

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

## Provisional Findings Report

ME 7085/23  
25 July 2024

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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## **APPENDICES AND GLOSSARY**

- A. TERMS OF REFERENCE
  - B. CONDUCT OF THE INQUIRY
  - C. B2C-DEDICATED PERIMETER
  - D. TSA SERVICE CATEGORIES
- GLOSSARY

# SUMMARY

## OVERVIEW

1. The Competition and Markets Authority (**CMA**) has provisionally found that the completed acquisition (the **Merger**) by Spreadex Limited (**Spreadex**) of the business-to-consumer (**B2C**) business of Sporting Index Limited (**Sporting Index**) 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.
2. Spreadex and Sporting Index are each a **Party** to the Merger; together they are referred to as the **Parties** and, for statements relating to the situation post-Merger, as the **Merged Entity**.
3. This is not our final decision, and we invite any interested parties to make representations to us on these provisional findings by no later than **17:00 hours on Thursday 15 August 2024**. Please make any responses to these provisional findings by email to [Spreadex.SportingIndex@cma.gov.uk](mailto:Spreadex.SportingIndex@cma.gov.uk). We will take all submissions received by this date into account in reaching our final decision.

## THE PARTIES AND THEIR PRODUCTS AND SERVICES

### The Parties

4. 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, Formula 1 motor racing, rugby, rowing, golf and greyhound racing. It also provides financial spread betting and casino betting services. The turnover of Spreadex in FY23 was approximately £88.9million in the UK.
5. Sporting Index provides online sports betting services primarily in the UK, with minimal sales to customers in Ireland and Gibraltar. Sporting Index offers both fixed odds and spread betting services. The turnover of Sporting Index Limited in FY22 was around £9.8 million worldwide, almost all of which was earned in the UK.
6. Spreadex acquired Sporting Index from Sporting Group Holdings Limited (**Sporting Group**), a subsidiary of La Française des Jeux (**FDJ**), on 6 November 2023. The Merger did not include the purchase of the business-to-business (**B2B**) activities of Sporting Group (namely, **Sporting Solutions**), which were retained by FDJ following a corporate restructure implemented in advance of the Merger.
7. The Sporting Index business acquired by Spreadex comprised a number of assets, including the Sporting Index Limited legal entity, which, following the corporate

restructure, owned or comprised the Sporting Index brand, intellectual property (IP), domain names, regulatory licences, customer lists, deferred tax losses, trade debtors and trade creditors/approvals and six employees.

## **The Parties' products and services**

8. Online sports betting services involve a customer staking an amount of money (ie the initial stake) on the outcome of a sports event, or on the likelihood of an event occurring or not occurring. A customer's 'payoff' is the amount they stand to win if their bet is successful, and their 'losses' are the amount they stand to lose.
9. In fixed odds betting, the payoff is determined based on odds set in advance and the losses are capped based on the amount of the initial stake. In spread betting, the provider offers a spread (or range) of outcomes and allows customers to 'buy' (predict higher than the spread) or 'sell' (predict lower than the spread). Customers choosing to buy will win if the outcome is higher than the predicted level and lose if it is lower. Customers choosing to sell will win if the outcome is lower than the predicted spread and lose if it is higher. The payoff is determined based on 'how right' the customer is and both the payoff and the losses can be far higher than the initial amount staked. There are many different outcomes that customers can choose to bet on. By way of example, customers can bet on how many goals will be scored in a football match or the total minutes of all goals scored by headers in a football match; how many sixes will be hit in a cricket match, or how many runs a team or individual player will score in a cricket match.

## **OUR ASSESSMENT**

### **Why are we examining this Merger?**

10. The CMA's primary duty is to seek to promote competition for the benefit of UK consumers, including the investigation of mergers that could raise significant competition concerns in the UK where it has jurisdiction to do so.
11. In this case, the CMA has provisionally found that it has jurisdiction over the Merger because Spreadex and Sporting Index have a combined share of supply, by revenue, of 100% (with an increment of [20-30%] as a result of the Merger) in the supply of licensed online sports spread betting services in the UK, meaning that the share of supply test is met.

### **How have we examined this Merger so far?**

12. In assessing the competitive effects of a completed merger, the question we are required to answer is whether the merger has resulted in an SLC, or there is an

expectation – ie a more than 50% chance – that the merger may be expected to result in an SLC, within any market or markets in the UK.

13. To determine whether this is the case, we have gathered a substantial volume of evidence that we considered in the round to reach our provisional findings. We have considered and augmented the information collected during the CMA's phase 1 investigation (the first stage of the investigatory process), including by gathering further evidence from a wide variety of sources, using our statutory powers where necessary, to assess the potential impact of the Merger on competition in the UK.
14. We have received several submissions and responses to information requests from the Parties, including Sporting Group and FDJ, and from third parties, and held a 'teach-in' and a hearing with Spreadex. The evidence we have received includes internal documents, views on the competitive landscape and the impact of the Merger, and a range of quantitative evidence, including betting activity data and financial performance data. We sent a questionnaire to the Parties' highest value customers to obtain their views on the Merger. We have also collected evidence (including contemporaneous internal documents) from third parties regarding the sale process and any plans to acquire the target had the Merger not gone ahead.
15. Based on this evidence, we have focussed on whether the Merger has resulted, or may be expected to result, in horizontal unilateral effects in the supply of licensed online sports spread betting services in the UK. Horizontal unilateral effects can arise when one firm merges with a competitor, allowing the merged entity profitably to raise prices (or in this case, widen spreads) 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 any rivals.
16. When assessing whether a merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects, the CMA's main consideration is whether there are sufficient remaining alternatives to constrain the merged entity. Amongst other factors, our assessment has therefore focussed on the extent to which the Parties are constrained by providers of unlicensed sports spread betting, sports fixed odds betting or financial spread betting.

### **What would have happened absent the Merger?**

17. To determine the impact that the Merger has had, or may be expected to have, on competition, we have considered what would likely have happened absent the Merger, to provide a comparator. This is known as the counterfactual.
18. In this case, based on submissions and evidence received from the Parties and third parties, we have focussed on what would have happened to Sporting Index absent the Merger, and in particular whether (a) Sporting Index was likely to have exited the market (whether through failure or otherwise), and (b) there would not



have been an alternative, less anti-competitive purchaser (to Spreadex) for Sporting Index or its assets. We have considered whether alternative bidders for the B2C business of Sporting Index would likely have acquired Sporting Index or its assets (either in the form acquired by Spreadex, or a different configuration of assets with the support of a transitional services agreement (**TSA**) from Sporting Group), and also whether the B2C business would likely have instead been sold together with the B2B business of Sporting Index.

19. In doing so, we have reviewed internal documents, analysed financial data, and gathered evidence from the seller, professional advisors on the sale process, and alternative bidders for the Sporting Index business.
20. While Sporting Group had not engaged in detailed discussions with alternative bidders during the sale process on the scope, duration and pricing of a potential TSA, Sporting Group was prepared to be flexible in relation to the scope of the TSA services required by potential purchasers. Based on the evidence provided to us, our provisional conclusion is that the most likely counterfactual is that Sporting Index, under the ownership of an alternative bidder or (as part of a broader transaction together with the B2B business) another purchaser, would continue to compete in the supply of licensed online sports spread betting services, broadly in line with pre-Merger conditions of competition.

## **What did the evidence tell us?**

### **... about the relevant market?**

21. Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'. The CMA is therefore required to identify the market or markets within which an SLC has resulted, or may be expected to result. Market definition can also be a helpful analytical tool to identify the most significant competitive alternatives available to customers of the merger firms.
22. In this case, we have considered whether one or more of sports fixed odds betting providers, financial spread betting providers and unlicensed sports spread betting providers form part of the relevant market, or should instead be considered as out-of-market constraints on the Parties. We have considered a range of evidence, including third party views (including from sports fixed odds providers, financial spread providers, unlicensed sports spread betting providers, and customers of the Parties) and the Parties' internal documents.
23. In relation to sports fixed odds betting, our provisional view is that the evidence provided to us shows that:

- (a) on the demand-side, neither customers nor sports fixed odds betting providers see sports fixed odds betting products as close alternatives to sports spread betting products; and
  - (b) on the supply-side, although some assets are used to supply both sports fixed odds betting and sports spread betting, sports fixed odds betting providers would face significant challenges to supplying sports spread betting products.
24. In relation to financial spread betting providers and unlicensed sports spread betting providers:
- (a) Financial spread betting providers told us that they did not compete with sports spread betting providers, which is also supported by customer evidence and the Parties' internal documents.
  - (b) Similarly, customers concerned about the Merger told us that unlicensed sports spread betting providers were not credible alternatives, as they lack certain customer protections and are unable to solicit customers in the UK.
25. On the basis of the evidence provided to us, our provisional conclusion is that the relevant market is the supply of licensed online sports spread betting services in the UK, and that any constraint from sports fixed odds betting providers, financial spread betting providers or unlicensed sports spread betting providers will be addressed in the competitive assessment as an out-of-market constraint.

**... about the Parties' positions in licensed online sports spread betting?**

26. As the Parties' are the only two suppliers of licensed online sports spread betting services in the UK, they have a combined share of 100% (with an increment of [20-30%] as a result of the Merger).
27. Where there are only two providers operating in the relevant market, our starting point is that they will necessarily be each other's closest competitors. This position was supported by the Parties' internal documents and the evidence provided to us from third parties, including customers.

**... about the competitive constraints on the Parties?**

28. As noted above, the Parties are the only two firms active in the supply of licensed online sports spread betting services in the UK. We have therefore considered the strength of the competitive constraint imposed on the Parties by out-of-market competitors, namely unlicensed sports spread betting firms, financial spread betting firms and sports fixed odds betting providers.
29. Our assessment of the evidence provided to us is, in summary:

- (a) Spreadex's internal documents show it was aware that it faced no other licensed sports spread betting competitors, other than Sporting Index. While there are some examples of Spreadex monitoring sports fixed odds betting providers, this is consistent with competition between Spreadex's fixed odds business and fixed odds competitors, rather than any constraint on its sports spread betting business. We have not seen evidence in the Parties' internal documents, or other evidence provided by the Parties, that financial spread betting providers or unlicensed sports spread betting providers exert any competitive constraint on the Parties.
- (b) Of the 33 responses to our questionnaire, only two customers told us that they would switch to sports fixed odds betting if their preferred sports spread betting provider were unavailable. Similarly, only two customers told us that they would switch to unlicensed sports spread betting providers, and only one customer told us that they would switch to a financial spread betting provider.
- (c) Sports fixed odds betting providers told us that there were significant differences between sports fixed odds betting and sports spread betting, and that they did not compete, or only competed 'weakly', with the Parties.
30. Our provisional conclusion is therefore that the remaining out-of-market competitive constraints on the Parties following the Merger (including unlicensed sports spread betting firms, financial spread betting firms and sports fixed odds betting providers) are weak.
31. In view of the above, and in particular given the closeness of competition between the Parties, and the absence of sufficient alternative competitive constraints, our provisional conclusion is that that the Merger raises competition concerns in the supply of licensed online sports spread betting services in the UK; and therefore, subject to our provisional findings on countervailing factors, the Merger has resulted, or may be expected to result, in an SLC.

**...about any countervailing factors that prevent or mitigate an SLC arising?**

32. We have also considered whether there are any countervailing factors that prevent or mitigate an SLC arising from the Merger, in particular, (a) any entry and/or expansion and (b) any Merger efficiencies.
33. To assess entry and/or expansion we have considered whether there are any barriers to entry or expansion into licensed online sports spread betting in the UK. Having considered views of the Parties and other industry participants, our provisional conclusion is that developing or acquiring the required technology and industry expertise would both be significant barriers to entry or expansion, and that such barriers would make it very difficult for any entry or expansion into the supply of licensed online sports spread betting to be timely, likely and sufficient to prevent

an SLC arising from the Merger. We have also not seen evidence of any potential entrants planning to enter or expand into the market in a way that would be timely, likely and sufficient to prevent an SLC arising from the Merger.

34. To assess merger efficiencies, we have considered whether benefits submitted by the Parties, in the form of a better product and customer experience for Sporting Index customers by using Spreadex's platform, (a) enhance rivalry in the relevant market, (b) are timely, likely and sufficient to prevent an SLC, (c) are merger specific, and (d) benefit customers in the UK. Our provisional view is that the claimed efficiencies are not merger-specific, as the benefits would have been available to Sporting Index customers with or without the Merger, and do not enhance rivalry, given that the Parties are the only two providers of licensed online sports spread betting in the UK and face weak out-of-market constraints.
35. On this basis, our provisional conclusion is that there are no countervailing factors to prevent or mitigate an SLC arising from the Merger.

## **PROVISIONAL CONCLUSION**

36. In view of the above, our provisional conclusion is that the Merger has resulted in the creation of a relevant merger situation, which has resulted, or may be expected to result, in an SLC in the supply of licensed online sports spread betting services in the UK.

# PROVISIONAL FINDINGS

## 1. THE REFERENCE

- 1.1 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**),<sup>1</sup> 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 the **Merged Entity**<sup>2</sup>) from Sporting Group Holdings Limited (**Sporting Group**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**).
- 1.2 In exercise of its duty under section 35(1) of the Act,<sup>3</sup> 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.
- 1.3 Upon deciding to make these provisional findings, we have decided to extend the statutory timetable by eight weeks, which means that we are now required to prepare and publish our final report by 26 November 2024.<sup>4</sup>
- 1.4 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A and Appendix B respectively.
- 1.5 This document, together with its appendices, constitutes the provisional findings published and notified to the Parties in line with the CMA's rules of procedure.<sup>5</sup> Further information relevant to this inquiry, can be found on the CMA webpage.<sup>6</sup>

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<sup>1</sup> [Section 22\(1\)](#) of the Act.

<sup>2</sup> Spreadex and Sporting Index are each a **Party** to the Merger; together they are referred to as the **Parties** and, for statements relating to the situation post-Merger, as the **Merged Entity**.

<sup>3</sup> [Section 35\(1\)](#) of the Act.

<sup>4</sup> In accordance with section 39(1) of the Act, we were required to prepare and publish our final report within a period of 24 weeks beginning with the date of the reference concerned, which meant that the statutory deadline to do so was 1 October 2024. The statutory deadline was extended by eight weeks pursuant to section 39(3) of the Act (see the 'Notice of extension of inquiry period under section 39(3) of the Enterprise Act 2002' published on the [inquiry webpage](#)).

<sup>5</sup> [CMA rules of procedure for merger, market and special reference groups \(CMA17\) \(the Rules\)](#), March 2014, Rule 11.

<sup>6</sup> See: [Spreadex / Sporting Index Merger inquiry](#).

## 2. INDUSTRY BACKGROUND

- 2.1 In this chapter we provide an overview of the licensed online sports (including spread and fixed odds) betting services sector (**online sports betting services**) in the UK, in which the Parties are active (see also Chapter 3, Parties, Merger and Merger Rationale).

### Overview of the industry

- 2.2 Online sports betting services involve a customer staking an amount of money (ie the initial stake) on the outcome of a sports event, or on the likelihood of an event occurring or not occurring.<sup>7</sup> A customer's 'payoff' is the amount they stand to win if their bet is successful, and their 'losses' are the amount they stand to lose if their bet is unsuccessful. Online sports betting services involve customers using websites and apps to place their bets.
- 2.3 In fixed odds betting, the payoff is determined based on odds set in advance. The losses are capped based on the amount of the initial stake. Within fixed odds betting, odds can be determined by the bookmaker (sportsbook betting) or through a betting exchange, where customers set their own odds and bet against each other (exchange betting). In this report, references to 'fixed odds' do not include exchange betting.
- 2.4 In spread betting, the provider offers a spread (or range) of outcomes and allows customers to 'buy' (predict higher than the spread) or 'sell' (predict lower than the spread). Customers choosing to buy will win if the outcome is higher than the predicted spread and lose if it is lower. Customers choosing to sell will win if the outcome is lower than the predicted spread and lose if it is higher.<sup>8</sup> The payoff is determined based on 'how right' the customer is and both the payoff and the losses can be far higher than the initial amount staked. There are many different outcomes that customers can choose to bet on. By way of example, customers can bet on how many goals will be scored in a football match or the total minutes of all goals scored by headers in a football match; how many sixes will be hit in a cricket match, or how many runs a team or individual player will score in a cricket match.
- 2.5 Using the example of customers betting on how many goals will be scored in a football match, a sports spread betting provider may provide a spread of 2.8–3. A customer choosing to buy in this scenario would be predicting that there will be more than three goals scored, while a customer choosing to sell will be predicting

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<sup>7</sup> Under [section 9\(1\)](#) of the Gambling Act 2005, betting is defined as 'making or accepting a bet on: (a) the outcome of a race, competition or other event or process; (b) the likelihood of anything occurring or not occurring; or (c) whether anything is or is not true.

<sup>8</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 26.

that fewer than 2.8 goals will be scored. The amount of money a customer wins or loses will depend on how right or wrong the customer is (ie the difference between the actual number of goals scored and the predicted number of goals scored). For instance, if seven goals are scored in the match, then a customer choosing to buy will win their initial stake multiplied by four (ie 7 minus 3) while a customer choosing to sell will lose their initial stake multiplied by 4.2 (ie 7 minus 2.8). However, if no goals are scored, then a customer choosing to buy will lose their initial stake multiplied by three while a customer choosing to sell will win their initial stake multiplied by 2.8.

- 2.6 Customers of online sports spread betting services are therefore generally individuals who are comfortable with the increased risk and complexity of spread betting.
- 2.7 In order to create a new sports spread betting account with a licensed online sports spread betting provider in the UK, customers are asked to provide certain financial information as part of the sign-up process, including information on the individual's employment status, net annual income, and total levels of savings/investments.<sup>9</sup> Sporting Group (the previous owner of Sporting Index) described how, pre-Merger, it often prompted Sporting Index customers who were regularly betting to update their financial information.<sup>10</sup> Further detail on compliance requirements for licensed online sports spread betting providers are provided below.

## Pricing spreads

- 2.8 As set out in paragraphs 2.4 and 2.5, a sports spread betting provider will offer a spread of outcomes for customers to bet on.
- 2.9 In order to price its spreads, Spreadex told us that it first [REDACTED], which are then put into Spreadex's model. This model [REDACTED]. An example of this [REDACTED].<sup>11</sup>
- 2.10 Once the more granular [REDACTED] have been determined, these [REDACTED] may be further adjusted by Spreadex's sports traders in order to account for [REDACTED]. Following this, Spreadex then automatically generates spreads by inputting the [REDACTED]. The spreads are then displayed on Spreadex's front-end technology platform with which customers directly interact. Spreadex is also able to [REDACTED]. This is done automatically by Spreadex's model, but Spreadex sports traders may also [REDACTED].<sup>12</sup>

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<sup>9</sup> Spreadex teach-in slides, 1 May 2024, slide 9.

<sup>10</sup> Third party hearing transcript.

<sup>11</sup> Spreadex teach-in slides, 1 May 2024, slides 17-20.

<sup>12</sup> Spreadex teach-in slides, 1 May 2024, slides 17-20.

## Providers of licensed online sports betting services

- 2.11 As set out in paragraph 2.1, the Parties are active in the licensed online sports (including spread and fixed odds) betting services sector. Spreadex estimates the sports fixed odds betting sector to be around £2.2 billion in gross gambling yield terms in 2022.<sup>13</sup> Other providers of fixed odds betting services include bet365 Group, Entain Group (via Ladbrokes, Coral and others), Flutter Entertainment (via Sky Bet), BetVictor and 888 Holdings (via William Hill).<sup>14</sup>
- 2.12 The Parties are the only two providers of licensed online sports spread betting services in the UK.<sup>15</sup> Based on the Parties' revenues, we estimate the licensed online sports spread betting sector in the UK to have had a size of £[X] million in 2020, £[X] million in 2021, £[X] million in 2022, and £[X] million in 2023.<sup>16</sup>
- 2.13 We note that based on these estimates, the size of the sector has decreased from 2020 to 2022 but increased from 2022 to 2023.<sup>17</sup>

## Regulatory framework

- 2.14 The Gambling Commission (**GC**) regulates all gambling in Great Britain, apart from spread betting which is regulated by the Financial Conduct Authority (**FCA**). We provide an overview of both regulatory frameworks below.

### FCA

- 2.15 Spread betting providers (including sports spread betting providers) which carry on regulated activities within the FCA perimeter of regulation must obtain authorisation from the FCA and adhere to its regulations.<sup>18</sup>
- 2.16 The application process for an FCA licence involves the FCA scrutinising both the financial and non-financial resources of the applicant. This includes reviewing the feasibility of business plans and considering the potential for any consumer harm.<sup>19</sup> The FCA told us that it has a statutory deadline of six months to approve complete applications, and 12 months to determine incomplete applications.<sup>20</sup>

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<sup>13</sup> Gambling Commission (**GC**), '[Industry Statistics - February 2024 - Correction: Official statistics](#)', 1 February 2024 (last accessed 23 July 2024), as cited in Spreadex Letter to the Inquiry Group, 25 April 2024, page 3 and footnote 6. Gross gambling yield is the total amount paid to a GC licensee by way of stakes and any other amounts that will otherwise accrue to the licensee directly in connection with the activities authorised by the licence, minus the total amount deducted from the licensee in respect of the provision of prizes or winnings in connection with the activities authorised by the licence (GC, '[Regulatory returns guidance](#)', 4 May 2021 (last updated 1 July 2024) (last accessed on 23 July 2024)).

<sup>14</sup> See: [bet365](#); [Ladbrokes](#); [Sky Bet](#); [BetVictor](#); and [William Hill](#) (all last accessed on 23 July 2024).

<sup>15</sup> See Chapter 6, Horizontal Unilateral Effects.

<sup>16</sup> Spreadex response to the CMA's RF12, 2 February 2024, question 5.

<sup>17</sup> Sporting Group told us that the sector had been negatively impacted by the Coronavirus (COVID-19) pandemic, as there were fewer sporting events to bet on during this period (Third party hearing transcript).

<sup>18</sup> Sections 19 and 21 of the Financial Services and Markets Act 2000 (the **FSMA**).

<sup>19</sup> Third party call note.

<sup>20</sup> Third party response to the CMA's RFI.



- 2.17 In addition to obtaining the relevant regulatory authorisation from the FCA, authorised (that is, licensed) online sports spread betting firms must also comply with the FCA's regulations on an ongoing basis. This includes a requirement for firms to protect and hold customers' money segregated in a separate client money bank account under the FCA's Client Assets Sourcebook regime, and to report on this segregation on a monthly basis.<sup>21</sup>
- 2.18 The FCA introduced its new Consumer Duty, which came into force on 31 July 2023. It requires firms to act to deliver good outcomes for retail customers. This includes ensuring that the price a customer pays for a product is reasonable compared to the overall benefits that the customer gets from that product.<sup>22</sup>
- 2.19 The FCA Consumer Duty puts the onus on firms to conduct these assessments, however the FCA may ask to review a firm's fair value assessment together with supporting evidence, that demonstrates that a product provides fair value. In the spread betting context, the FCA would generally expect firms to consider, among other factors, the spreads offered as part of their fair value assessments.<sup>23</sup>
- 2.20 The FCA has a wide range of enforcement powers, including the power to impose financial penalties, prohibit individuals from performing functions in relation to the carrying out of regulated activities, impose a public censure, and in some cases require consumer redress.<sup>24</sup> The FCA may also place requirements on a firm's permission and limit or suspend the carrying out of a regulated activity, until the firm resolves the matter of concern to the FCA's satisfaction. The regulatory tools utilised by the FCA in any case will depend on a number of factors, including the circumstances of the case and the severity of the breach.<sup>25</sup>

## GC

- 2.21 Sports fixed odds providers wishing to solicit UK consumers must obtain a licence from the GC and adhere to its regulations.<sup>26</sup> The application process involves the GC looking at information such as business plans, profit and loss projections, and bank statements.<sup>27</sup>
- 2.22 Licensed online sports fixed odds betting firms must also comply with the GC's regulations on an ongoing basis. This involves, for example, putting into place policies and procedures intended to promote socially responsible gambling,<sup>28</sup> or

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<sup>21</sup> Third party call note.

