the merger. In some instances, the CMA may need to consider multiple possible scenarios before identifying the relevant counterfactual. In doing this, the CMA will consider whether any of the possible scenarios make a significant difference to the conditions of competition and, if any do, the CMA will find the most likely conditions of competition absent the merger as the counterfactual.¹⁰
14. As a part of its counterfactual assessment, the CMA may consider whether, absent the merger, one of the merger firms is likely to have exited the market. This may include exit for strategic or financial reasons. In forming a view on an exiting firm scenario, the CMA will use the following framework of cumulative conditions:¹¹
 - (a) the firm is likely to have exited (through failure or otherwise); and, if so
 - (b) there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question.
15. In the Phase 1 Decision, the CMA assessed the impact of the Merger against the pre-Merger situation, with Sporting Index operating as an independent competitor to Spreadex either under existing ownership or under the ownership of an alternative purchaser.¹² While Spreadex had submitted that absent the Merger, Sporting Index would have exited the UK sports spread betting market, the CMA did not consider that there was compelling evidence at phase 1 that it was inevitable that Sporting Index would have exited and

⁸ Merger Assessment Guidelines (CMA 129), March 2021 ([MAGs](#)), paragraph 3.1.

⁹ [MAGs](#), paragraph 3.2.

¹⁰ [MAGs](#), paragraph 3.13.

¹¹ [MAGs](#), paragraph 3.21 to 23.

¹² [Phase 1 Decision](#), paragraph 54.

that absent the Merger there would not have been an alternative, less anti-competitive purchaser to Spreadex for Sporting Index.¹³

16. The counterfactual assessment will be a central focus of our inquiry. At phase 2, we are required to form a view as to the most likely competitive situation absent the Merger.¹⁴ This means that we will consider whether it is most likely that, absent the Merger, Sporting Index would have:
 - (a) exited the market and there would not have been an alternative, less anticompetitive purchaser (than Spreadex) for Sporting Index or its assets; or
 - (b) continued to operate as an independent competitor to Spreadex, either under the pre-Merger ownership or under the ownership of an alternative purchaser.
17. Our analysis will be informed by internal documents, financial analysis and evidence from third parties. We welcome any further evidence on this part of our assessment.

Assessment of the competitive effects of the Merger

Theories of harm

18. The term ‘theory of harm’ refers to a hypothesis about how the process of rivalry could be harmed as a result of a merger. Theories of harm provide a framework for assessing the competitive effects of a merger and whether or not it could lead to an SLC relative to the counterfactual.¹⁵
19. In its Phase 1 Decision, the CMA found that the Merger gave rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of licensed online sports spread betting services in the UK.¹⁶ We are minded to focus our competitive assessment on this theory of harm at phase 2.
20. We may revise our theory of harm as the inquiry progresses and the identification of a theory of harm does not preclude an SLC being identified on another basis following further work, or our receipt of additional evidence.

¹³ [Phase 1 Decision](#), paragraphs 44 and 53. For the CMA to accept an exiting firm argument at phase 1, it would need to see compelling evidence that it was inevitable that the considerations listed in paragraph 14 would be met. At phase 2, the CMA will consider what is most likely ([MAGs](#), paragraph 3.23).

¹⁴ [MAGs](#), paragraphs 3.13 and 3.23.

¹⁵ [MAGs](#), paragraph 2.11.

¹⁶ [Phase 1 Decision](#), paragraphs 1 and 117.

Horizontal unilateral effects in the supply of licensed online sports spread betting services in the UK

21. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.¹⁷
22. When assessing whether a merger may give rise to an SLC as a result of horizontal unilateral effects, the CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger.¹⁸
23. In the Phase 1 Decision, the CMA found that the Merger gave rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of licensed online sports spread betting services in the UK, because:¹⁹
 - (a) the Merger has created a monopoly supplier of licensed online sports spread betting services in the UK, by removing the only other licensed supplier of these services;
 - (b) customers that approached the CMA raising concerns about the Merger considered that the Merger removed Spreadex's only competitor;
 - (c) fixed odds betting providers generally considered that the Parties are each other's closest competitors and that online sports fixed odds betting is not substitutable for online sports spread betting;
 - (d) internal documents indicate that Spreadex viewed Sporting Index as its only competitor in the supply of licensed online sports spread betting;
 - (e) evidence from third parties generally suggests that sports fixed odds and unlicensed sports spread betting providers exercise at most a weak constraint on the Merged Entity's sports spread betting activities; and
 - (f) while one betting company indicated it might be interested in starting to offer sports spread betting services in the UK, it also identified a number of hurdles that would need to be overcome before it could enter the market.

¹⁷ MAGs, paragraph 4.1.

