

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

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

Introduction

1. On 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**) from Sporting Group Holdings Limited (**Sporting Group**), a subsidiary of La Française des Jeux Sporting Group (**FDJ**), for further investigation and report by a group of CMA panel members (the **Inquiry Group**). Spreadex and Sporting Index are together referred to as the **Parties**.
2. On 15 January 2024, the CMA made an initial enforcement order (the **Initial Order**) addressed to Spreadex.Com Limited and Spreadex in accordance with section 72(2) of the Act to prevent pre-emptive action. The Initial Order is still in force. On 29 April 2024, the CMA issued written directions under the Initial Order that, for the purpose of securing compliance with the Initial Order, a monitoring trustee (**Monitoring Trustee**) must be appointed in accordance with the terms provided for in those written directions. The Monitoring Trustee was formally appointed on 7 May 2024.
3. In our provisional findings on the reference notified to the Parties on 25 July 2024 (the **Provisional Findings Report**), we provisionally concluded that the Merger has resulted in the creation of a relevant merger situation, and that the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in the supply of licensed online sports spread betting services in the UK. In this notice of possible remedies (the **Notice**), we refer to the supply of licensed online sports spread betting services in the UK as the **Relevant Market**.
4. We have also provisionally concluded that this SLC has resulted, or may be expected to result, in adverse effects, in terms of one or more of worse range,

¹ CMA Rules of Procedure for Merger, Market and Special Reference Groups (**CMA17**), March 2014 (corrected November 2015).

user experience and prices than otherwise have been, or be, the case absent the Merger.²

5. This Notice sets out the actions which the Inquiry Group considers it might take for the purpose of remedying, mitigating or preventing the SLC and/or any resulting adverse effects identified in the Provisional Findings Report.
6. This Notice is intended as a starting point for discussion with the Parties and third parties, including customers and competitors.³ A remedies working paper, containing a detailed assessment of the different remedies options and setting out the Inquiry Group's provisional decision on remedies, will be sent to the Parties for comment (but not published) at a later date in the investigation.⁴
7. We invite comments on possible remedies by **17:00 on Thursday 8 August 2024**.⁵

CMA criteria for remedies

8. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it.⁶
9. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects.⁷
10. The effectiveness of a remedy is assessed by reference to its:⁸
 - (a) impact on the SLC and its resulting adverse effects – the aim being to restore the process of rivalry between firms seeking to win customers' business over time;
 - (b) duration and timing – remedies need to be capable of timely implementation and to address the SLC effectively throughout its expected duration;

² Further detail on the Provisional SLC is set out within the Provisional Findings Report.

³ [Merger Remedies \(CMA87\)](#), December 2018, paragraph 4.56.

⁴ [CMA87](#), paragraph 4.64.

⁵ Responses to the Notice are typically requested within 14 days of publication of the Notice (and in any event, no less than seven days) so that they can be considered before response hearings ([Mergers: guidance on the CMA's jurisdiction and procedure \(CMA2 revised\)](#)), January 2021 (as amended 4 January 2022), paragraph 13.1.

⁶ Section 35(4) of the Act.

⁷ [CMA87](#), paragraph 3.4.

⁸ [CMA87](#), paragraph 3.5.

- (c) practicality, in terms of its implementation and any subsequent monitoring and enforcement; and
 - (d) risk profile, in particular to seek a remedy that has a high degree of certainty of achieving its intended effect.
11. Having identified the effective remedy options, the CMA will select the least costly and intrusive remedy that it considers to be effective and seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁹

Initial views on possible remedy options

12. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC and/or any resulting adverse effects that have been provisionally identified.
13. As set out in published remedies guidance, in merger inquiries, the CMA normally prefers structural remedies, such as divestiture of a standalone business, over behavioural remedies designed to regulate the ongoing behaviour of the merger parties or control market outcomes (eg prices, quality or product range), because:¹⁰
- (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry lost as a result of the merger;
 - (b) behavioural remedies generally give rise to risks around one or more of specification, circumvention, market distortion, and monitoring and enforcement,¹¹ are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
 - (c) structural remedies rarely require monitoring and enforcement once implemented.
14. In this section we set out our initial views on each of the following categories of possible remedies:
- (a) Divestiture remedy options;

⁹ CMA87, paragraph 3.4.