<sup>22</sup> Third party response to the CMA's RFI.

<sup>23</sup> Third party response to the CMA's RFI.

<sup>24</sup> FCA, '[Enforcement](#)', 21 April 2016 (last updated 2 April 2024) (last accessed on 23 July 2024).

<sup>25</sup> Third party call note.

<sup>26</sup> [Section 5](#) of the Gambling (Licensing and Advertising) Act 2014.

<sup>27</sup> GC, '[Apply for a licence to operate a gambling business](#)' (last accessed on 23 July 2024).

<sup>28</sup> GC, '[Licence Conditions and Codes of Practice \(LCCP\) Condition 3.1.1 - Combating problem gambling](#)' (last accessed on 23 July 2024).

firms providing evidence to the GC, if required, showing how they have satisfied themselves that their terms are not unfair.<sup>29</sup>

- 2.23 The GC can review the manner in which licensees carry on licensed activities,<sup>30</sup> and following a review, the GC may (a) give the licensee a warning, (b) add, remove, or amend a condition to the licence, (c) suspend a licence, (d) revoke a licence, and/or (e) impose a financial penalty.<sup>31</sup>

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<sup>29</sup> GC, '[LCCP Condition 4.1.1 - Fair terms](#)' (last accessed 23 July 2024).

<sup>30</sup> [Section 116](#) of the Gambling Act 2005.

<sup>31</sup> [Section 117](#) of the Gambling Act 2005.

### 3. PARTIES, MERGER AND MERGER RATIONALE

#### Spreadex

- 3.1 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, Formula 1 motor racing, rugby, rowing, golf and greyhound racing. It also provides financial spread betting and casino betting services.<sup>32</sup>
- 3.2 The turnover of Spreadex in its financial year (FY) ended 31 December 2023 was approximately £88.9 million in the UK.<sup>33</sup> In 2023, Spreadex earned around £[REDACTED] million turnover from the sports spread betting part of its business and almost £[REDACTED] million from the fixed-odds betting part of its business, with the remaining revenues accounted for primarily by its financial spread betting and casino betting business.<sup>34</sup>

#### Sporting Index

- 3.3 Sporting Index<sup>35</sup> 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.<sup>36</sup>
- 3.4 The turnover of Sporting Index in FY22 was around £9.8 million worldwide, almost all of which was earned in the UK.<sup>37</sup> In 2023, Sporting Index earned around £[REDACTED] million turnover from the spread betting part of its business and almost £[REDACTED] million from the fixed-odds betting part of its business.<sup>38</sup>

#### The Merger

- 3.5 Prior to the Merger, Sporting Group was the holding company of both:<sup>39</sup>
- (a) Sporting Index, the B2C arm of Sporting Group, which comprised its spread betting and fixed odds betting activities (the **B2C Business**); and

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<sup>32</sup> Spreadex, Briefing Paper, 13 July 2023, paragraph 2.4.

<sup>33</sup> Spreadex, '[Spreadex Limited Annual Report and Financial Statement for the year ended 31 May 2023](#)', page 11 (last accessed on 23 July 2024).

<sup>34</sup> Spreadex response to the CMA's RF12, 2 February 2024, 2 February 2024, question 5.

<sup>35</sup> Sporting Index is referred to in some internal documents as '**SPIN**'.

<sup>36</sup> Spreadex, Briefing Paper, 13 July 2023, paragraph 2.1.

<sup>37</sup> Sporting Index, '[Sporting Index Limited Annual report and financial statements for the year ended 31 December 2022](#)', page 13 (last accessed on 23 July 2024). Spreadex, Briefing Paper, 13 July 2023, paragraph 4.1 and Table.

<sup>38</sup> Spreadex response to the CMA's RF12, 2 February 2024, question 5.

<sup>39</sup> Sporting Group, '[Sporting Group Holdings Limited Annual report and financial statements for the year ended 31 December 2022](#)', page 1 (last accessed on 23 July 2024).

(b) Sporting Solutions Services Limited (**Sporting Solutions**), the ‘business-to-business’ (**B2B**) arm of Sporting Group (the **B2B Business**).

3.6 Spreadex acquired Sporting Index from Sporting Group, a subsidiary of La Française des Jeux (**FDJ**), on 6 November 2023. The Merger did not include the purchase of the B2B activities of Sporting Group, namely Sporting Solutions, which were retained by FDJ following a corporate restructure implemented in advance of the Merger.<sup>40</sup>

3.7 The Sporting Index business acquired by Spreadex comprised a number of assets, including the Sporting Index legal entity, which, following the corporate restructure, owned or comprised the Sporting Index brand, intellectual property (**IP**), domain names, regulatory licences, customer lists, deferred tax losses, trade debtors and trade creditors/approvals and six employees.<sup>41</sup>

3.8 Spreadex’s internal documents show that the strategic rationale for the Merger was to obtain access to Sporting Index’s client base, historical data and dormant accounts, as well as to remove the competitive threat of another firm buying the business, and Sporting Index becoming a stronger competitor as a result.<sup>42</sup>

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<sup>40</sup> Spreadex gained control over Sporting Index which, following the corporate restructure, owned a number of assets relating to the Sporting Index business, as described in paragraph 3.7. The assets, technology and employees comprising Sporting Solutions were carved out and moved to Sporting Solutions Limited.

<sup>41</sup> The remaining employees of the pre-Merger Sporting Index business were not acquired by Spreadex [X].

<sup>42</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103.

## 4. RELEVANT MERGER SITUATION

### Introduction

- 4.1 This chapter addresses the first of the two statutory questions which we are required to answer under section 35 of the Act and pursuant to our Terms of Reference, namely: whether a relevant merger situation (**RMS**) has been created.<sup>43</sup>
- 4.2 The concept of an RMS has two principal elements: (a) two or more enterprises have ceased to be distinct enterprises within the statutory period for reference;<sup>44</sup> and (b) the turnover test and/or the share of supply test is satisfied.<sup>45</sup> We address each of these elements in turn below.

### Enterprises ceasing to be distinct

#### Enterprises

- 4.3 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’.<sup>46</sup> A ‘business’ is defined as including ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.<sup>47</sup>
- 4.4 Each of Spreadex and Sporting Index is active in the supply of online sports betting services, predominantly in the UK, and generates turnover from these services (see Chapter 3, Parties, Merger and Merger Rationale). Sporting Index comprises the Sporting Index legal entity and the core components of the B2C Business.<sup>48</sup>
- 4.5 Our provisional view is that the Sporting Index entity, assets and components acquired by Spreadex on the one hand, and Spreadex itself on the other hand, each constitute a ‘business’ within the meaning of the Act. Consequently, we are satisfied that the activities of each of Spreadex and Sporting Index constitute an ‘enterprise’ for the purposes of the Act.

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<sup>43</sup> See [section 35](#) of the Act and Appendix A, Terms of Reference.

<sup>44</sup> Sections [23](#) and [24](#) of the Act.

<sup>45</sup> [Section 23](#) of the Act.

<sup>46</sup> [Section 129\(1\)](#) of the Act.

<sup>47</sup> [Section 129\(1\)](#) of the Act.

<sup>48</sup> As explained at paragraph 3.7, Spreadex acquired Sporting Index which, following the corporate restructure, owned or comprised the Sporting Index brand, IP, domain names, regulatory licences, customer lists, deferred tax losses, trade debtors and trade creditors/approvals and six employees. [X].

## Ceasing to be distinct

- 4.6 The Act provides that any two enterprises cease to be distinct if they are brought under common ownership or common control.<sup>49</sup> The Merger concerns the acquisition by Spreadex of the B2C Business, and the entire issued share capital, of Sporting Index. Therefore, as a result of the Merger, the enterprise of Sporting Index is now wholly under the ownership and control of Spreadex.
- 4.7 Accordingly, our provisional view is that the Merger has resulted in two or more enterprises (namely, the enterprises of Spreadex and Sporting Index) ceasing to be distinct.

## The applicable statutory period

- 4.8 The Act requires that the enterprises must have ceased to be distinct within either (a) not more than four months before the day on which the reference is made, or (b) where the merger took place without having been made public and without the CMA being informed of it, four months from the earlier of the time that material facts are made public or the time the CMA is told of material facts.<sup>50</sup> The four-month period may be extended under section 25 of the Act.<sup>51</sup>
- 4.9 The CMA was informed about the Merger on 25 August 2023 and the Merger completed on 6 November 2023. The four-month period for a reference decision under section 24 of the Act therefore commenced upon completion of the Merger. It was extended under section 25(1) of the Act to 5 April 2024. On 4 April 2024, the CMA decided that the Merger gave rise to a realistic prospect of an SLC and further extended the four-month period to 11 April 2024 to allow Spreadex the opportunity to offer undertakings in lieu of a reference (**UILs**).<sup>52</sup> On 10 April 2024, Spreadex informed the CMA that it would not offer UILs. Accordingly, pursuant to section 25(5)(b) of the Act, the extension to the four-month period ended on 24 April 2024. The reference was made on 17 April 2024.<sup>53</sup>
- 4.10 Our provisional view is therefore that the enterprises of Spreadex and Sporting Index ceased to be distinct within the applicable statutory period for reference, and therefore the first limb of the RMS test is met.

## Turnover test or share of supply test

- 4.11 The turnover test is met where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.<sup>54</sup> As the turnover of Sporting Index in its last

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<sup>49</sup> [Section 26](#) of the Act.

<sup>50</sup> [Section 24](#) of the Act.

<sup>51</sup> [Section 25](#) of the Act.

<sup>52</sup> Sections [25\(4\)](#) and [73A\(1\)](#) of the Act.

<sup>53</sup> See Chapter 1, The Reference and Appendix A, Terms of Reference

<sup>54</sup> [Section 23\(1\)\(b\)](#) of the Act.

financial year prior to the merger agreement was around £9.8 million worldwide, almost all of which was earned in the UK,<sup>55</sup> the turnover test is not met.

- 4.12 The share of supply test is met where, as a result of enterprises ceasing to be distinct, the following condition prevails or prevails to a greater extent: at least one quarter of goods or services of any description<sup>56</sup> which are supplied in the UK, or in a substantial part of the UK, are supplied either by or to one and the same person.<sup>57</sup> The requirement that the condition prevails or prevails to a greater extent means that the merger must result in the creation or increase in a share of supply of goods or services of a particular description and the resulting share must be 25% or more.
- 4.13 Spreadex and Sporting Index have a combined share of supply by revenue of 100% in the supply of licensed online sports spread betting services in the UK (with an increment of [20-30%] arising from the Merger). Accordingly, our provisional view is that the share of supply test in section 23 of the Act is met,<sup>58</sup> and therefore the second limb of the RMS test is met.

### **Provisional conclusion on the relevant merger situation**

- 4.14 In view of the above, we have provisionally concluded that the Merger has resulted in the creation of an RMS.

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<sup>55</sup> Spreadex, Briefing Paper, 13 July 2023, paragraph 4.1 and Table.

<sup>56</sup> The concept of goods or services of 'any description' is very broad. The CMA is required by the Act to measure shares of supply by reference to such criterion, or such combination of criteria as the CMA considers appropriate (see [section 23\(5\)](#) of the Act).

<sup>57</sup> Section [23\(2\)](#), [\(3\)](#) and [\(4\)](#) of the Act.

<sup>58</sup> [Section 23](#) of the Act.

## 5. COUNTERFACTUAL

- 5.1 This chapter sets out our assessment and provisional conclusion on the appropriate counterfactual for the Merger. The counterfactual is an analytical tool used in answering the question of whether a merger has resulted, or may be expected to result, in an SLC. It does this by providing the basis for a comparison of the prospects of competition with the merger against the competitive situation without the merger.<sup>59</sup> The latter is called the counterfactual.
- 5.2 This chapter is structured under the following headings:
- (a) Framework for assessing the counterfactual.
  - (b) Events leading up to the Merger.
  - (c) Submissions on the counterfactual.
  - (d) Assessment of the appropriate counterfactual.
  - (e) Provisional conclusion on the counterfactual.

### Framework for assessing the counterfactual

- 5.3 The CMA's framework for assessing the counterfactual is set out in the Merger Assessment Guidelines (the **MAGs**). As set out in the MAGs, at phase 2, the CMA has to make an overall judgement as to whether or not an SLC has occurred or is likely to occur. To help make this assessment, 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 (eg a merger firm being purchased by alternative acquirers). 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.<sup>60</sup>
- 5.4 The counterfactual is not, however, intended to be a detailed description of the conditions of competition that would have prevailed absent the merger and the CMA will generally conclude on the counterfactual conditions of competition broadly. The CMA's assessment of those conditions is better considered in the competitive assessment.<sup>61</sup> The CMA also seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger,<sup>62</sup> and the

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<sup>59</sup> CMA 'Merger Assessment Guidelines', 18 March 2021 (CMA129) ([MAGs](#)), paragraph 3.1.

<sup>60</sup> [MAGs](#), paragraph 3.13.

<sup>61</sup> [MAGs](#), paragraph 3.7 and 3.9.

<sup>62</sup> [MAGs](#), paragraph 3.11.



counterfactual assessment will often focus on significant changes affecting competition between the merger firms, such as exit by one of the merger firms.<sup>63</sup>

- 5.5 Establishing the appropriate counterfactual is an inherently uncertain exercise and evidence relating to future developments absent the merger may be difficult to obtain. Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual. As part of its assessment, the CMA may consider the ability and incentive (including but not limited to evidence of intention) of the merger firms to pursue alternatives to the merger, which may include reviewing evidence of specific plans where available.<sup>64</sup>
- 5.6 The time horizon for considering the counterfactual will be consistent with the time horizon used in the CMA's competitive assessment.<sup>65</sup>
- 5.7 An example of a situation in which the CMA may use a different counterfactual to the pre-merger conditions of competition is the so-called 'exiting firm' scenario: that is where, absent the merger, one of the merger firms is likely to have exited the market. In forming a view on an 'exiting firm' scenario, the CMA will use the following framework of cumulative conditions:<sup>66</sup>
- (a) the firm is likely to have exited (through failure or otherwise) (the **Exit Condition**); 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 (the **Alternative Purchaser Condition**).

## Events leading up to the Merger

- 5.8 We set out below the key events leading up to the Merger, which we consider are relevant to our consideration of the appropriate counterfactual.
- 5.9 FDJ told us that in early 2022, it decided to prepare a 'detailed and elemental financial analysis for the "carve-out" of the Spread activity from the B2B', prior to engaging in a formal sale process at a later date.<sup>67</sup> FDJ engaged the consulting firm AlixPartners in June 2022 to conduct a 'cost analysis' of Sporting Group and its business lines before subsequently engaging AlixPartners between October and December 2022 to explore possible sale options for the B2C Business.<sup>68</sup>

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<sup>63</sup> [MAGs](#), paragraph 3.8.

<sup>64</sup> [MAGs](#), paragraph 3.14.

<sup>65</sup> [MAGs](#), paragraph 3.15.

<sup>66</sup> [MAGs](#), paragraph 3.21.

<sup>67</sup> Third party response to the CMA's RFI.

<sup>68</sup> Third party call note.

- 5.10 FDJ told us that it had explored a number of different sale options for the B2C Business,<sup>69</sup> before ultimately deciding to sell the B2C Business (the **B2C-dedicated Perimeter**), with FDJ retaining all B2B-dedicated assets and assets which were shared between the B2C Business and the B2B Business.<sup>70</sup> Diagrams illustrating the B2C-dedicated Perimeter within the wider Sporting Group structure are provided in Appendix C. As shown in Figure C.1 and Figure C.4 of Appendix C, the B2C-dedicated Perimeter comprised: the Sporting Index legal entity; around [X] B2C employees; the source code for Sporting Index’s spread betting platform; B2C IP and trademarks; and B2C contracts. A Transitional Services Agreement (**TSA**) was also offered to potential purchasers (see Figure C.3 of Appendix C for the envisaged TSA service areas).<sup>71</sup>
- 5.11 [X] told us that in August 2022, an individual at Sporting Index approached [X] to enquire about its interest in acquiring Sporting Index.<sup>72</sup>
- 5.12 Sporting Group told us that a decision was taken on 15 December 2022 to pursue a sale process of the B2C Business.<sup>73</sup> A formal sale process for the sale of the B2C-dedicated Perimeter (led by Sporting Group and its advisor, Oakvale Capital) commenced in early January 2023 (the **B2C Sale Process**).<sup>74</sup>
- 5.13 FDJ told us that it first approached two potential purchasers who had ‘showed inbound interest for a transaction’ before the B2C Sale Process (namely, [X] and [X]), and that a list of other potential purchasers to approach had been prepared with the support of Oakvale Capital ‘to maximise the potential of success of the transaction’.<sup>75</sup> According to Sporting Group’s ‘contacts database’ for the B2C Sale Process:<sup>76</sup>
- (a) a total of 14 potential purchasers were listed, albeit five do not appear to have been contacted;
  - (b) Spreadex was first contacted by Sporting Group on 7 February 2023 concerning the B2C Sale Process at the ICE London exhibition;<sup>77</sup>
  - (c) between [X].<sup>78</sup>

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<sup>69</sup> Third party response to the CMA’s RFI. Third party response to the CMA’s RFI.

<sup>70</sup> Spreadex response to the Enquiry Letter, 14 December 2023, Annex 32 and third party response to the CMA’s RFI.

<sup>71</sup> Spreadex response to the Enquiry Letter, 14 December 2023, Annex 32 and third party response to the CMA’s RFI.

<sup>72</sup> Third party call note.

<sup>73</sup> Third party response to the CMA’s RFI.

<sup>74</sup> Third party response to the CMA’s RFI.

<sup>75</sup> Third party response to the CMA’s RFI.

<sup>76</sup> Third party response to the CMA’s RFI.

<sup>77</sup> See: [About the Exhibition | a Gaming Showcase | ICE London 7-9 February 2023 at ExCeL London UK \(icegaming.com\)](#) (last accessed on 23 July 2024).

<sup>78</sup> [X]. Third party response to the CMA’s RFI.

- 5.14 Spreadex told us that prior to being contacted by Andy Wright, the Sporting Group CEO, it had not considered purchasing Sporting Index.<sup>79</sup>
- 5.15 On 15 February 2023, during FDJ's investor presentation on its FY22<sup>80</sup> results, FDJ disclosed its intention to sell the B2C Business. FDJ also told investors that it had launched a 'process of economies and restructuring' to improve the performance of the B2B Business by the end of 2023.<sup>81</sup>
- 5.16 Sporting Group received three preliminary bids, a bid from Spreadex on around 23 February 2023 to acquire Sporting Index for between £[X] million and £[X] million,<sup>82</sup> and a bid from each of the following bidders (referred to collectively in this chapter as the **Alternative Bidders**):
- (a) [X], which bid £[X] million [X],<sup>83</sup> an increase on [X] initial intended bid of £[X] million;<sup>84</sup> and
  - (b) [X], which bid £[X] million [X] (which was later confirmed, subject to minor non-price amendments, on 24 March 2023).<sup>85</sup>
- 5.17 An internal FDJ document dated 23 February 2023 evaluated the preliminary bids from Spreadex, and the Alternative Bidders.<sup>86</sup>
- 5.18 On 22 March 2023, Spreadex submitted a 'Letter of Intent' with a proposed offer for Spreadex to purchase 100% of the shares in Sporting Index for £[X] million.<sup>87</sup>
- 5.19 Around the end of March 2023, in a document prepared by Oakvale Capital for FDJ, recommendations were made to:<sup>88</sup>
- (a) select Spreadex as the preferred purchaser by signing an exclusivity agreement with it;
  - (b) begin drafting the transaction documents and a TSA with Spreadex; and
  - (c) accelerate the removal of all B2B elements from the Sporting Index entity.
- 5.20 While Spreadex agreed to acquire the B2C-dedicated Perimeter, it did not require the transfer of all of Sporting Index's B2C employees who formed part of the B2C-dedicated Perimeter, and ultimately, only six B2C employees were transferred

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<sup>79</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 4.

<sup>80</sup> FDJ's financial year ended 31 December 2022.

<sup>81</sup> See: '[Webcast of FDJ Annual Results 2022](#)' (from 1:17:40 to 1:19:19) (last accessed on 23 July 2024).

<sup>82</sup> Third party response to the CMA's RFI

<sup>83</sup> Third party response to the CMA's RFI.

<sup>84</sup> Third party call note.

<sup>85</sup> Third party response to the CMA's RFI.

<sup>86</sup> Third party response to the CMA's RFI.

<sup>87</sup> Third party response to the CMA's RFI

<sup>88</sup> Third party response to the CMA's RFI.

(three in Customer Services, two in Marketing and one in Customer Relations).<sup>89</sup> On 30 June 2023, the Spreadex Board approved the Merger for an estimated consideration of £[REDACTED] million, conditional primarily on: (a) FCA approval of the change of control; (b) completion of the ‘carve out’ of certain assets relevant to the operation of the B2B Business; and (c) termination of the employment of certain B2C employees of Sporting Index.<sup>90</sup>

- 5.21 Spreadex’s proposed acquisition of Sporting Index was approved: (a) by FDJ’s Investment Committee in June 2023;<sup>91</sup> (b) by the Sporting Solutions Board on 5 July 2023;<sup>92</sup> and (c) by the Sporting Index Board on 5 July 2023.<sup>93</sup>
- 5.22 In August 2023, FDJ initiated a separate sale process for the sale of Sporting Solutions, ie the B2B Business. As of around May 2024, FDJ told us that it was having conversations with potential bidders and was populating vendor data rooms for buyer due diligence.<sup>94</sup> FDJ commented that [REDACTED].<sup>95</sup> FDJ provided us with a subsequent update on its sale process for the B2B Business on 9 July 2024, and told us that the sale process for the B2B Business was at ‘[REDACTED]’ and that it had ‘[REDACTED]’.<sup>96</sup>
- 5.23 Spreadex told us that although it acquired Sporting Index’s [REDACTED] spread betting platform, which had been offered as part of the B2C-dedicated Perimeter given that the B2B Business ‘would no longer need it’,<sup>97</sup> it decided to service Sporting Index customers using a ‘white label version’ of the Spreadex website, which was ‘hosted on the underlying proprietary’ Spreadex ‘technology’.<sup>98</sup> Furthermore, Spreadex completed the migration of Sporting Index data to its own Spreadex ‘systems’ on the date of completion of the Merger, and therefore, ultimately did not require a TSA from Sporting Group.<sup>99</sup> FDJ told us that Sporting Index’s processes, staff and operations remained unchanged until completion of the Merger, when an ‘overnight transfer / switchover occurred for customers and technology’.<sup>100</sup>
- 5.24 The Merger completed on 6 November 2023.<sup>101</sup>

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<sup>89</sup> See: [Derogation Letter](#), 15 January 2024.

<sup>90</sup> Spreadex response to the Enquiry Letter, 14 December 2023, Annex 8. CMA approval was not a condition to closing.