¹⁸ MAGs, paragraph 4.3.

¹⁹ Phase 1 Decision, paragraph 18.

24. In order to investigate this theory of harm at phase 2, we will use the data and information collected during the phase 1 investigation, and seek to expand this evidence base as appropriate.
25. Amongst other factors, we will consider:
- (a) the extent to which the Parties' products competed prior to the Merger, and the extent of any similarities and differences between their products and services offered, for example with regards to price,²⁰ range of popular bet markets available, and customer experience;
 - (b) the extent to which the Parties competed dynamically by investing in product development prior to the Merger;
 - (c) the ways in which the Parties' customers used their products;
 - (d) the competitive constraint posed by suppliers of fixed odds betting;
 - (e) the competitive constraint posed by suppliers of other (non-sport) types of spread betting (ie financial spread betting);
 - (f) the competitive constraint posed by suppliers of unlicensed sports spread betting services; and
 - (g) the prospects for, and barriers to, future entry and/or expansion.
26. Subject to new evidence being submitted, we are not currently minded to investigate any other theories of harm in relation to this Merger.

Market definition

27. Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'.²¹ The CMA is therefore required to identify the market or markets within which an SLC has resulted, or may be expected to result. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.²²
28. In its Phase 1 Decision, the CMA considered the impact of the Merger on the supply of licensed online sports spread betting services in the UK, and considered the extent to which fixed odds providers and unlicensed providers exerted constraints on the Parties. Specifically, it considered the extent to

²⁰ For example, in terms of the size of the spread and/or promotions.

²¹ [Section 35\(1\)\(b\)](#) of the Act.

²² [MAGs](#), paragraph 9.1.

which betting customers would be expected to switch away from spread betting to fixed odds betting in response to a small but significant worsening of terms of spread betting products.²³ The CMA concluded that the relevant product market is the supply of licensed online sports spread betting (excluding fixed odds providers), and as part of its competitive assessment it took into account the constraint exerted by fixed odds providers as an out-of-market constraint.²⁴ We currently consider that this frame of reference is an appropriate starting point for our analysis of market definition. Where relevant, we will consider in our competitive assessment out-of-market constraints and any differences in the degree of competitive constraints on the Merged Entity from different suppliers (overall and, if appropriate, in relation to specific customer segments).

29. In the CMA's Phase 1 Decision, the UK was considered to be the appropriate geographic frame of reference.²⁵ We will consider the Parties' and others' submissions and evidence on this point.

Countervailing factors

30. We will consider whether there are countervailing factors which prevent or mitigate any SLC that we may find.²⁶ Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.
31. We will consider evidence of entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Merger.²⁷
32. We will also consider any relevant evidence submitted to us by the Parties that the Merger is likely to give rise to efficiencies that will enhance rivalry, such that the Merger has not resulted, or may not be expected to result, in an SLC.²⁸
33. Cost and revenue synergies often form part of the rationale for mergers, and it is not uncommon for firms to make efficiency claims in merger proceedings. Many efficiency claims by merger firms are not accepted by the CMA because the evidence supporting those claims is difficult to verify and substantiate.²⁹

²³ [Phase 1 Decision](#), paragraph 70.

²⁴ [Phase 1 Decision](#), paragraph 73.

²⁵ [Phase 1 Decision](#), paragraph 76.

²⁶ [MAGs](#), paragraph 8.1.

²⁷ [MAGs](#), paragraphs 8.28 to 8.43.

²⁸ In order to reach a view that such efficiencies prevent or mitigate any SLC found, the CMA must be satisfied that the evidence shows that that the merger efficiencies: (a) enhance rivalry in the supply of those products where an SLC may otherwise arise; (b) are timely, likely and sufficient to prevent an SLC from arising; (c) are merger-specific; and (d) benefit customers in the UK ([MAGs](#), paragraph 8.8).

²⁹ [MAGs](#), paragraph 8.6.

Most of the information relating to the synergies and cost reductions resulting from a merger is held by the merger firms. Merger firms who do wish to make efficiency claims are encouraged to provide verifiable evidence to support their claims in line with the CMA's framework early in the CMA's merger review process.³⁰

Possible remedies and relevant customer benefits

34. Should we conclude that the Merger has resulted, or may be expected to result, in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
35. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits that have arisen, or may be expected to arise, as a result of the Merger and, if so, what these benefits are or are likely to be, and which customers have benefitted or would likely benefit.³¹

Responses to this issues statement

36. Any party wishing to respond to this issues statement should do so in writing, no later than **17:00 (UK time) on Wednesday 29 May 2024** by emailing SpreadEx.SportingIndex@cma.gov.uk.

³⁰ [MAGs](#), paragraph 8.7.

³¹ [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15 to 3.24.