¹⁰ CMA87, paragraphs 3.5(a) and 3.46.

¹¹ For further information on each of these risks, see CMA87, paragraph 7.4.

- (b) Behavioural remedy options; and
- (c) Other remedy options.

Divestiture remedy options

15. In defining the scope of a divestiture package that will satisfactorily address an SLC, the CMA will normally seek to identify the smallest viable, standalone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.¹² The CMA will generally prefer the divestiture of an existing business, which can compete effectively on a standalone basis independently of the merger parties, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.¹³
16. In the present case, to ensure that the remedy is comprehensive, the divestiture package would need to be capable of competing effectively under separate ownership. We would therefore need to be confident that the divestiture package contained all the assets, staff and capabilities necessary to be able to continue to compete effectively, and that the process of separating these assets from the relevant Party's business would not risk materially impairing the competitive capabilities of the divested business.
17. At this stage, we have identified the following potential structural remedies:
 - (a) Requiring the divestiture of some, or all, of Sporting Index's assets acquired by Spreadex as part of the Merger to a potential purchaser approved by the CMA. This includes:¹⁴
 - (i) the Sporting Index legal entity (that is, Sporting Index Limited);
 - (ii) the Sporting Index brand;
 - (iii) the source code for the spread betting platform used by Sporting Index pre-Merger (the **pre-Merger Sporting Index Spread Betting Platform**);

¹² CMA87, paragraph 5.7.

¹³ CMA87, paragraph 5.12. Purchaser risk refers to the risks that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser; composition risk refers to the risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market (CMA87, paragraph 5.3).

¹⁴ See: [Derogation 15 January 2024](#). Spreadex response to the CMA's RF11, 10 January 2024, question 1111.

- (iv) the sports spread betting and sports fixed odds betting customer list (including all trading history to ensure Spreadex could meet the requirements of the Financial Conduct Authority (**FCA**), which regulates sports spread betting, and the Gambling Commission (**GC**), which regulates fixed odds betting);
 - (v) the five current employees (in Customer Relations, Customer Services and Marketing);
 - (vi) intellectual property (**IP**) and web domain names;
 - (vii) regulatory licences with the FCA and the GC;
 - (viii) unrecognised deferred tax losses; and
 - (ix) trade debtors and trade creditors/accruals.
- (b) Requiring the divestiture of a combination of Sporting Index assets (including the Sporting Index legal entity) and Spreadex assets. This may include for example some of the Sporting Index assets acquired by Spreadex under the Merger, supplemented by some Spreadex staff, and either a reconstituted IT platform and applications including (but not limited to) the pre-Merger Sporting Index Spread Betting Platform, or a clone of Spreadex's spread betting platform.
18. We note that prior to the Merger, and during the sale process for Sporting Index, the seller (Sporting Group) had offered Spreadex and other potential purchasers a Sporting Index business which, under a transitional services agreement (**TSA**), could be operated as a standalone business, including transferring staff and IT applications; and offering technical support under a TSA. However, under the Merger agreement, Spreadex: acquired just six employees ([X]); did not acquire some of the IT sports spread betting applications; and did not require a TSA.
19. Given the limited Sporting Index assets acquired by Spreadex as part of the Merger, and the fact that any potential purchaser is likely to have fewer (and potentially different) synergies than those between Spreadex and Sporting Index,¹⁵ it is our initial view that the divestiture of solely the Sporting Index assets acquired by Spreadex as part of the Merger is unlikely to be sufficient to constitute the divestment of a standalone business and be an effective remedy in addressing the SLC and/or any resulting adverse effects that we have provisionally identified. Therefore, it is our initial view that the divestiture

¹⁵ As explained in our Provisional Findings Report, Spreadex and Sporting Index are the only two providers of licensed online sports spread betting services in the UK.

of a combination of Sporting Index assets and Spreadex assets (including the Sporting Index legal entity) for the purpose of establishing a standalone business would represent an effective structural remedy.

20. We will consider responses on both of the above options, as well as any other divestiture remedies put forward as part of this consultation.