<sup>91</sup> Third party response to the CMA’s RFI.

<sup>92</sup> Spreadex response to the Enquiry Letter, 14 December 2023, Annex 7.

<sup>93</sup> Spreadex response to the Enquiry Letter, 14 December 2023, Annex 6.

<sup>94</sup> Third party response to the CMA’s RFI.

<sup>95</sup> Third party response to the CMA’s RFI.

<sup>96</sup> Third party response to the CMA’s RFI.

<sup>97</sup> Spreadex response to the CMA’s RF11, 10 January 2024, question 11.

<sup>98</sup> See: [Derogation Letter](#), 15 January 2024.

<sup>99</sup> Spreadex response to the CMA’s RF11, 10 January 2024, question 12.

<sup>100</sup> Third party response to the CMA’s RFI.

<sup>101</sup> Under the Merger, Spreadex acquired the Sporting Index legal entity, including the Sporting Index brand; IP; domain names; regulatory licences with the FCA and the GC; the customer list (including all trading history); unrecognised deferred tax losses; trade debtors and trade creditors / accruals; and six employees (three in Customer Services, two in Marketing and one in Customer Relations) (see: [Derogation Letter](#), 15 January 2024). Spreadex also acquired the B2C application code for the [REDACTED] spread betting platform (Spreadex response to the CMA’s RF11, 10 January 2024, question 11).

## Submissions on the counterfactual

5.25 We set out below the main submissions from Spreadex and the former owners of Sporting Index (FDJ and Sporting Group) on the appropriate counterfactual.

### Spreadex's submissions on the counterfactual

5.26 Spreadex submitted that absent the Merger, 'FDJ would have closed Sporting Index and there would not have been an alternative purchaser'.<sup>102</sup> Spreadex's submissions on each of the two conditions of the so-called 'exiting firm' counterfactual are provided below.

### Spreadex's submissions on the Exit Condition

5.27 In relation to the Exit Condition, Spreadex submitted that absent the Merger, FDJ would have closed Sporting Index due to:

- (a) The ongoing and increasingly significant losses of Sporting Index<sup>103</sup> since its acquisition by FDJ in 2019, where its last profit was recorded in FY18.<sup>104</sup> It told us that it understood that this financial situation had not improved under FDJ's ownership and therefore, FDJ had decided to either sell or close the business;<sup>105</sup>
- (b) FDJ's commentary in its annual report and public domain on the steps it was taking to improve the profitability of the UK business.<sup>106</sup> For example, Spreadex told us that FDJ's FY22 financial statements had reclassified Sporting Index as 'assets held for disposal';<sup>107</sup>
- (c) the comments made by FDJ during a shareholder meeting in February 2023, in response to analyst questions at FDJ's year-end results announcement, when FDJ stated that Sporting Index did not align with its wider strategy, and that it had therefore launched a process to divest the business;<sup>108</sup>
- (d) an increasingly rigorous regulatory environment in the UK, which would have limited Sporting Index's ability to improve its profitability;<sup>109</sup> and

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<sup>102</sup> Spreadex Letter to the Inquiry Group, 25 April 2024.

<sup>103</sup> Spreadex Letter to the Inquiry Group, 25 April 2024.

<sup>104</sup> Sporting Index's financial year ended 31 December 2018.

<sup>105</sup> Spreadex, Briefing Paper, 13 July 2023.

<sup>106</sup> Spreadex Letter to the Inquiry Group, 25 April 2024.

<sup>107</sup> Spreadex, 'CMA Issues Meeting', 11 March 2024, slide 6.

<sup>108</sup> Spreadex, 'CMA Issues Meeting', 11 March 2024, slide 7 ('Webcast of FDJ Annual Results 2022', dated 16 February 2023').

<sup>109</sup> Spreadex, 'CMA Issues Meeting', 11 March 2024, slide 6.

- (e) FDJ's subsequent strategic decision to divest Sporting Group's B2B arm, ie Sporting Solutions.<sup>110</sup>

### **Spreadex's submissions on the Alternative Purchaser Condition**

- 5.28 In relation to the Alternative Purchaser Condition, Spreadex submitted that 'FDJ's decision to sell the B2C Business was a result of increasing pressures on Sporting Index's revenues and profitability since FDJ's acquisition of the company in May 2019, which was, in part, due to the increasingly rigorous regulatory environment in the UK. It explained that this 'context' was 'significant because it calls into question the ability of the Alternative Bidders successfully to enter the market via the acquisition of Sporting Index'.<sup>111</sup>
- 5.29 Spreadex submitted that it believed that 'there were no viable alternative bidders that would have been capable of running Sporting Index'.<sup>112</sup> It also submitted that it was 'notable' that 'of the fourteen potential buyers, of whom nine were contacted by Sporting Group and/or its advisors, only three showed any interest',<sup>113</sup> and added that no other 'alternative transaction perimeter would have been commercially viable'.<sup>114</sup>
- 5.30 Spreadex submitted that the complementary nature of Spreadex's business (offering the same dual-regulated services, namely sports fixed odds betting and sports spread betting) with Sporting Index's business, meant that the opportunity was 'financially viable' for Spreadex, but 'not for others'.<sup>115</sup> Spreadex explained that this was because of the nature of the target assets available for sale (which it submitted could not be operated on a standalone basis), and the significant technological, regulatory, and operational requirements involved (and their associated costs).<sup>116</sup>
- 5.31 Spreadex submitted that it was 'significant that FDJ and Sporting Group did not proceed with either of the Alternative Bidders', and that while it was 'apparent' that both Alternative Bidders '[X]', Sporting Group was 'clear that there are other relevant factors, including concerns as to whether they would be able to secure FCA approval and the fact that they would both be reliant on a long-term TSA, which Sporting Group appears to have been reluctant to proceed with'. It added that if 'they had been genuine viable Alternative Bidders', it was 'implausible that

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<sup>110</sup> See: SBC News, '[FDJ to sell Sporting Solutions as future lies in B2C growth](#)', 19 February 2024 (last accessed on 23 July 2024).

<sup>111</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>112</sup> Spreadex Letter to the Inquiry Group, 25 April 2024.

<sup>113</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>114</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>115</sup> Letter from Spreadex to the CMA's Mergers Intelligence Committee, 6 December 2023.

<sup>116</sup> Spreadex Letter to the Inquiry Group, 25 April 2024.

they would not have been invited to engage in routine due diligence and/or to submit improved offers'.<sup>117</sup>

5.32 Spreadex also submitted that based on its 'knowledge of [REDACTED], [REDACTED] and the wider market', 'neither of the Alternative Bidders would have been credible purchasers', and that 'if FDJ pursued this transaction with them further', FDJ 'would have reached the same conclusion'.<sup>118</sup> Spreadex told us that 'neither of the Alternative Bidders would have been able to operate in a sustainable and regulatory compliant manner on a long-term basis' and that that it appeared that 'both bidders have not adequately assessed the long-term viability of operating the business in the current market and under current regulatory conditions'. In this regard, Spreadex submitted that both [REDACTED] and [REDACTED] 'would have faced significant back-office costs (including IT, recruitment, office, finance and legal costs) and would also have had to incur substantial advertising expenditure to win business, given the substantial customer acquisition friction' which was 'a result of the current regulatory regime'. In particular, Spreadex submitted that:<sup>119</sup>

- (a) [REDACTED] would have required more administrative, IT and marketing staff in order to comply with regulatory requirements as well as handling the increased volume of transactions going through the business as a result of taking on the Sporting Index customers. [REDACTED] would also need to acquire a trading team since it is Spreadex's understanding that it does not have one';
- (b) given 'Spreadex's understanding that [REDACTED] has no [REDACTED] arm, it would similarly have had to hire administrative, IT and marketing staff (more such staff than [REDACTED]) as well as scaling up its trading team'; and
- (c) both '[REDACTED] and [REDACTED] would have had to acquire information feeds and would likely have faced higher transaction fees than Spreadex, which has synergies from its financial leveraged trading business'.

5.33 Spreadex submitted that based on the terms of a TSA offered by FDJ to Spreadex, who was an experienced provider of similar services, no alternative bidder would have been able to [REDACTED].<sup>120</sup> Spreadex told us that the potential TSA would have covered [REDACTED]. Spreadex submitted that this would have cost around £[REDACTED] million [REDACTED].<sup>121</sup> Spreadex submitted that FDJ's proposed price for the TSA at a time when Sporting Index's annual revenues were around £9.8 million (and likely to fall further), [REDACTED].<sup>122</sup>

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<sup>117</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>118</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>119</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>120</sup> Spreadex Letter to the Inquiry Group, 25 April 2024.

<sup>121</sup> Spreadex response to the CMA's RF11, 10 January 2024, question 12.

<sup>122</sup> Spreadex, 'CMA Issues Meeting', 11 March 2024, slide 16.

- 5.34 Spreadex submitted that this TSA fee would likely be required to be paid by another bidder given that it would be unlikely to have the infrastructure in place to provide the required level of service to customers without a TSA.<sup>123</sup> Spreadex told us that it understood that the CMA had talked to alternative bidders at Phase 1 who had made comments that indicated they might have been able to purchase the target and return it to profitability. Spreadex submitted that, in its view, these bidders could not have been clear about what assets they were buying; what TSA arrangements were possible; and what the regulatory requirements were.<sup>124</sup>
- 5.35 Spreadex submitted that it was ‘not possible to assess the ‘credibility of [redacted] and [redacted] as viable purchasers and operators of the B2C Business without factoring in the impact of the necessary TSA on their potential bids and their ability to operate the B2C Business sustainably’.<sup>125</sup>
- 5.36 Spreadex submitted that with regard to Sporting Index’s ongoing costs once the business had been ‘stood up’, it could not see how any B2C Business could be run on a lower cost base than what Sporting Index was achieving prior to the acquisition (of around £18 million)<sup>126</sup> due to:<sup>127</sup>
- (a) the seller’s longstanding experience in the industry;
  - (b) the synergies the seller had from its Sporting Solutions business, meaning some of the material costs (eg staff and technology costs) were held in another entity; and
  - (c) the ‘cost-cutting optimisation’ the seller had undertaken in attempts to make Sporting Index profitable.
- 5.37 Spreadex told us that ‘the costs of the TSA that was offered to Spreadex were simply not sustainable’ (costing around £[redacted] million (including VAT) a year, compared to Sporting Index’s revenues at the time of around £9.8 million). It explained that whilst ‘the precise scope and cost of the TSA would have been subject to negotiation, given that Spreadex had many of the functions that the TSA provided for (and the Alternative Bidders did not), a TSA for those bidders would, more likely than not, have been more expensive and extensive’. It added that there was ‘a prohibitive minimum cost required to operate in the market, whether this be via proprietary technology and staff, via a TSA, or a combination of both’,<sup>128</sup> and estimated this to be around £[redacted] million a year, based on Spreadex’s FY24 cost

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<sup>123</sup> Spreadex response to the CMA’s RF11, 10 January 2024, question 12.

<sup>124</sup> Spreadex Letter to the Inquiry Group, 25 April 2024.

<sup>125</sup> Spreadex, ‘Response to the CMA’s Annotated Issues Statement and accompanying Working Papers’, 1 July 2024.

<sup>126</sup> We note that the £18 million cost base figure quoted by Spreadex relates to all costs between FY22 revenues and ‘profit before tax’. For reference, of the £18 million cost base figure, £1.6 million related to direct costs (to Gross Profit) (Sporting Index, ‘[Sporting Index Limited Annual report and financial statements for the year ended 31 December 2022](#)’ (last accessed on 23 July 2024)).

<sup>127</sup> Spreadex response to the CMA’s s109 notice 01, 24 April 2024, question 28

<sup>128</sup> Spreadex, ‘Response to the CMA’s Annotated Issues Statement and accompanying Working Papers’, 1 July 2024.



base for its 'Sports' business line of around £[REDACTED] million plus around £[REDACTED]million of [REDACTED].<sup>129</sup>

### **FDJ's submissions on the counterfactual**

5.38 FDJ told us that if Spreadex had not acquired Sporting Index, 'Sporting Group would have considered offers' from the other bidders, and 'could have started discussions with alternative purchasers'. It added that there '[REDACTED] required for the sale of the business', but that [REDACTED].<sup>130</sup> In this regard, FDJ told us that [REDACTED].<sup>131</sup> FDJ told us that [REDACTED].<sup>132</sup>

### **Assessment of the appropriate counterfactual**

5.39 Spreadex submitted that the appropriate counterfactual in this case is that FDJ would have wound down Sporting Index on the basis that there were no other viable purchasers. We have therefore considered whether the two cumulative conditions have been met (that is, the Exit Condition and the Alternative Purchaser Condition) for an 'exiting firm' scenario to be taken as the appropriate counterfactual in this case.

5.40 In the present case, we have considered the Exit Condition initially<sup>133</sup> by way of summary assessment, and we have then proceeded to assess in more detail whether the Alternative Purchaser Condition is met. This is because, in this case, there were two Alternative Bidders and the question of whether the Alternative Purchaser Condition is met is at the core of the counterfactual assessment. We therefore present first our assessment in relation to the Alternative Purchaser Condition, followed by our summary assessment of the Exit Condition.

5.41 We consider the appropriate starting point for our assessment of the counterfactual to be the commencement of the B2C Sale Process in early January 2023, prior to Spreadex's involvement in the B2C Sale Process in February 2023.

### **FDJ's rationale for the sale of the B2C Business**

5.42 FDJ told us that it had initially acquired Sporting Group for its B2B activity, in particular the complementary trading capabilities (that FDJ lacked), and not specifically for its B2C activity. It added that following its acquisition of Sporting Group, the 'regulatory framework in the UK evolved significantly' in relation to improving the safeguarding of consumers. It explained that the subsequent

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<sup>129</sup> Spreadex main party hearing, 'Opening Statement Accompanying Slides', 4 July 2024; Spreadex, 'Spreadex Hearing follow up response - 9 July', 9 July 2024.

<sup>130</sup> Third party response to the CMA's RFI.

<sup>131</sup> Third party response to the CMA's RFI.

<sup>132</sup> Third party response to the CMA's RFI.

<sup>133</sup> [MAGs](#), paragraph 3.26.

compliance requirements led to a significant loss in premium customers, who were very hard to replace given their specific ‘VIP’ profiles. It told us that the B2C Business relied on [redacted] that were [redacted]. Moreover, it told us that spread betting was a very regulated activity that was allowed only in a few countries (the UK being the first) and that attracted a niche of very high-value customers (with high affordability to bet) which represented an ageing demographic. FDJ told us that these factors led to significant losses, which led to the decision to sell.<sup>134</sup>

- 5.43 Sporting Group told us that [redacted]. It told us that [redacted], so that the GC rules were also applied to spread betting customers, and similarly, the FCA rules were also applied to fixed odds customers. Sporting Group told us that as a result, it was regularly requesting that spread betting customers disclose personal information that was not technically required by the FCA, which ‘a lot of high net worth clients were not prepared’ to do, resulting in reduced customer numbers and customer activity, eg either from customers not sharing the requested documentation or only ‘part sharing’ the requested information resulting in Sporting Index suspending customers until they completed the request. Sporting Group told us that FDJ, ‘being partly state-owned’ could not ‘countenance’ any regulatory fines or ‘accept’ being under investigation for failure to comply with regulations.<sup>135</sup>
- 5.44 FDJ’s concerns about the risks to its reputation and its wider strategic objectives for its group business arising from any regulatory breach in the UK were also broadly corroborated by third-party evidence: the former Managing Director of [redacted] who led [redacted] bid during the B2C Sale Process (the **Former [redacted] MD**) submitted that FDJ had ambitions to enter the ‘lucrative’ US market, and given that the UK regulatory environment was becoming ‘more stringent’ and FDJ was becoming more ‘risk averse’, he believed that FDJ considered Sporting Index to be a ‘weak link’ and did not want to risk the FCA or the GC finding any failings in Sporting Index, ‘devaluing’ FDJ and undermining FDJ’s expansion plans.<sup>136</sup>
- 5.45 While FDJ had announced its intention to sell the B2C Business on 15 February 2023 during its investor presentation, it did not commit to a deadline to complete this sale, stating only that it would ‘do what we can to not make it last not [sic] very long’.<sup>137</sup> At its hearing, Sporting Group also told us that it did not have an internal deadline to complete the sale of Sporting Index.<sup>138</sup> In this regard, we consider that while FDJ would have tried and taken steps to sell the B2C Business as quickly as it could have, it would have had sufficient time to consider and pursue alternative transaction options (noting that prior to launching the B2C Sale Process, FDJ had

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<sup>134</sup> Third party response to the CMA’s RFI.

<sup>135</sup> Third party hearing transcript.

<sup>136</sup> Third party call note.

<sup>137</sup> See: [‘Webcast of FDJ Annual Results 2022’](#) (from 1:17:40 to 1:19:19) (last accessed on 23 July 2024).

<sup>138</sup> Third party hearing transcript.

considered several possible sale scenarios for the sale of the B2C Business,<sup>139</sup> see also paragraph 5.104(a)).

- 5.46 Sporting Group also told us that it was unable to provide documents that contained discussions of what FDJ or Sporting Group would have done if Spreadex, [REDACTED] or [REDACTED] had not submitted a '[REDACTED]', given that such discussions were not recorded. However, it told us that there were other potential purchasers it had approached. It also told us that there were 'multiple scenarios to this sale, based on numerous factors', and therefore, it was likely that if it had not received a bid 'deemed satisfactory', Sporting Group would have entered into discussions with some other potential purchasers to realise this sale.<sup>140</sup>
- 5.47 Based on the evidence above, we consider that FDJ was strongly incentivised to complete a sale of the B2C Business and that if it could not have achieved a sale of the B2C-dedicated Perimeter with either of the Alternative Bidders, it would likely have either reached out to other potential purchasers, or considered a differently configured transaction perimeter for the sale of the B2C Business. We also note that: (a) as discussed in paragraphs 5.65 to 5.76, FDJ had not estimated Sporting Index's liquidation value, but had submitted instead that '[REDACTED]' and that it did not have a '[REDACTED]' for the sale of Sporting Index;<sup>141</sup> and (b) in August 2023, FDJ initiated a separate sale process for the sale of Sporting Solutions, ie the B2B Business.<sup>142</sup>
- 5.48 Based on the evidence we have seen to date, we are considering whether the Alternative Purchaser Condition has been met.

### **Our assessment of the Alternative Purchaser Condition**

- 5.49 As noted at paragraph 5.325.32 above, Spreadex submitted that it did not consider the Alternative Bidders to be 'credible purchasers',<sup>143</sup> and that neither would have been able to operate Sporting Index in a 'sustainable and regulatory compliant manner on a long-term basis', as, in its submission, they had not 'adequately assessed the long-term viability of operating the business in the current market and under current regulatory conditions'.<sup>144</sup>
- 5.50 As noted at paragraph 5.75.7 above, the Alternative Purchaser Condition is that there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question.<sup>145</sup> In the present case, it is relevant to note in particular the following points set out in the MAGs: The CMA may consider

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<sup>139</sup> Third party response to the CMA's RFI.

<sup>140</sup> Third party response to the CMA's RFI.

<sup>141</sup> Third party response to the CMA's RFI.

<sup>142</sup> Third party response to the CMA's RFI.

<sup>143</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>144</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>145</sup> [MAGs](#), paragraph 3.21(b).

the marketing process for the target firm as well as offers received for it, and as regards the latter the CMA will consider whether there was an alternative purchaser willing to acquire the firm at any price above liquidation value.<sup>146</sup> It will consider alternative purchasers that would have operated the business as a competitor.<sup>147</sup> The assessment of the competitive constraint of the target firm under the ownership of an alternative purchaser (that is, whether the effect of the merger under review would be substantially less competitive than the effect of an acquisition by that alternative purchaser) would be conducted in the competitive assessment.<sup>148</sup>

- 5.51 We note Sporting Group's submissions on a possible sale of the B2C Business to an Alternative Bidder:
- (a) Sporting Group told us that the bids from the Alternative Bidders [redacted] than Spreadex's bid; and both would have required a TSA from Sporting Group for a 'long period of time', as they did not have all the necessary resources and expertise to run such a business as a standalone business. In this regard, Sporting Group told us that only Spreadex had 'all the pre-requisites to operate it 'overnight' without external support'.<sup>149</sup>
  - (b) Sporting Group also told us that in its view, maintaining these TSAs, even if the Alternative Bidders had offered the same bid as Spreadex, '[redacted]', and therefore it would have undertaken an 'in-depth analysis' prior to making any decision to pursue a sale.<sup>150</sup>
- 5.52 Spreadex told us that Sporting Group had confirmed that it considered neither of the Alternative Bidders had the 'necessary resources and expertise to operate the B2C Business without the benefits of a long-term TSA', and that it was clear that a 'long-term TSA was not at all attractive to FDJ and Sporting Group'.<sup>151</sup>
- 5.53 For the purpose of assessing whether the B2C Business may have been acquired by one of the Alternative Bidders, we are considering the following:
- (a) the Alternative Bidders' commitment to complete a transaction;
  - (b) the Alternative Bidders' bids;
  - (c) the TSAs required by the Alternative Bidders; and
  - (d) the Alternative Bidders' plans for the B2C Business.

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<sup>146</sup> [MAGs](#), paragraph 3.30.

<sup>147</sup> [MAGs](#), paragraph 3.30.

<sup>148</sup> [MAGs](#), paragraph 3.31.

<sup>149</sup> Third party response to the CMA's RFI.

<sup>150</sup> Third party response to the CMA's RFI.

<sup>151</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

5.54 We consider each of these in turn below.

### **Alternative Bidders' commitment and capability to complete a transaction**

5.55 We are considering whether each of the Alternative Bidders were committed to completing an acquisition of the B2C Business.

5.56 We note that prior to the B2C Sale Process, in December 2022, AlixPartners made a presentation to FDJ on the possible sale options for the B2C Business. AlixPartners had explored a number of feasible sale options (see also paragraph 5.104(a) below), including the sale of the Sporting Index legal entity and all B2C-dedicated assets.<sup>152</sup> Sporting Group confirmed that the B2C Business offered to potential purchasers during the B2C Sale Process was in line with AlixPartners' recommendations.<sup>153</sup> AlixPartners told us that the 'idea' behind selling the Sporting Index legal entity and all of the B2C-dedicated assets was to sell a 'standalone activity', which 'anybody could acquire' as the purchaser would acquire the 'legal entity, the right people, software and the underlying IT systems' as well as acquire Sporting Index's FCA authorisation to offer spread betting services in the UK, but which would still require a TSA for 'some services, which were shared between B2B and B2C'. It added that while it believed that it would be possible for a 'private investor' (or financial buyer) to acquire the Sporting Index legal entity and all of the B2C-dedicated assets, it did not consider this to be likely given the [redacted] and the limited scope to realise synergies, which would have been available to a purchaser that was already an existing spread betting provider.<sup>154</sup>

5.57 Sporting Group told us that from the 'exploratory conversations' it had had with the Alternative Bidders, it 'became apparent that they were becoming more dependent' as a business on Sporting Group and FDJ 'supporting them more and more with the process'. It also told us that its 'primary concern' in relation to the Alternative Bidders was that neither were FCA-regulated. It also told us that [redacted] was [redacted], and therefore, with [redacted].<sup>155</sup>

5.58 In relation to [redacted] commitment and capability to complete a transaction under the B2C Sale Process, we note that:

- (a) [redacted], registered in the UK and regulated by the GC, operates primarily a sports fixed odds betting business in the UK,<sup>156</sup> and based on its latest published statutory accounts, generated total annual revenues of around £[redacted] million and gross profit of around £[redacted] million for its financial year

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<sup>152</sup> Third party call note.

<sup>153</sup> Third party hearing transcript.

<sup>154</sup> Third party call note.

<sup>155</sup> Third party hearing transcript.

<sup>156</sup> Third party call note; and third party response to the CMA's RFI.

ended [REDACTED].<sup>157</sup> [REDACTED] operates in [REDACTED] sports spread betting.<sup>158,159</sup> The Former [REDACTED] MD told us that [REDACTED] generated annual revenues of around £[REDACTED] million.<sup>160</sup>

- (b) [REDACTED] told us that [REDACTED] operated its own spread betting platform and had around [REDACTED] spread betting clients a week.<sup>161</sup> [REDACTED] told us that it primarily operated in the UK as an online sports bookmaker licensed by the GC. It told us that it had [REDACTED].<sup>162</sup>
- (c) [REDACTED] had previously attempted to acquire Sporting Index in [REDACTED], when it made an unsolicited approach to Sporting Group. [REDACTED] told us that it had received some information about the business including details of trading activity, profitability, size and staff numbers, and that these discussions ceased when it was clear that [REDACTED] valuation of the business was well short of Sporting Group's valuation.<sup>163</sup> In relation to [REDACTED] attempt in [REDACTED] to acquire Sporting Index, the Former [REDACTED] MD told us that these discussions lasted for less than a year, and that Sporting Group had valued Sporting Index at the time at around £[REDACTED] million, compared to [REDACTED] own valuation of around £[REDACTED] million.<sup>164</sup>
- (d) [REDACTED] told us that an acquisition of Sporting Index would have allowed it to enter the UK spread betting market quickly, in particular, as it would have acquired Sporting Index's FCA licence, as well as its 'superior trading and website technology'.<sup>165</sup> [REDACTED] told us that while [REDACTED] was able to [REDACTED], it required an FCA licence to carry out marketing activities directed at UK customers.<sup>166</sup>
- (e) [REDACTED] told us that during the B2C Sale Process, after its first offer was rejected, it made a revised offer. It told us that [REDACTED] was told that this was not sufficient and that [REDACTED] was 'out of the reckoning for the sale'.<sup>167</sup>
- (f) [REDACTED] told us that if it were to commence the supply of UK spread betting services, it would anticipate taking customers away from the incumbent (ie Spreadex), as new spread betters could not be easily 'created' given the nature of spread betting. It added that there were many different ways to market to customers, including [REDACTED].<sup>168</sup>

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<sup>157</sup> [REDACTED].

<sup>158</sup> [REDACTED] and [REDACTED] are not part of the same corporate group (ie there is no common ultimate holding company), but they both have common shareholders. Third party call note.

<sup>159</sup> [REDACTED].

<sup>160</sup> Third party call note.

<sup>161</sup> Third party call note.

<sup>162</sup> Third party call note.

<sup>163</sup> Third party call note.

<sup>164</sup> Third party call note.

<sup>165</sup> Third party call note.

<sup>166</sup> Third party call note.

<sup>167</sup> Third party call note.

<sup>168</sup> Third party call note.

- (g) The Former [redacted] MD told us that given [redacted] management decision structure, [redacted] did not require approval from [redacted] shareholders to progress the transaction, and added that the transaction would have been [redacted].<sup>169</sup>
- (h) The Former [redacted] MD also told us that he was aware of [redacted] potential interest in acquiring the B2C Business in the future if it became available for sale.<sup>170</sup>

5.59 In the case of [redacted], we note that:

- (a) [redacted], registered in [redacted], is a [redacted] sports betting operator and [redacted],<sup>171</sup> with annual revenues of around £[redacted] million. [redacted] told us that it operated a similar business to [redacted].<sup>172</sup>
- (b) [redacted].<sup>173</sup> [redacted]. [redacted] also told us that it provided similar [redacted] services [redacted].<sup>174</sup> In view of this and (a) above, our provisional view is that [redacted] has prior experience of running [redacted] betting business, and is currently active in the supply of [redacted] services.
- (c) [redacted] told us that [redacted] was primarily driven by the opportunity to take advantage of the high business valuations attributed to gambling operators at the time, [redacted]. It told us that following [redacted], which developed its [redacted] capabilities organically and through acquisitions (eg acquiring [redacted]). It told us that under FDJ's ownership, through a combination of [redacted], Sporting Index's financial performance had suffered. [redacted] told us that the sale of the B2C Business would have given it an opportunity (if it were to acquire it) to [redacted] enter the UK sports spread betting market, and to improve Sporting Index's performance, eg by using its pricing expertise to provide greater price differentiation to attract more sports spread betting clients.<sup>175</sup>
- (d) [redacted] told us that it already had the capabilities from its existing business to [redacted] spreads [redacted],<sup>176</sup> and that while it did not yet have the capabilities to [redacted] spreads [redacted], it was 'already committed' to developing these capabilities.<sup>177</sup>
- (e) [redacted] told us that given its [redacted], it already understood the underlying Sporting Index business well, and therefore, its due diligence was focused on the separation of Sporting Index from Sporting Solutions.<sup>178</sup>

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<sup>169</sup> Third party call note.

<sup>170</sup> Third party call note.

<sup>171</sup> See: [redacted].

<sup>172</sup> Third party call note.

<sup>173</sup> Third party call note.

<sup>174</sup> Third party call note.

<sup>175</sup> Third party call note.

<sup>176</sup> Third party response to the CMA's RFI.

<sup>177</sup> Third party call note.

<sup>178</sup> Third party call note.

- (f) [redacted] told us that it considered its bid to be a ‘strong one’.<sup>179</sup> [redacted] also told us that its controlling shareholder ([redacted]) had approved the proposed transaction, with a ‘guided’ valuation of £[redacted] million, and that while it had expected the seller to engage with [redacted], this did not occur. It added that the seller had raised no ‘material concerns’ in relation to [redacted] bid, and that as no ‘feedback’ had been provided, it had not been given an opportunity to provide ‘comfort’ to the seller.<sup>180</sup>

5.60 Based on an internal FDJ document dated 23 February 2023, there was a slide comparing the bids from the Alternative Bidders and Spreadex (see Figure 5.1 below).<sup>181</sup>

**Figure 5.1: FDJ assessment of bids (23 February 2023)**

[redacted]

*Source: Third party response to the CMA’s RFI.*

- 5.61 In relation to Figure 5.1, Oakvale Capital told us that while the Alternative Bidders were both ‘keen’ on doing the transaction, based on their lower [redacted]. However, it told us that hypothetically, if [redacted] had [redacted], it considered that it would have progressed [redacted] with further due diligence.<sup>182</sup>
- 5.62 We note that based on the ratings given to the bids of each bidder for the listed bid criteria set out in Figure 5.1 above, the bids from each of the Alternative Bidders appeared viable.<sup>183</sup>
- 5.63 We note that the ratings given to [redacted] bid in Figure 5.1 appear to contradict Sporting Group’s comment that with [redacted].<sup>184</sup> We consider the Alternative Bidders’ bids on the basis of their bid values in paragraphs 5.65 to 5.76.
- 5.64 Based on the above, our provisional view is that the Alternative Bidders were each committed to completing a purchase of the B2C Business, noting, in particular:
- (a) that the Alternative Bidders were already familiar (albeit to varying degrees) with the B2C Business based on their respective past activities outside of the B2C Sale Process;
  - (b) their respective rationales for the transaction (in particular, their primary interest in the sports spread betting element of the B2C-dedicated Perimeter)

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<sup>179</sup> Third party call note.

<sup>180</sup> Third party call note.

<sup>181</sup> Third party response to the CMA’s RFI.

<sup>182</sup> Third party call note.

<sup>183</sup> Third party response to the CMA’s RFI.

<sup>184</sup> Third party hearing transcript.



and the fit of the B2C Business with their respective business activities and capabilities; and

- (c) that each had submitted a bid and neither had voluntarily withdrawn from the B2C Sale Process.

### **Alternative Bidders' bids**

- 5.65 Sporting Group told us that it was unable to provide any responses that Sporting Group and/or FDJ made to the bids received from the Alternative Bidders given that all of these responses were given orally.<sup>185</sup> However, it told us that the main criterion that was considered for the sale of Sporting Index was 'financial valuation' and that given the differences in the potential purchasers' ability to integrate the Sporting Index asset into their respective operations, their respective bids were 'heterogeneous', with Spreadex's offer being [REDACTED].<sup>186</sup>
- 5.66 The MAGs state that for the purpose of assessing the counterfactual, the CMA will not restrict its analysis to alternative purchasers who were willing to pay the same or similar price that was agreed in the merger under investigation, but rather if there was an alternative purchaser willing to acquire the firm at any price above liquidation value.<sup>187</sup>
- 5.67 Therefore, consideration of the Alternative Bidders cannot be excluded on the basis that they had submitted [REDACTED] bids than Spreadex.
- 5.68 Sporting Group told us that a liquidation value for Sporting Index had not been prepared or estimated,<sup>188</sup> and in response to our question of whether the intragroup transactions between Sporting Index and Sporting Solutions would make it difficult to estimate Sporting Index's liquidation value based on its reported balance sheet, it confirmed that there would be no historic accounts that were '[REDACTED]', given that the two businesses had historically become 'very entwined, so contracts for the B2B business were under the B2C entity and vice versa'.<sup>189</sup>
- 5.69 While we do not have an estimate of Sporting Index's liquidation value, we note that in relation to whether there was a minimum price which FDJ required in order to sell the B2C Business, FDJ told us that [REDACTED].<sup>190</sup>
- 5.70 [REDACTED].<sup>191</sup> While it is unclear whether the ratings for the Alternative Bidders would have been more positive in the absence of Spreadex's [REDACTED] bid, we consider it

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<sup>185</sup> Third party response to the CMA's RFI.

<sup>186</sup> Third party response to the CMA's RFI.

<sup>187</sup> [MAGs](#), paragraph 3.30.

<sup>188</sup> Third party hearing transcript.

<sup>189</sup> Third party hearing transcript.

<sup>190</sup> Third party response to the CMA's RFI.

<sup>191</sup> Third party response to the CMA's RFI.

reasonable to consider that [REDACTED] bid of £[REDACTED] million would have represented an acceptable bid for FDJ.

- 5.71 We consider that a simple comparison of bid values understates the potential longer term value to Sporting Solutions of a sale to an Alternative Bidder. That is because [REDACTED].<sup>192</sup> In this regard, an internal FDJ document comparing Spreadex's bid with [REDACTED] bid in March 2023 stated that [REDACTED] would be a client, 'certainly in the short term with potential for an ongoing relationship', while Spreadex was 'unlikely to be a long term client due to competing interests and Spreadex own capabilities'.<sup>193</sup>
- 5.72 In addition, we note the following evidence from the Alternative Bidders:
- (a) the Former [REDACTED] MD told us that if [REDACTED] had been successful in acquiring the B2C Business, it would have [REDACTED] a customer of Sporting Solutions for its data feed services, noting that [REDACTED]. The Former [REDACTED] MD also told us that it had scope to increase its bid to £[REDACTED] million under certain circumstances;<sup>194</sup> and
  - (b) [REDACTED] told us that if it had acquired Sporting Index, the TSA services covering '[REDACTED]' (see also Appendix D) could have been converted into a new long-term agreement between Sporting Solutions and the acquired business.<sup>195</sup>
- 5.73 Spreadex submitted that while Sporting Group had informed the CMA that a liquidation value had not been prepared or estimated, 'FDJ would have been able to calculate this relatively easily (irrespective of the intercompany transactions and loans which eliminate on consolidation)'. It explained that as 'a proxy', based on the balance sheet Spreadex ultimately acquired (with net assets of around £[REDACTED] million), and 'applying a prudent valuation to the Sporting Index brand and the value of the customer list of around £[REDACTED] million, Spreadex would estimate a total liquidation value of around £[REDACTED] million'.<sup>196</sup>
- 5.74 We note from AlixPartners' December 2022 report prepared for FDJ prior to the B2C Sale Process that based on AlixPartners' review of Sporting Index's balance sheet, it noted that '[t]he most marketable assets are [REDACTED]'.<sup>197</sup> We consider that for the purpose of the counterfactual, the existence and level of the liquidation value for such assets would rely on the availability of another purchaser (other than Spreadex), who would most likely place some value on these assets under any liquidation scenario. Given the niche nature of sports spread betting (with the Parties as the only two providers of licensed online sports spread betting services

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<sup>192</sup> Third party response to the CMA's RFI.

<sup>193</sup> Third party response to the CMA's RFI.

<sup>194</sup> Third party call note.

<sup>195</sup> Third party response to the CMA's RFI.

<sup>196</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>197</sup> Third party response to the CMA's RFI.

in the UK) (see Chapter 6, Horizontal Unilateral Effects, for further details), we consider that it is unlikely there would be many such bidders for the liquidated assets, and we would therefore expect any proceeds to be low. This also appears to be consistent with FDJ's approach to the sale process, noting that FDJ had not estimated Sporting Index's liquidation value, but had submitted instead that '[REDACTED]' and that it did not have a '[REDACTED]' for the sale of Sporting Index.<sup>198</sup>

5.75 Furthermore, we consider that a simple comparison of headline bid values would not take into account the consequential costs (or benefits) associated with different transaction structures. For example, we consider that Sporting Group would likely have incurred higher redundancy costs (ie in relation to the B2C-dedicated staff who would not be required by any acquirer) under the Merger transaction than under a sale to an Alternative Bidder. For example: (a) based on the details of the Alternative Bidders' respective bids, each Alternative Bidder was likely to require a higher number of B2C-dedicated staff than Spreadex (as stated above, under the Merger, just six B2C-dedicated staff were transferred to Spreadex) (see paragraphs 5.79(a)(ii) and 5.79(b)(ii)); and (b) AlixPartners' December 2022 report prepared for FDJ prior to the B2C Sale Process stated that if the sale of Sporting Index were to be structured only as an '[REDACTED]' (eg where, among other [REDACTED], then under this [REDACTED] transaction perimeter scenario, Sporting Group 'would be [REDACTED]' compared with a sale involving the [REDACTED].<sup>199</sup>

5.76 Taking the above evidence in the round, and noting FDJ's submission above that '[REDACTED]',<sup>200</sup> our provisional view is that given the potential longer term economic value associated with each of the Alternative Bidders' bids; and notwithstanding the absence of any estimated liquidation value for Sporting Index, it is not appropriate to rule out either of the Alternative Bidders' bids on the basis of their bid values.

### **TSAs required by the Alternative Bidders**

5.77 Spreadex submitted that it did not consider that 'either Alternative Bidder would have been able to operate Sporting Index as a viable competitor to Spreadex in light of:<sup>201</sup>

- (a) the 'cost of the TSA on offer and the wider cost of establishing Sporting Index as a viable competitor';
- (b) the 'challenge of growing the customer base in the current regulatory environment';

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<sup>198</sup> Third party response to the CMA's RFI.

<sup>199</sup> Third party response to the CMA's RFI.

<sup>200</sup> Third party response to the CMA's RFI.

<sup>201</sup> Spreadex, 'Spreadex Hearing follow up response - 9 July', 9 July 2024, page 1.

- (c) the 'limited capabilities and experience of the Alternative Bidders';
- (d) the 'lack of motivation' for FDJ 'to offer a long-term TSA on terms that the Alternative Bidders could afford'; and
- (e) the 'absence of an alternative viable transaction perimeter if the Merger had not proceeded'.

5.78 Spreadex submitted that there was 'a prohibitive minimum cost required to operate in the market, whether this be via proprietary technology and staff, via a TSA, or a combination of both',<sup>202</sup> and estimated that in order to operate Sporting Index in a regulatory compliant manner and to make the incremental marketing investment needed to address customer churn issues, Sporting Index's annual cost base needed to be around £[REDACTED] million a year. Spreadex based this figure on Spreadex's own FY24 cost base for its 'Sports' (spread betting) business line of around £[REDACTED] million (including staff and IT costs) plus around £[REDACTED] million of '[REDACTED]'. Spreadex noted that while Sporting Index's FY22 total cost base was around £18 million<sup>203</sup> (split £[REDACTED] million in cost of sales and £[REDACTED] million to 'run the business'), the 'cost burden' of operating Sporting Index in 'a regulatory compliant manner given the complexities of the dual regulated services it provides, cannot be reconciled with the limited revenue available in the declining spread betting segment of the wider sports betting market'.<sup>204</sup>

5.79 We note that Spreadex's submissions above on what it considered to be the 'minimum costs' which Sporting Index would be required to bear were based on Spreadex's own sports spread betting business. However, Spreadex's estimate for Sporting Index's ongoing cost base requirement is significantly higher than Sporting Index's reported FY22 costs in its annual accounts (down to profit before tax) of around £18 million;<sup>205</sup> and the annual costs presented in the [REDACTED] Document<sup>206</sup> and in AlixPartners' analysis of the 'pro forma' costs for the standalone B2C Business ([REDACTED]).<sup>207</sup> We requested internal documents from each of the Alternative Bidders, which they had prepared prior to submitting their respective bids. Based on these internal documents, we note that:

- (a) In relation to [REDACTED]:
  - (i) [REDACTED] had requested a breakdown of Sporting Index's annual costs, which Oakvale Capital provided on 15 February 2023, showing total

<sup>202</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>203</sup> Sporting Index, '[Sporting Index Limited Annual report and financial statements for the year ended 31 December 2022](#)' (last accessed on 23 July 2024).

<sup>204</sup> Spreadex, 'Spreadex Hearing follow up response - 9 July', 9 July 2024, page 2 and Annex 1.

<sup>205</sup> Sporting Index, '[Sporting Index Limited Annual report and financial statements for the year ended 31 December 2022](#)' (last accessed on 23 July 2024).

<sup>206</sup> Spreadex response to the Enquiry Letter, 14 December 2023, Annex 31.

<sup>207</sup> Third party response to the CMA's RFI.

costs (down to EBITDA) of around £[redacted] million.<sup>208</sup> Based on this information, [redacted] had undertaken a preliminary and relatively ‘high-level’ exercise to review Sporting Index’s costs and rather than identifying a need to increase the cost base, it had identified potential cost savings.<sup>209</sup> Prior to [redacted] confirming its preliminary bid, Oakvale Capital provided [redacted] with an updated cost figure of around £[redacted] million (down to EBITDA) based on a ‘current run-rate’ annual figure. After this update from Oakvale Capital, we note that [redacted] proceeded to confirm its preliminary bid.<sup>210</sup>

- (ii) At the time [redacted] confirmed its preliminary bid on 24 March 2023, it had indicated to Oakvale Capital that [redacted] ‘may not need [all of] the [redacted] [B2C] FTEs proposed in the deck’, but that based on ‘the information supplied to date, it would ‘require 17 staff (highlighted in green on [the] spreadsheet). There are also 19 people highlighted in the spreadsheet who we will need some/all of but need further clarity on their exact roles’. [redacted] also stated, as part of confirming its preliminary bid, that [redacted] would ‘add sufficient regulatory capital’ and that it did ‘not perceive there to be any CMA risk’.<sup>211</sup>

(b) In relation to [redacted]:

- (i) Prior to submitting its preliminary bid on 1 February 2023, we note that [redacted] had made enquiries into a broad range of topics concerning its potential acquisition of Sporting Index, receiving responses from Sporting Group to its questions covering the following topics: ‘Regulation / compliance’, ‘Trading’, ‘Operations and Finance’, ‘Client Acquisition / Retention, Pre-Marketing and Business Development’ and ‘IT and Technical’. In Sporting Group’s response, Sporting Group provided a breakdown of the functions of the B2C staff who were being offered as part of the B2C-dedicated Perimeter.<sup>212,213</sup>
- (ii) Following [redacted] initial due diligence, [redacted] preliminary bid sent to Oakvale Capital on 1 February 2023, stated that it would take on all ‘necessary staff’ and require ‘managed trading services’ and ‘full data feed’ from Sporting Solutions for one year: ‘As I mentioned within that meeting, we [redacted] are serious about our intentions in purchasing the Sporting Index business and I hope the following offer proves our intent: [...] [redacted] would take the necessary staff (to be decided) to manage the day-to-day

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<sup>208</sup> Third party response to the CMA’s s109 notice.

<sup>209</sup> Third party response to the CMA’s s109 notice.

<sup>210</sup> Third party response to the CMA’s s109 notice.

<sup>211</sup> Third party response to the CMA’s s109 notice.

<sup>212</sup> Third party response to the CMA’s s109 notice.

<sup>213</sup> Third party response to the CMA’s s109 notice.

operations of the business, and dedicated tech-support to manage day to day support and possible short term tech development. [REDACTED] would inherit all TUPE costs on migrated/employed staff', and 'Sporting Group to supply: [REDACTED] for 1 year [and] [REDACTED] for 1 year'.<sup>214</sup>

- 5.80 We also note that while Spreadex highlighted the 'challenge of growing the customer base in the current regulatory environment', which the acquirer of Sporting Index would have to face, Spreadex's internal documents show that part of the rationale for the Merger was to diminish the competitive threat of such an acquirer – for example:
- (a) In Spreadex's proposed initial bid document, a sports trading manager stated that after acquiring Sporting Index, Spreadex 'would not have [REDACTED]'.<sup>215</sup>
  - (b) In February 2023, the Spreadex CEO circulated an email discussing the benefits and costs of acquiring Sporting Index. One of the stated benefits was that '[REDACTED]'.<sup>216</sup>
- 5.81 In relation to the above, we note Spreadex's submission that Sporting Index's minimum cost base to operate in a regulatory compliant manner should be determined with reference to Spreadex's own cost base. However, the evidence from AlixPartners and the Alternative Bidders does not support Spreadex's submission that Sporting Index's cost base should be materially higher than its pre-Merger cost base. While we accept that additional regulations have been introduced by the FCA, the manner of ensuring compliance will likely vary between firms and therefore the financial consequences of this are uncertain. While the new regulations might result in additional costs for an alternative purchaser of Sporting Index, Spreadex has not provided us with persuasive evidence that Sporting Index's cost base would be prohibitively high, in particular for any of the Alternative Bidders. In this regard, we note that the Alternative Bidders each operate in adjacent markets and would have been well-informed bidders based on their current business and past experience, who would take regulatory compliance costs and their effects into account. The Alternative Bidders also considered they could run the business more efficiently, and they have each identified possible opportunities to reduce the cost base or increase revenues, as we set out in more detail below. In this regard, we infer from the [REDACTED] bids made by the Alternative Bidders in comparison to that of Spreadex, that each had factored into their bid levels (which were [REDACTED] in absolute terms), the potential costs and risks associated with their acquisition of Sporting Index, including any risks associated with achieving revenue growth, given Sporting Index's historic financial under-performance.

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<sup>214</sup> Third party response to the CMA's s109 notice.

<sup>215</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103.

<sup>216</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 22, email 103.