Behavioural remedy options

21. Our initial view is that a behavioural remedy is very unlikely to be an effective remedy to the SLC and/or any resulting adverse effects that we have provisionally identified, given our initial view that there are significant risks in designing effective behavioural remedies, including the risks of specifying the form of conduct or market outcome with sufficient precision in a dynamic technological market and the challenges in monitoring compliance. We will consider any behavioural remedies put forward as part of this consultation.

Other remedy options

22. More generally, we will consider any other practicable remedies that the Parties, or any interested third parties, may propose that would be effective in addressing the SLC and/or any resulting adverse effects that we have provisionally identified.
23. Where the merger parties propose remedy options for the CMA's consideration, the CMA's engagement on remedies with limited prospect of being effective can reduce the CMA's ability to focus on remedies that have a greater prospect of being effective. Therefore, in keeping with the CMA's guidance on remedies and in view of the statutory deadline for us to publish our final decision on any SLC and remedies, we will not conduct a detailed consideration of proposed remedies unless those proposing remedy options can demonstrate that their proposed remedy options will satisfactorily address the SLC and/or any resulting adverse effects identified in the Provisional Findings Report.
24. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role¹⁶ to safeguard the effectiveness of any structural remedies. We will evaluate the impact of any proposed combination of measures on the SLC and/or any resulting adverse effects that we have provisionally identified.

¹⁶ [CMA87](#), paragraph 3.47.

Invitation for comments on a possible divestiture remedy

25. In evaluating possible divestitures as a remedy to the SLC and/or any adverse effects that have been provisionally identified, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, the CMA will have regard to the following critical elements of the design of divestiture remedies:¹⁷
- (a) the scope of the divestiture package;
 - (b) identification of a suitable purchaser; and
 - (c) ensuring an effective divestiture process.

The scope of the divestiture package

26. To be effective and not raise any composition risk, any divestiture package would need to be appropriately configured to address the SLC and/or adverse effects that we have provisionally identified, and be attractive to potential purchasers in order to enable the purchaser to operate effectively as an independent competitor.
27. The CMA's Initial Order (see paragraph 2 above) is intended to preserve Sporting Index's viability and competitive independence until our determination of the reference. However, at the time when the Initial Order was imposed, Sporting Index had already been largely integrated into Spreadex's operations, and given the limited number of assets and employees acquired by Spreadex as part of the Merger, Sporting Index currently relies on Spreadex for its continued viability and does not operate on a standalone basis.¹⁸
28. We also understand that the pre-Merger Sporting Index Spread Betting Platform (which was used by Sporting Index pre-Merger and was acquired by Spreadex as part of the Merger) is currently not operational, as Spreadex did not acquire certain IT components from FDJ that are required for the pre-Merger Sporting Index Spread Betting Platform to be operational, nor elect to take the TSA offered by Sporting Group. Sporting Index has therefore been operating using a 'white-label' version of Spreadex's website, which is running on the same database and underlying technology stack, as well as the same operational applications as Spreadex's own website.¹⁹

¹⁷ CMA87, paragraphs 5.3-5.4.

¹⁸ See: [Derogation 15 January 2024](#).

¹⁹ See: [Derogation 15 January 2024](#).

29. It is our initial view that a divestiture package should have the requisite functions and capabilities to allow a purchaser to compete as a standalone business. In our initial view, this would include (but not be limited to):
- (a) the reconstitution or re-creation of the IT platform, applications and other technology used by Sporting Index prior to the Merger and including but not limited to, the pre-Merger Sporting Index Spread Betting Platform, or otherwise a cloning of the Spreadex spread betting platform;
 - (b) ensuring the divestiture package has sufficient numbers of key employees such as sports traders, compliance staff, IT staff, and customer account managers to enable Sporting Index to operate as a competitor in the Relevant Market, and that these employees have suitable retention incentives; and
 - (c) ensuring that the key Sporting Index assets (including the Sporting Index legal entity) acquired by Spreadex as part of the Merger are included in the divestiture package.
30. As set out in paragraph 19, it is our initial view that in order to allow a purchaser to compete as a standalone business, divestiture of a combination of Sporting Index assets and Spreadex assets represents an effective structural remedy. We invite views on what would need to be included within the scope of the divestiture package from Spreadex and/or Sporting Index as part of such a combination.
31. In particular:
- (a) What categories of employees would be required, and how many of these employees would be required?
 - (b) With respect to reconstituting or recreating the IT platform, applications and other technology used by Sporting Index prior to the Merger, including but not limited to, the pre-Merger Sporting Index Spread Betting Platform:
 - (i) What technology, applications and IT platforms would be required?
 - (ii) What steps would be involved as part of this process?
 - (iii) Approximately how long would this process be estimated to take?
 - (iv) How costly would this process be?