- 5.82 In response to the Working Papers, Spreadex told us that it spends about £[REDACTED] million on marketing in order to address its customer churn of [REDACTED]% per annum, and that the Alternative Bidders would need to incur a similar marketing expense to mitigate Sporting Index's customer churn.<sup>217</sup> However, we have not seen evidence that: (a) this marketing expense relates to the churn and acquisition of sports spread betting customers specifically; (b) customers could not be acquired or retained using other strategies involving less expenditure; or (c) this marketing expense is a consequence of any regulatory changes. We also consider that, as set out in paragraph 5.81, the Alternative Bidders were well-informed bidders and likely would have taken the issue of Sporting Index's customer churn, and any required marketing expenditure, into account when placing their bid.
- 5.83 In relation to Sporting Group's submission that even if the Alternative Bidders had offered the same bid as Spreadex, the need to maintain the TSAs '[REDACTED]',<sup>218</sup> we note that given that Spreadex's bid had been accepted, it was not necessary for Sporting Group to carry out any evaluation of [REDACTED] of the Alternative Bidders' bids. In this regard, there is no contemporaneous evidence on the likely outcome of this evaluation exercise, taking into account the benefits arising from the potential longer term income stream for the B2B Business should the B2C Business have been acquired by an Alternative Bidder. Sporting Group told us that while the TSA fees would be an additional income stream for Sporting Solutions, this did not take into account the fact that the TSA would divert management resources and attention away from its core B2B Business.<sup>219</sup> We note however that the evaluation had not been carried out and the likely outcome of such evaluation remains uncertain to Sporting Group.
- 5.84 For reference, we note that based on a March 2023 internal FDJ document, which evaluated the bids from Spreadex and [REDACTED], before recommending the selection of Spreadex as the preferred purchaser, the document assumed that Spreadex would also require a TSA from Sporting Solutions, whereby Sporting Group would provide the option of [REDACTED] to aid with the transitional process for a period of up to eight weeks after the completion date.<sup>220</sup> By contrast, [REDACTED] told us that based on a document broadly outlining the scope of the TSA, Sporting Group had initially proposed a TSA for two to three years,<sup>221</sup> and while the Former [REDACTED] MD told us that the TSA was not an aspect of the transaction that had been considered in detail by [REDACTED].<sup>222</sup> [REDACTED] preliminary bid sent to Oakvale Capital on 1 February 2023,

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<sup>217</sup> Spreadex main party hearing transcript, 4 July 2024, page 8, lines 4-16. Spreadex, 'Spreadex Hearing follow up response - 9 July', 9 July 2024, page 8.

<sup>218</sup> Third party response to the CMA's RFI.

<sup>219</sup> Third party hearing transcript.

<sup>220</sup> Third party response to the CMA's RFI.

<sup>221</sup> Third party call note.

<sup>222</sup> Third party call note.

stated that it would take on all ‘necessary staff’ and require ‘managed trading services’ and ‘full data feed’ from Sporting Solutions for one year.<sup>223</sup>

- 5.85 We have also considered whether the terms of the TSA would have rendered the Alternative Bidders’ bids unviable, as Spreadex has submitted.
- 5.86 We first note Spreadex’s submission that one of the reasons why Sporting Group would have been reluctant to proceed with the Alternative Bidders was the fact that, in Spreadex’s view, they would both be reliant on a ‘long-term TSA’.<sup>224</sup> At a hearing with Spreadex, in response to our question of what Spreadex meant by ‘long-term’ in the context of a TSA, Spreadex told us that one of the Alternative Bidders had mentioned that the TSA would be a period of two to three years, and that it considered this period to be ‘quite realistic’, given that an acquisition by an Alternative Bidder would require the ‘creation of a whole trading platform from scratch to get away from the dependency on them [ie Sporting Group]’.<sup>225</sup> We note from [X] submission that since it was Sporting Group (and not [X]) who had initially proposed a TSA for two to three years with [X], it is unclear whether Sporting Group, in the absence of a bid from Spreadex, would have considered its own proposal of a two-to three-year TSA to be inappropriate.<sup>226</sup> We also note that in relation to Spreadex’s submission that the TSA would require the ‘creation of a whole trading platform from scratch’, the alternative purchaser would have acquired Sporting Index’s [X] spread betting software and had the option to acquire certain additional and necessary B2C applications<sup>227</sup> (which Spreadex did not acquire under the Merger), as well as receiving support from Sporting Group under a TSA to ensure that the purchaser could [X].<sup>228</sup>
- 5.87 In relation to the TSA, we note that each of the Alternative Bidders’ bid letters listed one of the ‘outstanding key issues’ as ‘a review of the TSA requirements and agreement on pricing’.<sup>229,230</sup>
- 5.88 In this regard, we note the following:
- (a) The Former [X] MD told us that while [X] was provided with the broad details of the possible types of TSA services available to potential purchasers, this aspect of the transaction had not been discussed in detail with Sporting Group, and added that [X] had not received the details of the TSA fees. However, the Former [X] MD told us that the scope of the TSA and that the task of reducing its reliance on the TSA did not raise material concerns. Instead, the Former [X] MD told us that if [X] had successfully

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<sup>223</sup> Third party response to the CMA’s s109 notice.

<sup>224</sup> Spreadex, ‘Response to the CMA’s Annotated Issues Statement and accompanying Working Papers’, 1 July 2024.

<sup>225</sup> Spreadex main party hearing transcript, 4 July 2024, pages 62-63.

<sup>226</sup> Third party call note.

<sup>227</sup> Spreadex response to the Enquiry Letter, 14 December 2023, Annex 32.

<sup>228</sup> Third party response to the CMA’s RFI.

<sup>229</sup> Third party response to the CMA’s RFI.

<sup>230</sup> Third party response to the CMA’s RFI.



acquired the B2C Business, its immediate priorities following completion of the transaction, would have been (among others) to ‘re-engage’ with the entire customer database.<sup>231</sup>

- (b) [X] told us that Sporting Group had initially quoted an indicative annual TSA fee of around £[X] million, albeit the fee for certain TSA services was still missing at the time. It told us that in around March 2023, Sporting Group provided an updated annual TSA fee quote of around £[X] million. [X] told us that it had factored this updated TSA fee into its valuation when it confirmed its £[X] million bid on 24 March 2023.<sup>232</sup> [X] told us that despite this late increase in the TSA fee, [X] remained committed to completing the deal. [X] also told us that it noted that FDJ might have wanted sell Sporting Index to a purchaser who did not require a TSA since that would have allowed it to exit the market quickly.<sup>233</sup> [X] also told us that other than receiving a document outlining the scope and fees of a potential TSA, the seller did not engage in detailed discussions with [X] on the TSA.<sup>234</sup>

5.89 We requested FDJ to provide us with all documents sent to potential purchasers concerning the scope and terms of the TSA. In response, FDJ told us that it had prepared the TSA services offered to Spreadex in the event the migration to Spreadex took longer than expected (and noted that the TSA was ultimately not needed given that this migration occurred at closing ‘without any major issue’). However, other than noting that a TSA with [X] or [X] would have been much ‘more complex and longer’, FDJ told us that it had not developed the TSA services it would have offered [X] or [X], but instead provided them with ‘some preliminary task listing and cost assessment to measure the magnitude of it’.<sup>235</sup> Oakvale Capital told us that the details of the TSA were prepared by Sporting Group’s lawyers with input from AlixPartners, and that it had not been involved in the details of any TSA discussions with any bidder, except Spreadex.<sup>236</sup>

5.90 Based on a document sent by Sporting Group to [X] covering the scope of the TSA, the contemplated TSA would cover the following four broad service categories: (a) [X]; (b) Technology services, eg services relating to the spread betting platform ([X]) and the [X]; (c) [X]; and (d) [X].<sup>237</sup> Further details on each TSA service category are provided in Appendix D.

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<sup>231</sup> Third party call note.

<sup>232</sup> Third party call note.

<sup>233</sup> Third party call note.

<sup>234</sup> Third party call note.

<sup>235</sup> Third party response to the CMA’s RFI.

<sup>236</sup> Third party call note.

<sup>237</sup> Third party response to the CMA’s RFI.

- 5.91 We also note that the [REDACTED] Document (which [REDACTED] Spreadex [REDACTED] received) shows that FDJ was prepared to be flexible in relation to the scope of the TSA services required by potential purchasers, eg the [REDACTED] Document states that:<sup>238,239</sup>
- (a) ‘Under a TSA expected to be in place for an initial period, FDJ would transition the company to a new owner and provide any required support services for a pre-defined period’; and
  - (b) the ‘spread betting technology – ‘[REDACTED]’ – is to be included as part of the transaction’ and ‘Other technology and platform can be provided for a defined period on a market rate basis’.
- 5.92 Based on the above, and given the availability of Spreadex’s bid, it had not been necessary for Sporting Group to enter into any negotiations with each of the Alternative Bidders on the scope and terms of the TSAs. In this regard, given that each Alternative Bidder would likely have acquired more of the B2C staff (who formed part of the B2C-dedicated Perimeter) than Spreadex<sup>240</sup> and required the [REDACTED] spread betting technology (which Spreadex acquired but did not require given the availability of its own spread betting technology<sup>241</sup>), we would expect the scope and terms of any TSA offered to each Alternative Bidder to be different from those offered to Spreadex. We consider that the TSA fee would need to reflect the individual circumstances of a purchaser, and note that Sporting Group had quoted a TSA fee to [REDACTED], which was [REDACTED] than the fee quoted to Spreadex.
- 5.93 We also note that differences in each Alternative Bidders’ existing capabilities would likely determine the scope, duration and therefore, costs of any required TSA. For example:
- (a) [REDACTED] told us that the key asset was Sporting Index’s spread betting platform and added that it already had [REDACTED], and that there were elements of the outlined TSA services it would not require.<sup>242</sup> [REDACTED] also told us that as it already had some [REDACTED], this would reduce the scope and duration of any TSA requirement. For example, in relation to the TSA service category, ‘[REDACTED]’ (see also Appendix D), [REDACTED] told us that there were three ‘types’ of services that combined to form the Sporting Index offering:<sup>243</sup>

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<sup>238</sup> Spreadex response to the Enquiry Letter, 14 December 2023, Annex 31.

<sup>239</sup> Third party response to the CMA’s RFI.

<sup>240</sup> We note that when Spreadex acquired the B2B Business (Sporting Index), only six employees were acquired (three in Customer Services, two in Marketing and one in Customer Relations) (see: [Derogation Letter](#), 15 January 2024).

<sup>241</sup> In this regard, we note that Spreadex told us that post-Merger, the [REDACTED] spread betting technology was not being used by Sporting Index and was not used by the Spreadex platform (Spreadex response to the CMA’s RFI, 10 January 2024, question 11).

<sup>242</sup> Third party call note.

<sup>243</sup> Third party response to the CMA’s RFI.

- (i) Those sports for which Sporting Index was able to offer independently, including horse and greyhound racing for example. [REDACTED] would have acquired the capability for offering these sports.
  - (ii) Those sports which Sporting Index consumed from Sporting Solutions, which were also available from [REDACTED]. These included most major, global sports – football, tennis, basketball, etc. [REDACTED] told us that it would have replaced Sporting Solutions as the supplier of these sports for Sporting Index. However, for business continuity, [REDACTED] told us that until [REDACTED] could supply these sports to Sporting Index technology through a technical integration, these sports would have initially been supplied by Sporting Solutions post-completion.
  - (iii) Those sports which Sporting Index consumed from Sporting Solutions but which were not yet available from [REDACTED]. These included sports such as Cricket and Rugby. [REDACTED] told us that these sports would have formed the main sports required under the ongoing pricing services of the TSA, until [REDACTED] could supply them.
- (b) In relation to [REDACTED]:
- (i) [REDACTED] told us that [REDACTED] used feed providers to create pricing and employees from its team in [REDACTED] to price and create spreads manually for some ‘[sports] markets’. It also told us that [REDACTED] and [REDACTED] used different ‘tech houses’ to develop their respective platforms, with [REDACTED] using [REDACTED], and [REDACTED] using [REDACTED].<sup>244,245</sup> [REDACTED] holds an [REDACTED]% stake in [REDACTED].<sup>246</sup>
  - (ii) The Former [REDACTED] MD told us that it would have used its in-house capabilities and the staff transferring from Sporting Index and worked with third-parties to transition away from the TSA, and considered a possible [REDACTED] commercial relationship with Sporting Solutions [REDACTED].<sup>247</sup>

5.94 In relation to the above, while we would have expected Sporting Group to engage in a detailed discussion on the scope, duration and pricing of a TSA with the Alternative Bidders given their respective individual needs, based on the evidence from the Alternative Bidders, this had not taken place to the extent required. In this regard, we note FDJ’s submission that it had not developed the TSA services it would have offered the Alternative Bidders, but instead, had provided them with ‘some preliminary task listing and cost assessment to measure the magnitude of it’.<sup>248</sup> Sporting Group told us that in relation to the scope and pricing for a possible TSA with the Alternative Bidders, this issue was ‘not fully delved into deeply

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<sup>244</sup> See also [REDACTED] and [REDACTED].

<sup>245</sup> Third party call note.

<sup>246</sup> Third party response to the CMA’s RFI.

<sup>247</sup> Third party call note.

<sup>248</sup> Third party response to the CMA’s RFI.

because of the initial indicative view' that it would be 'quite an extensive piece of work to do'. It added that there were 'a lot of component parts in running a standalone business', and 'as a business owner', it would 'choose the simplest path, generally'. It added that under a hypothetical scenario where Spreadex's bid did not exist, it would 'probably explore [redacted] against the other strategic options [redacted]', or 'some kind of restructure of the business'.<sup>249</sup> We also note that in light of the availability of Spreadex's bid, it would not have been necessary for Sporting Group to engage with the Alternative Bidders in a detailed discussion on the TSA to tailor it to their respective individual circumstances and requirements.

5.95 While we note that Sporting Group had not engaged in detailed discussions with the Alternative Bidders on the scope, duration and pricing of a potential TSA, at the time of the B2C Sale Process, Sporting Group was prepared to be flexible in relation to the scope of the TSA services required by potential purchasers (see paragraph 5.91). Taking the evidence in the round, our provisional view is that in the absence of Spreadex's bid, Sporting Group would likely have engaged further with the Alternative Bidders on the terms of any TSA in an effort to reach mutually acceptable terms in order to ensure the transaction completed with one of the Alternative Bidders and that both sides would have been incentivised to come to such an agreement.

### **Alternative Bidders' plans for the B2C Business**

5.96 For the purpose of assessing the counterfactual, the MAGs state that the CMA will consider alternative purchasers that would have operated the business as a competitor.<sup>250</sup>

5.97 We note that both Alternative Bidders: (a) had bid for the B2C Business primarily for its sports spread betting business; (b) planned to continue to compete by supplying sports spread betting services in the UK; and (c) outlined their respective plans for the B2C Business. In more detail:

(a) [redacted] told us that while Sporting Index was loss-making, it believed that if it had been successful in purchasing Sporting Index, it would have begun to make a profit within six to 12 months.<sup>251</sup> In this regard, [redacted] told us that:

(i) Sporting Index's value lay in its 'database of historical, inactive customers'. It told us that it was 'confident that, with the correct marketing, it would have been able to reactivate a large portion of these dormant accounts';<sup>252</sup>

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<sup>249</sup> Third party hearing transcript.

<sup>250</sup> MAGs, paragraph 3.30.

<sup>251</sup> Third party call note.

<sup>252</sup> Third party call note.

- (ii) there was scope to reduce Sporting Index's operating costs. It told us that Sporting Index had a 'staff count in excess of what was required to manage a business with such a small active customer base'. It added that its planning did not progress as far as considering which individual Sporting Index employees would be retained in the event of a purchase;<sup>253</sup> and
  - (iii) if it had acquired Sporting Index, it would have been able to compete with Spreadex given [REDACTED] 'risk appetite' and its 'confidence' in offering spreads for 'grade A events' (ie televised football, rugby, tennis, snooker, cricket and horse racing) based on the 'large volume of [...] information' available to [REDACTED].<sup>254</sup>
- (b) [REDACTED] told us that it had submitted a bid to purchase Sporting Index as it believed that it could combine its current [REDACTED] expertise with Sporting Index's strong brand to develop a product to compete in the UK B2C sports spread betting segment.<sup>255</sup> [REDACTED] explained that as the 'industry shifted from price differentiation to pricing as content' over the past five to 10 years, 'skills and knowledge in price setting' had disappeared from bookmaking, and that sports betting was now an 'homogenous market'. [REDACTED] told us that market prices rarely differed as neither sportsbooks nor the existing supply chain possessed the 'knowledge to differentiate on price, nor react in real time to the risk generated on their book'. [REDACTED] told us that [REDACTED] had 'a lot of expertise in this area of understanding risk and setting strong prices'.<sup>256</sup>

5.98 We further noted evidence setting out the potential upside opportunities for the B2C Business, including that the B2C Business could have been a competitor, under different ownership:

- (a) [REDACTED] told us that it believed that Sporting Index's profitability had been 'negatively impacted by [REDACTED] regulatory compliance'. It explained that the GC's rules on consumer due diligence (which applied to sports fixed odds betting), eg consumer affordability, were 'more stringent than those enforced by the FCA' (which applied to spread betting). It told us that it believed that [REDACTED].<sup>257</sup>
- (b) Similarly, the Former [REDACTED] MD told us that given FDJ's ambitions to enter the 'lucrative' US market, FDJ did not want to risk the FCA or the GC finding

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<sup>253</sup> Third party call note.

<sup>254</sup> Third party call note.

<sup>255</sup> Third party call note.

<sup>256</sup> Third party call note.

<sup>257</sup> Third party call note.

failings within the Sporting Index business that could 'devalue' FDJ and undermine its US entry plans.<sup>258</sup>

- (c) [X] told us that it believed that FDJ might have 'limited its investment in Sporting Index', as it had focused on developing Sporting Solutions internationally, noting that FDJ's primary aim in purchasing Sporting Group was the acquisition of the B2B arm of the business (Sporting Solutions).<sup>259</sup>

5.99 Sporting Group told us that its 'primary concern' in relation to the Alternative Bidders was that neither [X] nor [X] were currently FCA-regulated.<sup>260</sup> In response to the Working Papers, Spreadex told us that Sporting Group had 'real concerns that neither of the Alternative Bidders was FCA-regulated', and that while both Alternative Bidders 'would need to have been approved by the FCA in order for a sale to them to proceed', it considered that this 'may not have been straightforward'. For example, Spreadex submitted that 'based on Spreadex's experience of complying with FCA regulation', it believed that [X] referring to its '[X]' as a factor in its ability to compete with Spreadex. Spreadex submitted that it could 'be inferred from this that [X] strategy would likely have been to [X], if it had been successful in acquiring Sporting Index'. It added that '[X] proposed approach to running Sporting Index seems similarly to involve [X]'.<sup>261</sup>

5.100 As we set out in paragraph 5.58(d), [X] told us that an acquisition of Sporting Index would have allowed it to enter the UK spread betting market quickly, in particular, as it would have acquired Sporting Index's FCA licence, as well as its 'superior trading and website technology'.<sup>262</sup> As part of acquiring control over a UK FCA regulated firm, the proposed controller must submit a formal change in control notification to the FCA in order to be considered as a new controller of the firm. After receiving this notification, the FCA must determine whether to approve or object to the acquisition on the basis of the suitability of the notice giver and the financial soundness of the acquisition, and the FCA must also have regard to the likely influence that the acquirer will have over the UK FCA regulated firm and disregard the economic needs of the market.<sup>263, 264</sup>

5.101 We therefore consider it likely that each of the Alternative Bidders would have required FCA approval to acquire control over the Sporting Index business, in accordance with paragraph 5.100 above. As we set out in paragraph 5.81 above, we consider the Alternative bidders to be well-informed bidders each of whom would have considered its prospects for obtaining the regulatory approvals,

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<sup>258</sup> Third party call note.

<sup>259</sup> Third party call note.

<sup>260</sup> Third party hearing transcript.

<sup>261</sup> Spreadex made further submissions on why FCA approval would not have been 'straightforward' for a transaction led by an Alternative Bidder, eg Spreadex told us that [X]. Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>262</sup> Third party call note.

<sup>263</sup> Sections [178](#) and [185](#) of the FSMA.

<sup>264</sup> Third party response to the CMA's RFI.

including the costs required to obtain such regulatory approvals. We have seen no contemporaneous evidence that the Alternative Bidders nor indeed, FDJ nor Sporting Group, considered regulatory approval of either of the Alternative Bidders to be insurmountable, or a reason for excluding them from the B2C Sale Process, and we have not seen any evidence that the Alternative Bidders would not have received regulatory approval from the FCA.

5.102 Based on the above, our provisional view is that the B2C Business would have been operated as a competitor to Spreadex if it had been acquired by an Alternative Bidder.<sup>265</sup>

### **Our provisional conclusion on whether the Alternative Purchaser Condition is met**

5.103 Based on our assessment above and taking the evidence in the round, our provisional conclusion is that we are not persuaded that, in the absence of the Merger, there would not have been an alternative, less anti-competitive purchaser for the B2C Business. Therefore the Alternative Purchaser Condition is not met.

5.104 For the purposes of determining the counterfactual, we are not limited to considering whether the B2C Business could have been sold to an Alternative Bidder exactly as it was sold as part of the Merger. Indeed, we note that there were other possible scenarios under which the B2C Business could have been sold to an alternative purchaser (other than Spreadex), and which FDJ had considered or would likely have considered, including:

- (a) The sale of a B2C Business that was configured differently to the B2C-dedicated Perimeter and could therefore have attracted other potential purchasers. In this regard, we note that the B2C-dedicated Perimeter was not the only possible transaction structure for the sale of the B2C Business: prior to the B2C Sale Process, FDJ had considered several feasible sale scenarios for the sale of the B2C Business, but ultimately decided to pursue the sale of the B2C-dedicated Perimeter;<sup>266</sup> and
- (b) The sale of a combined B2C Business and B2B Business. In this regard, the evidence shows that FDJ's decision to sell the B2B Business was not contingent on completion of the Merger, or the sale of the B2C Business. For example, [REDACTED],<sup>267</sup> and that [REDACTED].<sup>268</sup> [REDACTED] told us that [REDACTED].<sup>269</sup>

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<sup>265</sup> [MAGs](#), paragraph 3.30 provides that 'the CMA will consider alternative purchasers that would have operated the business as a competitor'. There is no additional requirement, for these purposes, for the CMA to be satisfied that the business would have been profitable immediately, or to have become profitable over any particular period.

<sup>266</sup> Third party response to the CMA's RFI.

<sup>267</sup> Third party hearing transcript.

<sup>268</sup> Third party hearing transcript.

<sup>269</sup> Third party hearing transcript.

5.105 Spreadex submitted that no ‘alternative transaction perimeter would have been commercially viable’, and noted that: (a) at the time of the Merger, ‘FDJ had no interest in selling the B2B Business, which is why [FDJ] acquired Sporting Group in the first place, and would presumably have been the most valuable part of the business (given the B2B Business’ losses)’; and (b) given ‘the limited interest that was shown in the B2C Business’ and ‘FDJ’s apparent struggle to subsequently dispose of the more valuable B2B Business’, it was ‘not plausible that there could have been an alternative deal to dispose of the B2C Business alone (via a different package) that would have resulted in other interested plausible alternative bidders participating’.<sup>270</sup>

5.106 In relation to Spreadex’s submission above, we note the following:

- (a) FDJ’s decision to sell the B2B Business in early 2023 would have been made when the Merger had not yet completed. In the absence of the Merger or a sale of the B2C Business on its own, and given the extent of the integration of the B2C Business and the B2B Business (eg see Appendix C, which illustrates the assets shared between the B2C Business and the B2B Business), we consider that a combined business could have been offered for sale. In this regard, we note Sporting Group’s submission that [REDACTED].<sup>271</sup>
- (b) While Sporting Group also submitted that selling the [REDACTED],<sup>272</sup> we consider this risk to be low, noting that: (a) Sporting Index’s sports spread betting business is limited to the UK, with Spreadex, being the only other potential UK customer in sports spread betting, and noting that Spreadex would be unlikely to require the B2B Business’ services given its existing capabilities; (b) Sporting Index operates a relatively immaterial sports fixed odds business (around £[REDACTED] million of annual revenues) – in this regard, we note that the presence of the B2C Business had not prevented [REDACTED] from becoming a customer of the B2B Business (see paragraph 5.72(a) above); and (c) the majority of the B2B Business’ revenues (around 73% in FY22) are generated outside the UK.<sup>273</sup>
- (c) In a document prepared by AlixPartners exploring the possible sale scenarios for the B2C Business, a pro forma Profit and Loss account was prepared for the B2C Business, which showed the B2C Business (based on the B2C-Dedicated Perimeter) was [REDACTED] at an EBITDA-level,<sup>274</sup> and therefore, we would not expect the inclusion of the B2C Business as part of any sale of the

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<sup>270</sup> Spreadex, ‘Response to the CMA’s Annotated Issues Statement and accompanying Working Papers’, 1 July 2024.

<sup>271</sup> Third party hearing transcript.

<sup>272</sup> Third party hearing transcript.

<sup>273</sup> See: [‘Sporting Solutions Services Limited Annual report and financial statements for the year ended 31 December 2022’](#) (last accessed on 23 July 2024).

<sup>274</sup> Third party response to the CMA’s RFI.



B2B Business to have had a negative financial impact on the financials of the combined B2C Business and B2B Business.

- (d) Finally, we note that based on FDJ's latest update on 9 July 2024 on the sale process for the B2B Business, the sale process for the B2B Business was at '[X]' and that it had '[X]'.<sup>275</sup> In our provisional view, this is at odds with Spreadex's submission that FDJ had been 'struggling' to sell the B2B Business.<sup>276</sup>

- 5.107 In summary, based on the above assessment, our provisional view is that, in the absence of the Merger, the sale of the B2C Business to an Alternative Bidder or (as part of a broader transaction together with the B2B Business) another purchaser is the most likely scenario. No purchaser would have presented competition concerns as, other than Spreadex and Sporting Index, there were no other providers of licensed online sports spread betting services in the UK.
- 5.108 As set out in the MAGs, where two or more possible counterfactual scenarios lead to broadly the same conditions of competition, the CMA may not find it necessary to select the particular scenario that leads to its counterfactual.<sup>277</sup>
- 5.109 In the present case, our provisional view is that the conditions of competition under the above possible counterfactual scenarios would be broadly the same: that is, whether the B2C Business were to have been acquired on its own or as part of a broader transaction together with the B2B Business. In each scenario, although there would likely have been some differences in the level of competition depending on the purchaser (and its strategy) and what would have been acquired, we would expect the B2C Business to continue to supply licensed online sports spread betting services in the UK absent the Merger, and for the conditions of competition under each of the sale scenarios to be broadly the same and broadly in line with the pre-Merger conditions of competition. In those circumstances, it is not necessary to specify the precise perimeter of the B2C Business that would have been acquired under the counterfactual.

## **Our assessment of the Exit Condition**

- 5.110 In relation to the Exit Condition, our provisional assessment is, in summary, as follows:
- (a) The MAGs provide that if a firm that is claimed to be exiting is part of a larger corporate group, as is the case here, the CMA will consider the parent company's ability and incentive to provide continued financial support.<sup>278</sup> In

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<sup>275</sup> Third party response to the CMA's RFI.

<sup>276</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024.

<sup>277</sup> [MAGs](#), paragraph 3.9.

<sup>278</sup> [MAGs](#), paragraph 3.28.

the present case, although Sporting Index was a loss-making division within FDJ,<sup>279</sup> Sporting Index had received financial support from FDJ, and FDJ was able to continue to support it given the group's financial resources. Sporting Group also told us that under a hypothetical scenario where Spreadex's bid did not exist, [REDACTED].<sup>280</sup>

- (b) However, the evidence also shows that FDJ was concerned about the wider reputational risks if Sporting Index, a non-core business, were to breach the UK's FCA and GC regulations, which had become more stringent since it acquired Sporting Index, and the potentially significant negative repercussions for FDJ's broader strategy and wider core business.
- (c) [REDACTED],<sup>281</sup> and therefore, absent the Merger, we infer that if Sporting Index and Sporting Solutions could not be [REDACTED], FDJ would have considered [REDACTED].
- (d) However, we have reviewed internal documents from FDJ and Sporting Group which discussed future plans for the B2C Business. These documents do not set out the actions FDJ would have taken in the event it failed to find a purchaser for the B2C Business and do not show that FDJ had committed to exiting the market.<sup>282,283</sup>

5.111 In view of the above, given that both the Alternative Purchaser Condition and the Exit Condition must be met in order for us to accept an 'exiting firm' scenario, and our provisional conclusion is that the Alternative Purchaser Condition has not been met, it is not necessary for us to consider in more detail whether the Exit Condition has also been met.

## Provisional conclusion on the counterfactual

5.112 Based on our assessment above, our provisional conclusion is that the appropriate counterfactual is where the B2C Business, under the ownership of an Alternative Bidder or (as part of a broader transaction together with the B2B Business) another purchaser, would continue to compete in the supply of licensed online sports spread betting services, broadly in line with the pre-Merger conditions of competition.

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<sup>279</sup> While Sporting Index had been loss-making at an EBITDA-level since FY21, no material doubts were raised about its ability to meet its liabilities and remain as a going concern in its FY21 and FY22 accounts, and as at the end of FY22, Sporting Index had positive net current assets (ie current assets less current liabilities) of £22.1 million (prior year: £28.1 million) and positive net assets (ie total assets less total liabilities) of £18.7 million (prior year: £27.0 million), and continued to receive financial support from FDJ (Sporting Index, '[Sporting Index Limited Annual report and financial statements for the year ended 31 December 2021](#)' and '[Sporting Index Limited Annual report and financial statements for the year ended 31 December 2022](#)' (last accessed on 23 July 2024)).

<sup>280</sup> Third party hearing transcript.

<sup>281</sup> Third party response to the CMA's RFI.

<sup>282</sup> Third party response to the CMA's RFI.

<sup>283</sup> Third party response to the CMA's RFI.

## 6. HORIZONTAL UNILATERAL EFFECTS

### Introduction

- 6.1 This chapter sets out our provisional conclusions on market definition, the nature of competition, and the competitive assessment.
- 6.2 This chapter incorporates evidence from:
- (a) Spreadex's internal documents, including those which set out its rationale for the Merger;
  - (b) Internal documents from FDJ (the seller);
  - (c) Views from the Parties' highest spending customers; and
  - (d) Views from sports fixed odds betting providers, financial spread betting providers and potential entrants to spread betting in the UK.
- 6.3 By way of introduction, and as set out in Chapter 3, the Parties, Merger and Merger Rationale, the Parties overlap in the supply of sports fixed odds betting products and sports spread betting products.<sup>284</sup> The Parties are the only two licensed providers of sports spread betting in the UK, and they provide their services online. Our investigation has focused on sports spread betting, since (as explained at paragraph 6.88 below) given the Parties' relatively minor share of supply of sports fixed odds betting and the number of alternative (and in some cases large) providers remaining, our provisional view is that the Merger does not give rise to competition concerns in relation to the supply of sports fixed odds betting products.

### Market definition

- 6.4 This section sets out our provisional assessment of the relevant market for the purpose of our analysis of the competitive effects of the Merger. The determination of whether an SLC has resulted, or may be expected to result, from the Merger must be in terms of any SLC 'within any market or markets in the United Kingdom for goods or services'.<sup>285</sup> The relevant market is defined by identifying the most significant competitive alternatives available to customers of the merging parties.<sup>286</sup> An SLC can affect the whole or part of a market or markets.<sup>287</sup>

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<sup>284</sup> In this provisional findings report, we refer to sports spread betting *services* to refer to the Parties' offering in general, and sports spread betting *products* to refer to the different outcomes on which customers can place a bet.

<sup>285</sup> [Section 35\(1\)\(b\)](#) of the Act.

<sup>286</sup> [MAGs](#), paragraph 9.2.

<sup>287</sup> [MAGs](#), paragraph 9.1.

- 6.5 Whilst market definition can sometimes be a useful tool for identifying in a systematic manner the immediate constraints facing the merged entity, it is not an end in itself. The outcome of any market definition exercise does not determine the outcome of the competitive assessment in any mechanistic way, and the CMA may take into account constraints on the merged entity from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.<sup>288</sup>

## **Product market**

- 6.6 In assessing product market definition, we start by identifying the relevant focal products which, in the first instance, consists of identifying those products for which both Parties overlap, considering the nature of the products and their functionalities. Our assessment then goes on to identify competitive alternatives to the focal products.
- 6.7 We decide whether to widen the product market primarily by considering the degree of demand-side and, to a lesser degree, supply-side, substitution. One way of doing this is using the hypothetical monopolist test. This test delineates a market as a set of substitute products over which a hypothetical monopolist would find it profitable to impose a small but significant non-transitory increase in price (**SSNIP**), or an equivalent reduction in quality (which might be profitable if it lowered costs for the hypothetical monopolist).
- 6.8 In this case, our starting point is the supply of licensed online sports spread betting. We consider below whether it is appropriate to extend the definition of the product market to include each of:
- (a) Online sports fixed odds betting products;
  - (b) Licensed online financial spread betting products; and/or
  - (c) Unlicensed online sports spread betting products.

### **Online sports fixed odds betting**

- 6.9 We set out below (a) the Parties' views, (b) evidence from internal documents, (c) third party views and (d) our assessment of whether online sports fixed odds betting products should be included in the product market.

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<sup>288</sup> [MAGs](#), paragraph 9.4.

## *Parties' views*

- 6.10 Spreadex submitted that sports fixed odds betting providers and sports spread betting providers compete closely for customers who would not hesitate to switch to large, sports fixed odds betting providers if, for example, Spreadex attempted to worsen its offering by increasing spread widths or reducing innovation.<sup>289</sup>
- 6.11 In particular, Spreadex submitted the following:<sup>290</sup>
- (a) customers can achieve the same payout from spreads as they can from fixed odds betting, whether with Spreadex or another provider;
  - (b) 90% of Spreadex's spread betting customers use both spread betting and fixed odds betting products and of these customers [under half] of the total business value (ie revenue to Spreadex after payouts) comes from fixed odds and [over half] from spreads, indicating (in its view) that spread betting and fixed odds betting are alternatives;
  - (c) Spreadex has not [redacted] for fear of losing customers to fixed odds;<sup>291</sup>
  - (d) Spreadex sets the midpoint of its spread widths in reference to fixed-odds providers; and
  - (e) Spreadex benchmarks and adjusts its product offering and website with reference to fixed odds providers.
- 6.12 Spreadex also submitted that it continues to face constraints post-Merger, and that both evidence of customer churn and Spreadex's behaviour post-Merger, demonstrate that it faces competition from fixed odds providers (see paragraphs 6.118 and 6.119).
- 6.13 We discuss these points below in our assessment at paragraphs 6.31 to 6.35.
- 6.14 Spreadex also submitted that sports spread betting customers face greater transaction costs<sup>292</sup> during the sign-up process, for example, due to the requirement to provide financial information, when compared to the equivalent process on a fixed odds platform.<sup>293</sup>

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<sup>289</sup> Spreadex Letter to the Inquiry Group, 25 April 2024, page 3.

<sup>290</sup> Spreadex Letter to the Inquiry Group, 25 April 2024, page 3.

<sup>291</sup> Spreadex submitted specifically that, on performing a search on all spread prices it has offered on its most popular horse racing spread market (the 50-25-10 index) since 2018, only [redacted] ([0-5%]) have not aligned with the [redacted] spread width pricing structure that it has [redacted] (Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 14).

<sup>292</sup> Transaction costs are referred to in this provisional findings report to mean the inconvenience to the customer in terms of time spent providing relevant information to the sports spread betting provider, and the loss of privacy involved in disclosure.

<sup>293</sup> Spreadex main party hearing transcript, 4 July 2024, page 34 line 21 to page 35 line 5. Spreadex submitted that, with regards to ongoing monitoring of customers, the FCA regulation focuses on ensuring customers can make informed choices, whereas the GC requires more restrictive measures, such as prohibiting betting (Spreadex main party hearing transcript, 4 July 2024, page 35 lines 16-24).

### *Internal documents*

- 6.15 We have reviewed over 300 internal documents from Spreadex and 45 internal documents from FDJ (the seller) for evidence of substitutability between sports spread betting and sports fixed odds betting.
- 6.16 Spreadex submitted that it does not produce many internal documents in its day-to-day business.<sup>294</sup> Despite this, Spreadex's internal documents show that Spreadex expected that Sporting Index's customers would divert to Spreadex, if quality worsened, rather than to a fixed odds competitor, which is evidence that competition from sports fixed odds betting competitors is not strong. Specifically, Spreadex's 'proposed initial bid offer to buy the company' document, attached to an email of 21 February 2023, which collected the views of Spreadex's senior management and sports trading managers on the appropriate price to offer for Sporting Index, stated repeatedly that a reduction in quality on the Sporting Index platform could incentivise customers to switch to Spreadex.<sup>295</sup>
- (a) One of Spreadex's sports trading managers stated '[redacted]'.<sup>295</sup>
  - (b) Spreadex's CEO stated 'if we have to pay up twice for tennis data etc. this becomes more difficult to justify ([redacted])'. He also stated that, after the Merger, '[redacted]'.<sup>295</sup>
  - (c) Spreadex's CFO stated '[redacted]'.<sup>295</sup>
- 6.17 Spreadex submitted that this 'proposed initial bid offer to buy the company' was an initial brainstorming document, which did not record a final decision by Spreadex's senior management.<sup>296</sup> We nevertheless consider that this document represents relevant evidence of the preliminary views (albeit for discussion purposes) of important members of Spreadex's team, including in some cases its senior management, on the competitive processes in spread betting.
- 6.18 Spreadex's internal documents also show that Spreadex monitors sports fixed odds betting competitors. For example, in September 2023, Spreadex reviewed fixed odds competitors' user interface and user experience.<sup>297</sup> Similarly, in March 2023 a presentation to Spreadex's board compared its payment options to fixed odds competitors.<sup>298</sup> However, this is consistent with competition between Spreadex's fixed odds business and fixed odds competitors, and does not

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<sup>294</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024, paragraph 4.2.

<sup>295</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103. Given the small size of Sporting Index's fixed odds business, we consider it likely that these comments refer to migration from Sporting Index's spread betting business to Spreadex's spread betting business.

<sup>296</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024, paragraph 4.3.2.

<sup>297</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 24, Annexes 24.4, 24.5 and 24.7.

<sup>298</sup> Spreadex response to the Enquiry Letter, 14 December 2023, Annex 29, slide 13.

demonstrate closeness of competition between sports fixed odds betting and sports spread betting.

- 6.19 Spreadex's internal documents describe ways in which spread betting is distinct from fixed odds betting. For example, board meeting minutes describe a '[redacted]'.<sup>299</sup> This is evidence of low demand-side substitution.
- 6.20 FDJ's internal documents show that the conditions of competition differed between sports fixed odds betting and sports spread betting. For example, a September 2022 report by AlixPartners which was commissioned by FDJ stated that the number of Sporting Index's [redacted].<sup>300</sup> The same document described the sports fixed odds betting 'market' as 'highly competitive' (without applying the same description to sports spread betting).<sup>301</sup>
- 6.21 Overall, our provisional conclusion is that the Parties' internal documents show that:
- (a) On the demand-side, sports spread betting is not strongly constrained by sports fixed odds betting; and
  - (b) On the supply-side, some production assets are used to supply both sports fixed odds betting and sports spread betting markets. However, the Parties' internal documents do not show that sports fixed odds betting providers in practice use their existing capacity to supply sports spread betting products, or that the conditions of competition are the same for both sports fixed odds betting and sports spread betting customers.

### *Customers*

- 6.22 We sent a questionnaire to the Parties' customers who collectively accounted for around half of their sports spread betting revenue.<sup>302</sup> Of the 33 respondents, when asked who they would switch to if their preferred provider was unavailable, 16 said they would bet with an alternative sports spread betting provider, 14 said they

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<sup>299</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, Annex 43.5.

<sup>300</sup> Third party response to the CMA's RFI.

<sup>301</sup> Third party response to the CMA's RFI.

<sup>302</sup> Given the concentration of the Parties' revenue in their highest spending customers, we did not carry out a customer survey in this case and instead sent a questionnaire directly to the Parties' highest spending sports spread betting customers. The questionnaire was sent to a total of [redacted] customers, who collectively accounted for around 50% of the Parties' sports spread betting revenue. We note that we received 33 responses (amounting to a [20-30%] response rate), and the responses we received may not be representative of the Parties' overall customer base. Accordingly, we place relatively less weight on this evidence than the weight which we would place on the results of a full customer survey. However, we consider that the views of the Parties' highest spending customers are particularly relevant to the Parties' incentives to compete, and therefore we consider the responses to be useful evidence. Spreadex submitted that the low response rate could be indicative of a lack of concern about the impact of the Merger on competition (Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024, paragraph 4.4), however our provisional view is that the response rate ([20-30%]) is not materially low in this context, and we note also the relatively high level of concerns raised from those customer responses we did receive (15 out of 33), and the relatively small number of customers who identified an alternative to the Parties who they would switch to if their current provider was unavailable (5 out of 33).

would have not placed a bet and two said they would have bet with a sports fixed odds betting provider. Among the 16 who said they would have chosen an alternative provider, 11 said they would have switched to Spreadex or Sporting Index, two said they would switch to Sports Spreads (a spread betting provider that is not licensed to supply UK customers) and the remainder did not specify who they would have switched to.<sup>303</sup>

- 6.23 When asked to compare the advantages and disadvantages of sports fixed odds betting and sports spread betting, customers told us that ‘excitement levels’ and ‘risk’ are higher for sports spread betting, that it provides ‘greater rewards but greater risks’, that it allows customers ‘to wager on events such as headers’, that it allows customers ‘to close and take an early profit’, that it permits a ‘bigger range of markets’ and that it permits greater leverage.<sup>304</sup> Some customers simply said that they prefer spread betting.
- 6.24 Of the 33 customers who responded to our questionnaire, 25 said that there were types of spread bets which they could not replicate using fixed odds bets, five added that this amounted to ‘many’ or ‘lots’ of types of bets. Two customers said that there were no types of spread bets which could not be replicated by fixed odds bets.<sup>305</sup>
- 6.25 We also consider that customers’ comments on closeness of competition and the effect of the Merger (see paragraphs 6.104(c) to 6.1076.103**Error! Reference source not found.** below) are relevant to market definition. For instance, where customers indicated they were concerned by the reduction in competition as a result of the Merger, this may also indicate that online sports fixed odds betting providers do not provide a sufficient constraint, and therefore should not be included in the same product market.

### *Betting providers*

#### **Demand-side**

- 6.26 We also asked other betting providers about substitutability between sports spread betting and sports fixed odds betting. When asked whether customers would switch from sports spread betting to other forms of online betting, if spreads widened by 5% (which is equivalent to an increase in the price of the spread bet offered to customers), six betting providers gave ambiguous or uncertain

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<sup>303</sup> Customer responses to our questionnaire.

<sup>304</sup> Customer responses to our questionnaire.

<sup>305</sup> Customer responses to our questionnaire.



responses,<sup>306</sup> two said that customers would not switch<sup>307</sup> and one said that customers would switch to sports fixed odds betting.<sup>308</sup>

6.27 When asked to compare sports fixed odds betting and sports spread betting products:

- (a) One fixed odds betting provider submitted that sports spread betting products were fundamentally different to sports fixed odds betting products.<sup>309</sup> The provider explained that sports spread betting was riskier as, unlike fixed odds betting, customers could lose more than their initial stakes. Moreover, it noted that spread betting customers were rewarded for 'how right' they were and that this feature could not be easily replicated using fixed odds products. It said that customer needs were different for the two types of products and 'customers' approach to risk was different'.<sup>310</sup>
- (b) Another fixed odds betting provider submitted that, even with a limited degree of overlap between the offerings, the products were sufficiently different and that sports spread betting was not a competing product.<sup>311</sup>
- (c) Another fixed odds betting provider submitted that the complex nature of spread betting meant it attracted more sophisticated customers with a larger risk appetite. However, it submitted that customers can bet on the same outcomes, and that the vast majority of 'markets' that were offered by sports spread betting firms were also offered by sports fixed odds betting firms.<sup>312</sup>
- (d) A fixed odds betting provider submitted that customers bet on spread betting markets because 'of the inherent volatile nature of the product', and said that the spread betting market 'is significantly different to that of fixed odds market'. The provider added that a very popular 'fixed odd accumulator' feature was very difficult to replicate in sports spread betting. The provider estimated 50% of the sports fixed odds betting markets that it offered had a parallel sports spread betting market.<sup>313</sup>
- (e) Another fixed odds betting provider described sports spread betting as 'a different type of customer offering' which 'does not impact fixed odds betting'.<sup>314</sup>

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<sup>306</sup> Third party responses to the CMA's RFI.

<sup>307</sup> Third party responses to the CMA's RFI.

<sup>308</sup> Third party response to the CMA's RFI.

<sup>309</sup> Third party responses to the CMA's RFI.

<sup>310</sup> Third party call note.

<sup>311</sup> Third party call note.

<sup>312</sup> Third party call note and third party responses to the CMA's RFI. We note that in this context, a 'market' refers to a betting opportunity, rather than an economic market.

<sup>313</sup> Third party responses to the CMA's RFI.

<sup>314</sup> Third party response to the CMA's RFI.

- (f) FDJ (the seller) submitted that sports spread betting attracted a niche of very high value customers.<sup>315</sup> In Sporting Group’s 2018 strategic overview of its activities, it described sports spread betting as ‘highly differentiated’, and a ‘specialised gambling product, requiring strong pricing and trading capability’. In the same document, it added that there were high barriers to entry as the ‘financial and marketing controls set by the Financial Conduct Authority [were] alien to fixed odds operators’.<sup>316</sup>
- (g) One sports betting B2B provider submitted that it considered that most sports spread betting customers already hold sports fixed odds betting accounts, but there were elements of spread betting which cannot be replicated by fixed odds betting. The provider added that one such element was that ‘the more right you are, the more you win’. The provider submitted further that sports spread betting customers were generally affluent, self-made, and enjoyed taking risks.<sup>317</sup>
- (h) Another betting provider submitted that fixed odds betting and sports spread betting were in two very distinct markets. The provider added that there was not a lot of cross over between spread betting and fixed odds betting customers, but considered that it was more likely that a spread better would become a fixed odds better than the reverse. The provider further submitted that sports spread betting customers had different risk appetites and tended to be more ‘seasoned’ due to the complicated nature of spread betting.<sup>318</sup>
- (i) A former Sporting Index employee submitted that sports spread betting was more exciting compared to fixed odds betting as ‘you don’t necessarily know what you’re going to win or lose on any bet’ and that there were potentially huge gains from a relatively low stake. They added that sports spread betting customers were generally ‘more sophisticated’ and higher earners compared to fixed odds betting customers.<sup>319</sup>
- (j) Several third parties considered that sports spread betting was a ‘niche’ market in comparison to sports fixed odds betting.<sup>320</sup>

### Supply-side

6.28 Sports fixed odds betting providers (other than the Parties) told us that they have not considered (or considered materially) supplying sports spread betting products.<sup>321</sup> Sports fixed odds betting providers submitted that even if the width of

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<sup>315</sup> Third party response to the CMA’s RFI.

<sup>316</sup> Third party response to the CMA’s RFI.