- (v) Approximately how long would it take to integrate this platform into a prospective purchaser's business?
 - (vi) After integrating this platform into a prospective purchaser's business, what would be then required for the prospective purchaser to maintain and develop this platform?
 - (vii) What would be the principal risks to completing this process effectively and in a timely manner?
- (c) Based on the description of the Sporting Index assets acquired by Spreadex as part of the Merger set out at paragraph 17(a) above, are there other parts of the Sporting Index business which would need to be reconstituted or recreated in order to form a viable divestment business? What steps would be required to do so and how long would this process take? How costly would this process be?
- (d) With respect to cloning the Spreadex spread betting platform (in the event that a divestiture including Spreadex assets is required):
- (i) What technology, applications and IT platforms would be required?
 - (ii) What steps would be involved as part of this process?
 - (iii) Approximately how long would such a process be expected to take?
 - (iv) How costly would this process be?
 - (v) Approximately how long would it take to integrate this platform into a prospective purchaser's business?
 - (vi) After integrating this platform into a prospective purchaser's business, what would be then required for the prospective purchaser to maintain and develop this platform?
 - (vii) What would be the principal risks to completing this process effectively and in a timely manner?
- (e) Is it necessary for the divestiture package to be configured to allow a prospective purchaser to provide sports fixed odds betting services in addition to providing sports spread betting services, either in order to operate a viable sports spread betting business (eg because sports

fixed odds customers may become sports spread betting customers) and/or to attract a wider pool of prospective purchasers?²⁰

- (f) Would a TSA with Spreadex be required, and if so, what should the scope and duration of any such TSA involve?
 - (g) If the divestment of assets from either Spreadex, Sporting Index, or a combination of both would be effective in addressing the SLC and/or any resulting adverse effects that we have provisionally identified, should Spreadex be able to propose and specify which assets should be divested?
 - (h) Are there any other elements that would be required to be part of the divestiture package to ensure that it can compete effectively in the Relevant Market?
32. We note that the scope of the divestiture package needed to allow a purchaser to compete as a standalone business will rely to some extent on the identity and capabilities of the purchaser. However, our initial view is that as a starting point, the scope of the package should be sufficiently broad to address the risk that the scope will be too constrained or not appropriately configured to attract a suitable purchaser.
33. We will consider using the full extent of our remedial powers to ensure that the divestiture package represents an effective standalone competitor and supplier of licensed online sports spread betting services in the UK, in particular that it will continue to innovate and develop its services.

Identification of a suitable purchaser

34. Purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser or if a suitable purchaser is not available. As such, in line with CMA guidance, we will need to be satisfied that a prospective purchaser:²¹
- (a) is independent of Spreadex;
 - (b) has the necessary capability to compete;
 - (c) is committed to competing in the Relevant Market; and

²⁰ Both Spreadex and Sporting Index operated sports fixed odds betting businesses alongside their sports spread betting businesses prior to the Merger. Spreadex told us that 90% of spread betting customers also bet on fixed odds (Spreadex main party hearing transcript, 4 July 2024, page 16, lines 3-4, and page 49, lines 24-25.

²¹ [CMA87](#), paragraph 5.20 and 5.21.

(d) will not create further competition concerns

(together, the **Purchaser Suitability Criteria**).

35. We invite views on whether there are any specific factors to which we should pay particular regard in assessing purchaser suitability in this case, eg:
- (a) whether a proven capability of operating a spread betting business or a business in an adjacent market (eg sports fixed odds betting / financial spread betting), is essential or desirable;
 - (b) whether any particular purchaser (or types of purchaser) might fail to meet the Purchaser Suitability Criteria;
 - (c) whether any particular purchaser (or types of purchaser) would likely be unable to obtain the necessary approvals from the FCA to operate the divestment business, or likely be unable to comply with the FCA's ongoing regulatory requirements;
 - (d) whether there are any other factors that we should consider when identifying a suitable purchaser for the divestiture package; and
 - (e) whether there is a risk that Spreadex will be incentivised to divest a divestment business to a weak or otherwise inappropriate purchaser.