<sup>317</sup> Third party call note.

<sup>318</sup> Third party call note.

<sup>319</sup> Third party call note.

<sup>320</sup> Third party responses to the CMA’s RFI and third party call notes.

<sup>321</sup> Third party responses to the CMA’s RFI.

spreads increased by 5% (a SSNIP), this would not be an incentive to supply sports spread betting products.<sup>322</sup>

- 6.29 Sports fixed odds betting providers told us that they would face a variety of challenges in attempting to offer sports spread betting. For example, providers told us they would struggle to acquire or develop some combination of the following assets required to offer sports spread betting:
- (a) People and expertise;<sup>323</sup>
  - (b) Technology;<sup>324</sup>
  - (c) Brand awareness;<sup>325</sup> and
  - (d) An FCA license.<sup>326</sup>
- 6.30 See Chapter 7, Countervailing Factors, particularly the section on entry and expansion, for further detail.

*Our assessment of online sports fixed odds betting*

- 6.31 Contrary to the Parties' submissions, most customers told us that they cannot replicate sports spread betting through sports fixed odds betting 'markets' and some specifically said that they valued the wider range of 'markets' available through sports spread betting. Customers also explained a variety of other factors which they consider to be advantages of sports spread betting over sports fixed odds betting. We consider that given that customers face additional inconvenience costs when signing up for a sports spread betting account, customers must value these differences sufficiently to be prepared to incur these additional costs. This is further evidence of differentiation between sports spread betting and sports fixed odds betting.
- 6.32 Further, the use by customers of both sports spread betting and sports fixed odds betting does not imply that these are substitutes. Instead, customers appear to use sports fixed odds betting and sports spread betting for different reasons (such as perceived riskiness,<sup>327</sup> and the wider range of 'sports markets' available in sports spread betting). Customer responses show that some customers have demand for

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<sup>322</sup> Third party responses to the CMA's RFI.

<sup>323</sup> Third party responses to the CMA's RFI.

<sup>324</sup> Third party responses to the CMA's RFI.

<sup>325</sup> Third party responses to the CMA's RFI.

<sup>326</sup> Third party responses to the CMA's RFI.

<sup>327</sup> Spreadex submitted that the 'amount risked' per bet in sports spread betting [§]. It defined the 'amount risked' as the maximum amount of money a client could potentially lose when placing a bet (Spreadex response to the CMA's s109 notice 03 follow-up questions, 11 July 2024, pages 1-2). Our provisional view is that while this is one reasonable method for calculating risk, there are several possible approaches to risk measurement, such as volatility. The Parties' websites ([Sporting Index](#) and [Spreadex](#)) note that some spread betting 'markets' exhibit greater volatility than others. Customer feedback and third-party submissions show that sports spread betting is perceived as much riskier than sports fixed-odds betting.

both products; but in our view this does not mean that they would switch from one to the other in response to a worsening of price, quality, range or service in sports spread betting, and we have received no evidence to show that they would do so.

- 6.33 In addition, a [X] pricing policy does not imply a competitive dynamic between sports fixed odds betting and sports spread betting and could be explained by a range of factors (for example, that Spreadex has found it more profitable to flex other parameters given the salience of spread widths to customers, and/or that Spreadex has, prior to the Merger, been in competition with Sporting Index).
- 6.34 In our provisional view, the reference to fixed odds prices by the Parties as inputs into their spread pricing models does not show that sports fixed odds betting and sports spread betting are in competition. Both fixed odds pricing and spread pricing are based on constructing models of the probability of certain outcomes; fixed odds prices are inputs into these models and are therefore relevant to spread pricing as inputs rather than substitutes.
- 6.35 Spreadex's monitoring of sports fixed odds betting providers in its internal documents is consistent with Spreadex's own sports fixed odds betting business competing with other sports fixed odds betting providers; It is not clear that it is relevant to Spreadex's sports spread betting business. The Parties' internal documents instead indicate that the conditions of competition in sports spread betting and sports fixed odds betting are different.
- 6.36 As described in paragraphs 6.134 to 6.142, our provisional view is that the evidence does not support Spreadex's submission that it faces strong overall constraints, and therefore does not support their submission that they compete with sports fixed odds providers.
- 6.37 Overall, our provisional view is that the evidence provided to us shows that:
- (a) On the demand-side, neither customers nor sports fixed odds betting providers see sports fixed odds betting products as close alternatives to sports spread betting products; and
  - (b) On the supply-side, although some production assets are used to supply both sports fixed odds betting and sports spread betting, sports fixed odds betting providers would face significant challenges to supplying, and do not have the incentive to supply, sports spread betting products.
- 6.38 On the basis of the evidence, our provisional conclusion is that it is appropriate to exclude sports fixed odds betting providers from the product market, and to treat them as an out-of-market constraint.

## **Financial spread betting providers**

- 6.39 We have also gathered evidence from (a) customers and (b) financial spread betting providers to assess whether financial spread betting providers should be considered in the same product market as sports spread betting providers.<sup>328</sup>
- 6.40 In responding to our customer questionnaire, only one customer (out of 33) told us that they would switch to a financial spread betting provider if their existing sports spread betting provider was unavailable.
- 6.41 We gathered evidence from three financial spread betting providers who all submitted that they did not compete with sports spread betting providers.<sup>329</sup> No financial spread betting provider told the CMA that they can supply sports spread betting currently, and none told the CMA they would consider entering into the provision of sports spread betting, even if spread widths widened.<sup>330</sup>
- 6.42 We have not seen evidence in the Parties' internal documents that financial spread betting providers exert any competitive constraint on sports spread betting providers.
- 6.43 The Parties have not submitted that they compete with financial spread betting providers.
- 6.44 On the basis of the evidence, our provisional conclusion is that it is appropriate to exclude financial spread betting providers from the product market, and to treat them as an out-of-market constraint.

## **Unlicensed sports spread betting providers**

- 6.45 In this section we consider the extent to which unlicensed sports spread betting providers, ie those providers which are not licensed to supply UK customers, should be included in the product market. We have considered evidence from: (a) customers, (b) the Parties' internal documents, and (c) the relevant regulator.
- 6.46 The Parties submitted that sports spread betting providers offering services into the UK without an FCA licence operate in the same product market.<sup>331</sup>
- 6.47 On the demand-side:
- (a) Customers concerned about the Merger<sup>332</sup> submitted that the inability of unlicensed sports spread betting providers to solicit UK customers, and the

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<sup>328</sup> Financial spread betting is a form of financial leveraged trading.

<sup>329</sup> Third party responses to the CMA's RFI.

<sup>330</sup> Third party responses to the CMA's RFI.

<sup>331</sup> Spreadex response to the CMA's RFI1, 10 January 2024, question 2(a).

<sup>332</sup> A number of individuals sent unsolicited emails to the CMA expressing their concern about the Merger. In this chapter, we refer to these individuals as customers concerned about the Merger.

lack of customer protection offered, meant that unlicensed sports spread betting providers were not credible alternatives to licensed sports spread betting providers.<sup>333</sup>

- (b) Of the 33 customers who responded to our questionnaire, only two said that they would switch to an unlicensed sports spread betting provider if their existing provider was unavailable.

- 6.48 We have not seen any evidence in the Parties' internal documents that unlicensed sports spread betting providers exert any competitive constraint on licensed sports spread betting providers.
- 6.49 On the supply-side, FCA regulations prohibit unlicensed sports spread betting providers from actively soliciting customers in the UK.<sup>334</sup> However, unlicensed sports spread betting providers are relatively well positioned to enter the supply of licensed sports spread betting, as they already have the relevant technology, and we have examined this as a potential countervailing factor to any competitive effect of the Merger (see Chapter 7, Countervailing Factors for further detail).
- 6.50 On the basis of the evidence, our provisional conclusion is that it is appropriate to exclude unlicensed sports spread betting providers from the product market, and to treat them as an out-of-market constraint.

## Geographic market

- 6.51 Spreadex submitted that the narrowest relevant geographic market was the UK, noting that suppliers of online gambling within the UK were subject to regulation at the national level by the GC and/or the FCA, and this was consistent with previous CMA decisions.<sup>335</sup> Spreadex also submitted that the market may be wider since the Parties had international customers, where the regulatory regimes of those countries allowed (eg Denmark and Ireland).<sup>336</sup> However, the majority of the Parties' customers are located in the UK<sup>337</sup> and the regulation of sports spread betting differs across jurisdictions.
- 6.52 The CMA has previously considered that the relevant geographic market in relation to various segments within online gambling is the UK, given that providers need to hold a GC licence to serve customers in the UK.<sup>338</sup> There are similar

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<sup>333</sup> Concerned customer emails.

<sup>334</sup> Sections 19 and 21 of the FSMA. A third party explained that UK customers can legally use the services of a company licenced in another jurisdiction if they were overseas tax residents in that jurisdiction (Third party call note).

<sup>335</sup> Spreadex, Briefing Paper, 13 July 2023, paragraph 3.4 and Spreadex response to the Enquiry Letter, 14 December 2023, question 18.

<sup>336</sup> Spreadex response to the CMA's RF11, 10 January 2024, question 1.

<sup>337</sup> Spreadex, Briefing Paper, 13 July 2023, paragraphs 2.1 and 2.4.

<sup>338</sup> CMA, Flutter Entertainment plc / The Stars Group Inc merger inquiry, '[Decision on relevant merger situation and substantial lessening of competition](#)', 31 March 2020, paragraph 72; CMA, The Stars Group Inc / Sky Betting & Gaming group merger inquiry, '[Decision on relevant merger situation and substantial lessening of competition](#)', 11 October 2018,

national regulations in relation to sports spread betting, which requires a licence from the FCA to serve customers in the UK (see Chapter 2, Industry Background, for further detail on the regulatory landscape).

- 6.53 This is also consistent with the evidence received from third parties and seen in internal documents, which does not appear to show a strong competitive constraint from providers based outside of the UK (see paragraph 6.15 onwards).
- 6.54 On the basis of the evidence, our provisional conclusion is that a UK-wide geographic market is appropriate.

### **Provisional conclusion on market definition**

- 6.55 In view of the above, our provisional conclusion is that the relevant market is the supply of licensed online sports spread betting services in the UK.
- 6.56 Any constraint from sports fixed odds spread betting providers, financial spread betting providers and unlicensed sports spread betting providers, will be considered as an out-of-market constraint as part of the competitive assessment.

### **Nature of competition**

- 6.57 This section sets out our assessment of the nature of competition in the supply of licensed online sports spread betting products in the UK. We first discuss customer acquisition followed by the relevant parameters of competition in the UK licensed online sports spread betting market.

### **Customer acquisition**

- 6.58 As evidenced in the market definition Demand-side section above, sports spread betting comprises more complex betting products in comparison to fixed odds. To acquire sports spread betting customers, Spreadex told us that it targeted '[X]' and onboards [X] customers, given their already established interest in [X], then explains the spread betting product, before attempting to [X].<sup>339</sup>
- 6.59 Due to differences in regulatory requirements, sports spread betting customers are required to submit additional personal information, such as financial information (see Chapter 2, Industry Background), which Spreadex submitted increased friction in the customer journey.<sup>340</sup> Spreadex's sign-up process therefore first signs

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paragraph 41; CMA, GVC Holdings plc / Ladbrokes Coral Group plc merger inquiry, '[Decision on relevant merger situation and substantial lessening of competition](#)', 21 March 2018, paragraph 56; and CMA, Betfair Group plc / Paddy Power plc merger inquiry, '[Decision on relevant merger situation and substantial lessening of competition](#)', 17 December 2015, paragraph 44.

<sup>339</sup> Spreadex main party hearing transcript, 4 July 2024, page 16, lines 3-8.

<sup>340</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 2.

customers up for [redacted] and then offers customers the option to [redacted].<sup>341</sup> Spreadex also [redacted].<sup>342</sup>

- 6.60 We therefore consider that a licensed online sports spread betting provider would naturally acquire customers from fixed odds betting providers, as well as from other sports spread betting providers, due to their established interest in sports betting. The customer base in fixed odds betting enables licensed online sports spread betting providers to easily identify customers interested in sports betting and therefore customers who are also likely to be interested in sports spread betting products. However, it does not follow that the existence of this acquisition channel means that fixed odds providers exert a competitive constraint on licensed online sports spread betting providers as it does not demonstrate product substitution, or customer switching.
- 6.61 While the significant sign-up costs, especially the inconvenience customers face, may discourage customers from opening accounts with multiple providers, the evidence shows that a significant number of customers do have accounts with more than one licensed online sports spread betting providers (ie customers multi-home). In 2022, just over [redacted]% of Spreadex's sport spread betting customers also had sports spread betting accounts with Sporting Index.<sup>343</sup> Furthermore, we infer that higher value sports spread betting customers are more likely to have accounts with both Parties, as 19 out of 33 (58%) customer questionnaire respondents reported that they had accounts with both Spreadex and Sporting Index.<sup>344</sup>
- 6.62 Due to the customer behaviours induced by the sign-up costs, we consider competition takes place in both of the following ways:
- (a) Competition at the sports spread betting platform level to convince customers to sign up and maintain an account with a provider and continue to engage with it.<sup>345</sup>
  - (b) Competition at the level of individual sports spread bets to convince customers to place a specific bet. This is particularly important to multi-homing customers who can readily choose between more than one provider's platforms when placing a bet. However, competition at the level of

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<sup>341</sup> Spreadex main party hearing transcript, 4 July 2024, page 37, lines 12-13.

<sup>342</sup> For example, an email chain titled [redacted] dated December 2023 noted that [redacted] (Spreadex response to the CMA's s109 notice, 17 May 2024 and CMA's follow-up email, 4 June 2024, Annex 32.4).

<sup>343</sup> We note that the total number of sports spread betting customers used to calculate this figure includes a large number of customers that are not classed as active (ie customers who placed at least one spread bet over the relevant period). Sporting Index had [redacted] UK online sports spread customers in 2022 (Spreadex response to RFI2, 2 February 2024, question 6) and [redacted] of these customers were already customers of Spreadex (Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 31).

<sup>344</sup> Customer responses to our questionnaire. However, we note that we do not have evidence on the level of customer engagement on each platform so it may be the case that some of these customers, whilst having multiple accounts, are in effect spending the vast majority of their time and spend on only one platform. The questionnaire was sent to customers who cumulatively accounted for around 50% of the Parties' revenues.

<sup>345</sup> We note that the sign-up process creates customer facing costs (see paragraph 6.81(a) and footnote 382).



individual bets is also relevant to platform competition, as it can induce single-homing customers to multi-home.<sup>346</sup>

## Parameters of competition

6.63 With regards to the relevant parameters of competition, Spreadex and FDJ, the former owner of Sporting Index, made the following submissions:

- (a) Spreadex submitted that the parameters of competition in the ‘online sports betting market’, which we note is wider than our defined product market (see market definition section above), were price, range of ‘markets’, service, promotions and free bets, and user experience.<sup>347</sup>
- (b) FDJ submitted that a strong brand name, reputation, heritage, and focus on player safety and customer service made Sporting Index an attractive offering for customers.<sup>348</sup>

6.64 For the reasons set out below, our provisional view is that there are primarily three relevant parameters of competition in the supply of licensed online sports spread betting products in the UK: (a) price, (b) range of ‘spread markets’, and (c) user experience.

6.65 These parameters of competition are relevant both to static competition (both the product and platform levels) and to dynamic competition between the Parties (and any potential entrants).<sup>349</sup> In relation to dynamic competition, Spreadex’s internal documents show it considered the possibility that Sporting Index would become a stronger competitor.<sup>350</sup>

## Price

6.66 Under this parameter of competition, we address both spread widths and promotions.

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<sup>346</sup> 20 of the respondents to our customer questionnaire submitted that they had sports spread betting accounts with two or more providers. As noted in paragraph 6.61 above, 19 of the 20 customers multi-home between the Parties, and seven of the 20 also multi-home between at least one of the Parties and unlicensed providers. Only three of these 20 respondents submitted that they did not have a preferred provider.

<sup>347</sup> Spreadex response to the CMA’s RFI1, 10 January 2024, question 9(b). Spreadex also told us that [REDACTED] is important. For example, Spreadex submitted that [REDACTED] (Spreadex response to the CMA’s s109 notice 3, 21 May 2024, question 2); and Spreadex submitted that [REDACTED] (Spreadex main party hearing transcript, 4 July 2024, pages 53-54, lines 9-2).

<sup>348</sup> Third party response to the CMA’s RFI.

<sup>349</sup> Where investment and innovation efforts represent an important part of the competitive process itself, this can lead to dynamic competitive interactions between existing competitors and potential entrants that are making efforts to enter or expand (ie, dynamic competitors). Existing firms may invest in the present in order to protect future sales from dynamic competitors. Dynamic competitors making investments in the present will do so in order to win new sales in the future, including by winning sales from other suppliers (MAGs, paragraph 5.18).

<sup>350</sup> Spreadex’s internal documents show that it assessed the competitive threat of Sporting Index as a potentially stronger competitor in the future: (a) In the proposed initial bid, the CEO stated that the transaction was ‘a strong defensive play [REDACTED]’ (Spreadex internal document, 114, 20 February 2023); and (b) in an email the CFO stated that one of the benefits of the Merger was that it was ‘[REDACTED]’ (Spreadex response to the CMA’s s109 notice, 17 May 2024 and CMA’s follow-up email, 4 June 2024, Annex 4.42).

## *Spread widths*

- 6.67 Rather than offering a single price, spread betting includes both ‘buy’ and ‘sell’ points which are set around the most likely outcome, known as the mid-point. The difference between these buy and sell points is the spread width (see Chapter 2, Industry Background for further detail). Spread betting providers are incentivised to estimate the mid-point correctly, as customers can exploit any inaccuracies causing the provider to make losses.<sup>351</sup>
- 6.68 From the customer’s perspective, an attractive spread is one in which the buy or sell point, dependent on the customer’s bet, differs substantially compared to the customer’s expected outcome. A smaller difference between buy and sell points (ie a smaller spread width) implies a greater expected return from a bet for customers in aggregate but less margin for the provider. Consequently, narrowing the spread is analogous to lowering price in a more traditional market as it should attract customers to either buy or sell.
- 6.69 Therefore, we consider the closest concept to an economic price in the supply of online sports spread betting products is the width of the spread. As such, we consider the width of the spread as a relevant parameter of competition.
- 6.70 Spreadex and FDJ submitted that there is limited competition on this parameter:
- (a) Spreadex submitted that price is a ‘key differentiator for customers’,<sup>352</sup> however, it added that its spread widths pricing structure has [redacted] for a number of years.<sup>353</sup> Spreadex told us that since 2018, only [redacted] ([0-5%]) [redacted] horse racing index prices, which is its most popular horse racing bet, had not aligned with its [redacted] spread width pricing policy.<sup>354</sup>
  - (b) FDJ submitted that the size of the spreads offered was generally not a significant factor driving customers to participate in sports spread betting.<sup>355</sup> FDJ added that, historically, few spread sizes have been adjusted.<sup>356</sup> FDJ further submitted that the primary reason for adjusting spread sizes would be if there was a notable change in the client base betting on a ‘market’ and that this change would be to manage risk or make the ‘market’ more appealing to

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<sup>351</sup> Spreadex submitted that if it were [redacted] (Spreadex, ‘Product and pricing’ submission, 30 January 2024, page 9).

Spreadex added that [redacted] (Letter from Spreadex to the CMA’s Mergers Intelligence Committee, 6 December 2023).

<sup>352</sup> Spreadex response to the CMA’s RF11, 10 January 2024, question 9(b).

<sup>353</sup> Spreadex response to the CMA’s s109 notice 01, 24 April 2024, question 14.

<sup>354</sup> Spreadex response to the CMA’s s109 notice 01, 24 April 2024, question 14. Spreadex further submitted that due to the FCA’s consumer duty regulation, it is prohibited from pricing anti-competitively (Spreadex response to the CMA’s RF11, 10 January 2024, question 5). However, Spreadex were unable to provide examples where the FCA has required Spreadex to adjust spreads (Spreadex response to the CMA’s RF14, 22 April 2024, question 5).

<sup>355</sup> Third party response to the CMA’s RFI.

<sup>356</sup> We note that although FDJ referred to spread sizes, we consider that this term is equivalent to spread widths.

betters. FDJ added that it considered competitor spread sizes, but decisions were primarily based on internal data.<sup>357</sup>

6.71 However, the evidence provided to us also shows that customers prefer narrower spread widths as they are conscious of the potential payouts they can receive, and that spread widths can vary:

- (a) One customer gave the following rationale when considering their preferred provider or switching to another, '[my preferred provider offers] slightly tighter spreads' and '[the alternative offers] tighter spreads than [another]'.<sup>358</sup>
- (b) Another customer considered that the transaction could lead to 'an increase in the spread for each 'market' offered, making it more expensive for customers, reducing the potential returns'.<sup>359</sup>
- (c) In August 2022, Sporting Index conducted a customer survey and asked customers to share feedback about its products or services. Customers noted 'your spreads on low volatility outcomes (football supremacy) are too wide', 'spreads are far too wide', and 'spreads are too large'.<sup>360</sup>
- (d) In Spreadex's internal document considering the pros and cons of buying Sporting Index dated 20 February 2023, the CEO stated that the transaction is 'a strong defensive play [redacted]'.<sup>361</sup>
- (e) In Spreadex's proposed initial bid document, it was stated that '[redacted]'.<sup>362</sup>
- (f) A former employee of Sporting Index told us that the buy/sell 'price', depending on whether the customer is predicting a high or low result, is important to customers, and that Sporting Index offered personalised 'pricing' to some high value customers.<sup>363</sup>
- (g) A potential purchaser submitted that if it had acquired Sporting Index, it could have, contrary to the current industry standard, differentiated its product by price. It added that historically, Sporting Index was the market leader due to price differentiation.<sup>364</sup>

6.72 Overall, we consider that a [redacted] spread width pricing policy could be explained by a range of factors, such as a consistent competitor set, and does not imply that spread width is not a relevant parameter of competition. We nevertheless note that Spreadex took significant market share from Sporting Index whilst applying a [redacted]

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<sup>357</sup> Third party response to the CMA's RFI.

<sup>358</sup> Customer 8, questions 2 and 4.

<sup>359</sup> Customer 19, question 9.

<sup>360</sup> Third party response to the CMA's RFI.

<sup>361</sup> Spreadex internal document, 114, 20 February 2023.

<sup>362</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103.

<sup>363</sup> Third party call note.

<sup>364</sup> Third party call note.

spread width pricing policy,<sup>365</sup> and we consider that the evidence on the importance of spread widths to competition in recent years is mixed.

### *Promotions and entertainment*

- 6.73 Spreadex and FDJ submitted that they frequently offered promotions to customers, such as free bets.<sup>366</sup> In addition, Spreadex submitted that occasionally its clients may be [REDACTED].<sup>367</sup> Spreadex explained that this [REDACTED] of the total amount of bets placed.<sup>368</sup>
- 6.74 Internal documents show that these promotions were often run to [REDACTED].<sup>369</sup> However, for disengaged multi-homing customers, [REDACTED] if they are returning to sports spread betting.<sup>370</sup>
- 6.75 Spreadex told us that it provides entertainment (for example, invites to sporting events) [REDACTED].<sup>371</sup>
- 6.76 Third parties told us that sports spread betting companies also acquire and retain high-spending customers by offering them entertainment and personalised promotions.<sup>372</sup> This is supported by Sporting Index's [REDACTED].<sup>373</sup> Sporting Group told us that [REDACTED].<sup>374</sup>

### **Range of 'spread markets'**

- 6.77 The evidence provided to us shows that the variety and range of 'spread markets' (ie, the sporting events and outcomes on which customers are able to place spread bets) offered is important to customers:
- (a) Spreadex's internal documents show that a reduction in the range of 'markets' offered would incentivise customers to switch platforms. In the proposed initial bid document, the CFO stated that '[REDACTED]'.<sup>375</sup>
  - (b) In Spreadex's client migration survey, which sought to gather the views of Sporting Index customers post-Merger, [REDACTED].<sup>376</sup>

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<sup>365</sup> Spreadex, 'CMA Issues Meeting', 11 March 2024, slide 35. For further detail see paragraph 6.956.95 below.