Effective divestiture process

36. Asset risk arises if the competitive capability of the divestiture business deteriorates before completion of the divestiture. We will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture. In particular:
- (a) Are there risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture?
 - (b) What is the appropriate timescale for achieving a divestiture?
 - (c) In relation to any potential reconstitution of the Sporting Index business set out in paragraphs 31(b) and 31(c) above:
 - (viii) What is the appropriate timescale of any potential reconstitution of the Sporting Index business?
 - (ix) Should this process be completed prior to any divestiture process, or can this process be run in parallel with the divestiture process?

- (x) What should be the role of the Monitoring Trustee be in this potential reconstitution?
 - (xi) Should an independent expert be appointed to advise on this potential reconstitution?
 - (d) What other procedural safeguards should we put in place to ensure an effective divestiture process?
37. The CMA will have the power to mandate an independent divestiture trustee to dispose of the divestiture package at no minimum price if:
- (a) the Parties fail to procure divestiture to a suitable purchaser within the initial divestiture period; or
 - (b) the CMA has reason to expect that the Parties will not procure divestiture to a suitable purchaser within the initial divestiture period.
38. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. We invite views on whether the circumstances of this Merger necessitate the appointment of a divestiture trustee at the outset of any divestiture process.

Cost of remedies and proportionality

39. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction.²² The CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on others, including the CMA.²³ In particular, in relation to completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy.²⁴
40. When considering relevant costs, the CMA's considerations may include (but are not limited to):²⁵

²² CMA87, paragraph 3.6.

²³ CMA87, paragraph 3.8.

²⁴ CMA87, paragraph 3.9.

²⁵ CMA87, paragraph 3.10.

- (a) distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
- (c) the loss of any relevant customer benefits (**RCBs**) arising from the Merger which are foregone as a result of the remedy (see paragraphs 42 to 45 below).

41. We invite views on what costs are likely to arise in implementing a divestiture remedy option described above (see paragraphs 25 to 38).

Relevant customer benefits (RCBs)

42. In deciding the question of remedies, the CMA may, in particular, have regard to the effect of any remedial action on any RCBs in relation to the creation of the relevant merger situation.²⁶

43. RCBs are limited by the Act to benefits to relevant customers²⁷ in the form of:²⁸

- (a) lower prices, higher quality or greater choice of goods or services in any market in the UK (whether or not in the market(s) in which the SLC concerned has, or may have, occurred, or may occur); or
- (b) greater innovation in relation to such goods or services.

44. The Act provides that, in relation to a completed merger, a benefit is only an RCB if:²⁹

- (a) it has accrued, or may be expected to accrue within a reasonable period, as a result of the creation of the relevant merger situation; and
- (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.

45. We welcome views on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the

²⁶ Section 35(5) of the Act, see also [CMA87](#), paragraph 3.15.

²⁷ For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution; they are therefore not limited to final consumers (section 30(4) of the Act; see also [CMA87](#), paragraph 3.18).

²⁸ Section 30(1)(a) of the Act, see also [CMA87](#), paragraph 3.17.

²⁹ Section 30(2) of the Act, see also [CMA87](#), paragraph 3.19.

divestiture remedy option set out above (see paragraphs 25 to 38) or any other remedies that may be put forward for our consideration.

Next steps

46. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish us to consider, by **17:00 hours on Thursday 8 August 2024** (see Note (i)). Comments should be provided by email to Spreadex.SportingIndex@cma.gov.uk.
47. A copy of this notice will be posted on the CMA [case page](#).

Richard Feasey
Inquiry Group Chairman
25 July 2024

Note

- (i) This notice of possible actions to remedy, mitigate or prevent the SLC and/or any resulting adverse effects is made having regard to the Provisional Findings Report announced on 25 July 2024. The Parties have until 15 August 2024 to respond to the Provisional Findings Report. Our findings may alter in response to comments we receive on the Provisional Findings Report, in which case we may consider other possible remedies, if appropriate.