<sup>366</sup> Spreadex response to the CMA's RFI4, 22 April 2024, question 3; and third party response to the CMA's RFI.

<sup>367</sup> Spreadex main party hearing transcript, 4 July 2024, page 23, lines 7-12.

<sup>368</sup> Spreadex main party hearing transcript, 4 July 2024, page 23, lines 17-18.

<sup>369</sup> Spreadex response to the CMA's s109 notice, Annexes 24.1 and 44.9.

<sup>370</sup> A consultant to a betting provider told us that betting providers use incentives like free bets to re-engage dormant customers (Third party call note).

<sup>371</sup> Spreadex main party hearing transcript, 4 July 2024, page 27, line 2 to page 29, line 24.

<sup>372</sup> Third party call note; and third party hearing transcript.

<sup>373</sup> Spreadex response to the CMA's s109 notice 01, 10 May 2024, question 4, Annex.

<sup>374</sup> Third party hearing transcript.

<sup>375</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103.

<sup>376</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 35 and Annex 35.1.

(c) Customers gave the following rationale regarding their preferred provider: ‘variety of sports’, ‘availability of sports and related spreads’, ‘interesting range of choice’, ‘coverage of markets’, ‘provide good options when it comes to cricket spread bets’, ‘variety and depth of its offerings’, and ‘variety of markets’.<sup>377</sup>

6.78 The range of ‘spread markets’ offered influences a customer’s initial choice of sports spread betting provider as well as where they place individual bets. Customers will have preferences to place bets on specific sports, events, or outcomes, and consequently they select a sports spread betting provider that meets their needs.

6.79 The importance of the range of ‘spread markets’ a provider offers varies with the popularity of the event. For example, Spreadex expects its traders to offer a greater range of options for popular football games than for lesser known games.<sup>378</sup> Sporting Group told us that over 90% of sports spread betting revenue was generated from five sports. Sporting Group added that big events, such as football world cups were key to the success of a sports spread betting business.<sup>379</sup> In addition, FDJ submitted that Sporting Index’s business was largely driven by major events with customers typically returning organically around major sporting events.<sup>380</sup>

### **User experience**

6.80 Our provisional view is that the user experience offered by sports spread betting providers covers multiple aspects of their offerings, including but not limited to, the user interface on mobile applications and websites, the ease of the sign-up process, live streaming functionality, account management tools, and credit availability.

6.81 These features influence customers’ decision making when selecting a preferred provider as well as when choosing where to place individual bets. For example:

(a) With regards to joining a platform, customers face costs (in terms of inconvenience), such as providing personal and financial data, when creating and maintaining sports spread betting accounts.<sup>381</sup> Spreadex and FDJ submitted that they [redacted].<sup>382</sup> Providers are therefore incentivised to compete to reduce these costs through improvements to the sign-up process and account management systems in order to attract new customers and

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<sup>377</sup> Customers 7, 20, 23, 26, 27, 31, and 32, question 2.

<sup>378</sup> Spreadex response to the CMA’s s109 notice 03, 21 May 2024, Annex 1e.

<sup>379</sup> Third party hearing transcript.

<sup>380</sup> Third party response to the CMA’s RFI.

<sup>381</sup> See paragraph 2.7.

<sup>382</sup> [redacted] (Spreadex response to the CMA’s s109 notice 01, 24 April 2024, Annex 43.8, paragraph 4). [redacted] (Spreadex response to the CMA’s s109 notice, 17 May 2024 and CMA’s follow-up email, 4 June 2024, Annex 15.7).

encourage rival customers to switch or multi-home. Providers can also decide the extent to which they comply or over-comply with regulations as providers could either choose to meet the minimum requirements or go beyond these.

- (b) When placing individual bets, if a customer wishes to build their own bet, or bet in-play, this can only be facilitated if the sports spread betting provider offers these services. In addition, if the other parameters of competition are deemed equal by the customer, user experience features, such as the ability to watch a live stream of the event, may incentivise customers to place a bet with a certain provider.

6.82 Evidence from Spreadex and third parties shows that service and user experience is important for sports spread betting customers:

- (a) In Spreadex's proposed initial bid document, the CEO stated that, in order to incentivise switching to Spreadex, '[redacted]'. He added that '[redacted]'.<sup>383</sup>
- (b) Customers who responded to our questionnaire gave the following rationale regarding their choice of preferred provider: 'faster and better system', 'more affiliation with other customers', 'politeness', 'good service', 'best app', 'more user friendly and better customer service', 'always provided a good service', 'better customer service', 'more user friendly mobile website', 'ease of platform', 'great IT and easily navigated'.<sup>384</sup>

6.83 Spreadex submitted that customers can place sports spread bets using credit. A former employee of Sporting Index told us that some customers would choose to trade with a business depending on their credit limit.<sup>385</sup> We therefore consider that providers compete on the availability of credit to attract users to their platform. Spreadex submitted from November 2022 to October 2023, between [redacted] and [redacted] active customers placed bets using credit monthly.<sup>386</sup> In comparison, in December 2022 Spreadex had [redacted] monthly active customers of which [redacted] customers placed sports spread bets using credit.<sup>387</sup> However, Spreadex submitted that it has [redacted] in recent years and that, in the current regulatory environment, [redacted].<sup>388</sup>

### Provisional conclusion on the nature of competition

6.84 In summary, our provisional conclusion on the nature of competition is that the principal parameters of competition in the supply of licensed online sports spread betting in the UK are (a) prices (including spread widths and promotions), (b)

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<sup>383</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103.

<sup>384</sup> Customers 2, 3, 6, 7, 9, 10, 12, 13, 18, 24, and 33, question 2.

<sup>385</sup> Third party call note.

<sup>386</sup> Spreadex response to the CMA's s109 notice 3, 21 May 2024, question 10.

<sup>387</sup> Spreadex response to the CMA's RFI2, 31 January 2024, question 7.

<sup>388</sup> Spreadex main party hearing transcript, 4 July 2024, page 41, lines 2-17.

range of 'spread markets', and (c) user experience, and that competition takes place both statically and dynamically. If the Merger were to weaken competition in this market, this would have the adverse effect of worsening one or more of these parameters relative to what a more competitive market would deliver in the absence of the Merger. Therefore, in the Competitive Assessment below, we assess the closeness of competition and competitive constraints with reference to these parameters and processes.

## Competitive assessment

- 6.85 We have assessed the competitive effects of the Merger with reference to a 'theory of harm'. A theory of harm is a hypothesis about how the process of rivalry could be harmed as a result of a merger and provides a framework for analysis of the competitive effects of a merger.<sup>389</sup>
- 6.86 We have focused our competitive assessment on the horizontal unilateral effects in the supply of licensed online sports spread betting in the UK, assessing whether the removal of a competitor in that market would lead to a reduction in price, quality or range of services. We have considered in particular:
- (a) Market shares;
  - (b) Evidence on closeness of competition; and
  - (c) Evidence on competitive constraints.
- 6.87 In Chapter 5, Counterfactual, we provisionally concluded that the appropriate counterfactual is one where Sporting Index, under the ownership of an Alternative Bidder, would continue to compete in the supply of licensed online sports betting services, broadly in line with the pre-Merger conditions of competition. Although we have assessed the competitive effects of the Merger against the pre-Merger conditions of competition, our provisional view is that *even if* it were the case that, absent the Merger, Sporting Index would likely have been a weaker competitor under new ownership, then given that apart from Spreadex and Sporting Index there are no other providers of licensed online sports spread betting services in the UK, our provisional assessment of the competitive effects of the Merger would not be materially different.
- 6.88 Given the Parties' small share of supply of sports fixed odds betting and the number of alternative (and in some cases large) providers remaining, our

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<sup>389</sup> [MAGs](#), paragraph 2.11.

provisional view is that the Merger does not give rise to competition concerns in relation to the supply of sports fixed odds betting products.<sup>390</sup>

## Market shares

- 6.89 Spreadex submitted that the Parties have around a 95% share in the supply of online sports spread betting in the UK.<sup>391</sup> This estimate was based on conversations with some of its 'longer standing and more material customers' who noted that they also used the services of Star Spreads and Sports Spread (two unlicensed overseas providers).<sup>392</sup>
- 6.90 Table 6.1 below sets out estimated market shares of licensed online sports spread betting in the UK, based on the Parties' revenues.<sup>393</sup>

**Table 6.1: Estimated shares of licensed online sports spread betting in the UK by revenue\***

Provider	Revenues (£m in 2022)	Online sports spread betting share (2022)
Spreadex	[REDACTED]	[70-80%]
Sporting Index	[REDACTED]	[20-30%]
<b>Merged entity</b>	<b>[REDACTED]</b>	<b>100%</b>
<b>Total</b>	<b>[REDACTED]</b>	<b>100%</b>

Source: CMA estimates based on the Parties' revenues.

\* In 2023, Spreadex had a market share of [70-80%] and Sporting Index had a share of [20-30%]. However, we note that these share estimates may have been affected by the completed Merger (Spreadex response to RF12, 2 February 2024, question 5).

- 6.91 We note that the inclusion of unlicensed providers would not have a material impact on the figures in Table 6.1. Even if Star Spreads and Sports Spread's UK business had been included in the market shares, based on their estimated revenues,<sup>394</sup> Star Spreads and Sports Spread would have substantially lower shares and in combination, would have no more than a 5% share. The Parties would together still have supplied almost the entirety of online sports spread betting in the UK.

## Closeness of competition between the Parties

- 6.92 In this section we summarise the evidence we have collected regarding closeness of competition between the Parties.
- 6.93 We set out below (a) the Parties' views, (b) evidence from internal documents, (c) third parties' views, and (d) our assessment.

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<sup>390</sup> The Parties' combined market share in fixed odds betting was around 1% in 2022, and they would continue to face competition from fixed odds providers including BetVictor, Flutter, Entain, Betfred and Bet365.

<sup>391</sup> Spreadex response to the CMA's s109 notice, 17 January 2024, question 1(b).

<sup>392</sup> Spreadex response to the CMA's s109 notice, 17 January 2024, question 2.

<sup>393</sup> Spreadex response to RF12, 2 February 2024, question 5.

<sup>394</sup> Spreadex response to the CMA's s109 notice, 17 January 2024, questions 1-2.



## Parties' views

- 6.94 Spreadex acknowledged that the Parties were the only two licensed sports spread betting providers in the UK<sup>395</sup> and that they 'may be considered close competitors (given their focus on spread betting)'.<sup>396</sup>
- 6.95 Spreadex submitted that it had taken significant market share from Sporting Index on an annual basis, such that the market share in the supply of sports spread betting had switched from [70-80]:[20-30] in Sporting Index's favour to [20-30]:[70-80] in Spreadex's favour.<sup>397</sup> This is supported by FDJ's internal documents which estimated in 2018 that Sporting Index was the leader in sports spread betting with 80% market share.<sup>398</sup>
- 6.96 Spreadex submitted that Sporting Index offered fewer sports spread betting products than Spreadex (eg Spreadex traded [X] times the number of football events and [X] times the number of horse racing events<sup>399</sup>), had [X] and that its promotions were [X].<sup>400</sup>

## Internal documents

- 6.97 Spreadex's internal documents make clear that it considered Sporting Index to be its closest competitor, prior to the Merger. For example:
- (a) A Spreadex board paper dated March 2023 noted that it was Sporting Index's 'main rival'.<sup>401</sup>
  - (b) A Spreadex board meeting minute from July 2022 discussed Sporting Index's results, noting that 'the size of the sports spread betting market in the UK had [X]'.<sup>402</sup> While this board meeting minute contained an agenda item discussing Sporting Index's results, we did not identify any similar agenda items discussing the results of any other providers.
  - (c) Another Spreadex board meeting minute from April 2023 noted, when discussing the potential transaction, that Spreadex's prices '[X]'.<sup>403</sup>
- 6.98 In August 2022, Sporting Index conducted a customer survey and asked customers to share feedback about its products or services. Many customers referred to Spreadex when considering the quality of Sporting Index's offering,

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<sup>395</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 11.

<sup>396</sup> Spreadex, Briefing Paper, 13 July 2023, paragraph 1.5.

<sup>397</sup> Spreadex, 'CMA Issues Meeting', 11 March 2024, slide 35.

<sup>398</sup> Third party response to the CMA's RFI.

<sup>399</sup> Spreadex, 'CMA Issues Meeting', 11 March 2024, slide 43.

<sup>400</sup> Spreadex response to the CMA's RFI1, 10 January 2024, question 9(b); and Spreadex, 'CMA Issues Meeting', 11 March 2024, slide 35.

<sup>401</sup> Spreadex response to the Enquiry Letter, 14 December 2023, Annex 29, page 3.

<sup>402</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, Annex 43.5.

<sup>403</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, Annex 43.11.

such as 'I love the promotions which is why I use your site more than Spreadex', 'Spreadex offers more markets', 'there are only 2 companies giving spread betting prices (yourselves and Spreadex)', 'Spreadex offer the lowest prices about 70% of the time', and 'I have 2 accounts Sporting and Spreadex'.<sup>404</sup>

- 6.99 We consider that many of the Parties' internal documents which are relevant to market definition (see paragraph 6.15 above) are also relevant to our competitive assessment. Where the internal documents anticipate diversion to Spreadex in the event that Sporting Index's quality were to decline, they show closeness of competition.
- 6.100 Some FDJ internal documents support Spreadex's submission that Sporting Index had invested less effectively in technology than Spreadex in recent years, weakening its ability to compete. For example, a September 2022 report by AlixPartners which was commissioned by FDJ stated that 'underinvestment in technology platform leading to significant customer attrition' is one of the key challenges that Sporting Index faced, and that there had been a 'loss of HVC [high value customer] spread customers due to loss of appeal of spread platform, few updates since started in 2019', with a 31% loss in revenue per high value customer between 2019 and 2022.<sup>405</sup> However, FDJ's internal documents also demonstrate that it considered Spreadex a close competitor. For example, a document comparing a list of bidders described Spreadex as a 'direct competitor (#1 in UK in spread betting)'.<sup>406</sup>
- 6.101 Furthermore, the description of underinvestment in technology by Sporting Index implies that with greater investment it could have become a stronger competitor. Indeed, Spreadex's internal documents show that part of the rationale for the Merger was to diminish this competitive threat. For example:
- (a) In Spreadex's proposed initial bid document, a sports trading manager stated that after acquiring Sporting Index, Spreadex 'would not have the [REDACTED]'.<sup>407</sup>
  - (b) In February 2023, the Spreadex CEO circulated an email discussing the benefits and costs of acquiring Sporting Index. One of the stated benefits was that '[REDACTED]'.<sup>408</sup>
  - (c) In an email from July 2023, the CFO stated that one of the benefits of the Merger was that it was '[REDACTED]'.<sup>409</sup>

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<sup>404</sup> Third party response to the CMA's RFI.

<sup>405</sup> Third party response to the CMA's RFI.

<sup>406</sup> Third party response to the CMA's RFI.

<sup>407</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103. See paragraph 6.17 for Spreadex's submissions on the relevance of this document.

<sup>408</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 22, email 103.

<sup>409</sup> Spreadex response to the CMA's s109 notice, 17 May 2024 and CMA's follow-up email, 4 June 2024, Annex 4.42.

6.102 Another comment by one of Spreadex's sports trading managers in its proposed initial bid document was that it '[redacted]', and that the 'main issue with rev share [a revenue sharing agreement, as an alternative to the Merger] especially [redacted]'.<sup>410</sup>

### **Third-party views**

6.103 We received third party submissions on closeness of competition from FDJ (the seller), 33 responses to our customer questionnaire, five fixed odds providers, three financial spread betting providers, a B2B provider, a former Sporting Index employee, as well as emails from four customers concerned about the Merger.

6.104 Third parties submitted that the Merger would create a monopoly in the supply of sports spread betting as it removed Spreadex's only competitor.<sup>411,412</sup>

- (a) One provider told us that the removal of Sporting Index has removed competition and harmed innovation.<sup>413</sup>
- (b) One industry participant commented that Spreadex wanted to corner the market by purchasing Sporting Index, given that there is no other competition in the UK.<sup>414</sup>
- (c) The emails from customers concerned about the Merger described Sporting Index and Spreadex as '2 main players, 'two dominant players in a relatively small marketplace' and 'the 2 market leaders'.<sup>415</sup>

### *Customer questionnaire*

6.105 Of the 16 customers who said they would switch to an alternative provider if their existing provider was unavailable, 11 said they would switch to another of the merging parties.<sup>416</sup>

6.106 When asked to compare the similarities and differences between Spreadex and Sporting Index, seven customers told us that they were very similar, while eight said that the differences in pricing were valuable or increased the amount of choice they had, implying that it was necessary to have two sports spread betting providers to allow customers to make a comparison, even if the products or prices offered were not always identical. However, some customers told us that Spreadex was more user-friendly or had better technology.<sup>417</sup>

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<sup>410</sup> Spreadex response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103.

<sup>411</sup> Concerned customer emails.

<sup>412</sup> Third party call note; and third party responses to the CMA's RFI.

<sup>413</sup> Third party call note.

<sup>414</sup> Third party call note.

<sup>415</sup> Customer responses to our questionnaire.

<sup>416</sup> Customer responses to our questionnaire.

<sup>417</sup> Customer responses to our questionnaire.

6.107 Customer questionnaire evidence on the range of ‘spread markets’ offered on the platforms was mixed, with three customers submitting that the overall ‘spread markets’ offered were similar.<sup>418</sup> However, three customers submitted that the range of ‘spread markets’ offered differed, with Spreadex offering a greater range compared to Sporting Index. For example, customers submitted that ‘[the providers had] different strengths in less mainstream sports in coverage and depth of markets’,<sup>419</sup> ‘the two companies offered a range of individual markets that were independent of each other’,<sup>420</sup> and ‘Spreadex has numerous more markets’.<sup>421</sup>

### *Sporting Group*

6.108 Sporting Group described Spreadex as ‘the last man standing’ in the sports spread betting market.<sup>422</sup>

6.109 Sporting Group submitted that Sporting Index covered 95% of ‘spread markets’ which was very similar to Spreadex and that the remaining 5% included more ‘obscure sports and events’.<sup>423</sup>

6.110 However, Sporting Group and a former employee of Sporting Index told us that Sporting Index had applied affordability checks which were greater than technically required by spread betting regulation.<sup>424</sup> Sporting Group told us that its single fixed odds and spread betting regulatory compliance model created an ‘over index in terms of compliance internally’. Sporting Group explained that high net worth individuals were reluctant to share information regarding proof of wealth, which was required under its dual compliance policy, and this led to a decline in the client base at Sporting Index.<sup>425</sup> FDJ added however, that short term plans were continually explored to automate and streamline the manual compliance requirements customers faced.<sup>426</sup>

### **Our assessment**

6.111 As a starting point, we note that when there are only two providers operating in a particular market, as we consider to be the case here, they will necessarily be each other’s closest competitor. As we set out above in the section on market definition, our provisional view is that fixed odds providers, financial spread providers and unlicensed sports spread betting providers do not provide a strong constraint on the Parties.

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<sup>418</sup> Customer responses to our questionnaire.

<sup>419</sup> Customer responses to our questionnaire.

<sup>420</sup> Customer responses to our questionnaire.

<sup>421</sup> Customer responses to our questionnaire.

<sup>422</sup> Third party hearing transcript.

<sup>423</sup> Third party hearing transcript.

<sup>424</sup> Third party call note; and third party hearing transcript.

<sup>425</sup> Third party hearing transcript.

<sup>426</sup> Third party response to the CMA’s RFI.

- 6.112 In terms of competition between the Parties' products, we note that many of their customers told us that they were very similar prior to the Merger, particularly in terms of their pricing. In addition, many of the Parties' customers told us that they valued the ability to compare spread pricing between Spreadex and Sporting Index. This is supported by Spreadex's internal documents (see paragraph 6.71(e)). We consider that the range of 'spread markets' offered were likely considered similar by customers as Sporting Index offered the same high-profile events as Spreadex. We consider it likely that the additional lesser-known events offered by Spreadex only provided a limited competitive advantage over Sporting Index. We consider that there is further scope for competition between the Parties to compete by using promotions personalised to high value customers' interests (see paragraph 6.75). We furthermore note that evidence that Spreadex has taken market share from Sporting Index also supports the existence of substitution between the Parties (see paragraph 6.95 above).
- 6.113 In terms of competition between the Parties' platforms, we note that the Parties compete using promotions and entertainment to engage customers (see paragraphs 6.73 to 6.76). However, some customers said that Spreadex's platform was more user friendly than that of Sporting Index (which, in our view, is consistent with a lower level of investment by Sporting Index in its technology). We also note the evidence that Sporting Index's approach to regulation made it less attractive to some high value customers in recent years (see paragraph 6.110, and paragraphs 5.43 to 5.456.110).
- 6.114 In terms of the evidence of dynamic competition, we note that although Sporting Index had performed less strongly in recent years, part of the rationale for the Merger was explicitly to remove the possibility of greater competition by Sporting Index in future, which would have placed more competitive pressure on Spreadex.
- 6.115 On this basis, our provisional conclusion is that, as the Parties were the only two providers of licensed online sports spread betting in the UK prior to the Merger, they were necessarily close competitors, and that the loss of rivalry between the Parties worsened their incentives to compete in terms of the parameters of competition.

### **Competitive constraints**

- 6.116 As discussed above, the Parties are the only two firms active in the licensed online sports spread betting market in the UK. In this section, we consider the strength of the competitive constraint posed on the Parties by out-of-market competitors, namely unlicensed sports spread betting firms, financial spread betting firms and fixed odds providers.
- 6.117 We set out below (a) the Parties' views, (b) evidence from internal documents, (c) third parties' views and (d) our assessment.

## Parties' views

- 6.118 As described above in paragraph 6.10, the Parties submitted that they are closely constrained by fixed odds betting providers. In response to the Working Papers, Spreadex told us that it recognised that its offering may not be perfectly substitutable for some of the fixed odds offerings, but nevertheless considered that it was strongly constrained by fixed odds providers.<sup>427</sup> Spreadex further submitted that [redacted] customer churn of [redacted]% per annum places pressure on it to compete with fixed odds.<sup>428</sup>
- 6.119 Spreadex submitted that we should place evidential weight on its actions for the period post-completion of the Merger but prior to the CMA's review, as this was an accurate representation of how Spreadex would operate its business. Spreadex noted that during this period, its spread widths were maintained, promotional generosity increased, the user experience improved, additional markets were offered, and additional regulatory protections were provided. Spreadex concluded that its behaviour was consistent with the behaviour of a firm operating in a competitive environment that faced alternative constraints from competitors.<sup>429</sup> Furthermore, Spreadex submitted that if it considered it did not face alternative constraints, it would not have been incentivised to make these improvements as it would still retain the customers regardless.<sup>430</sup>
- 6.120 We assess these submissions below at paragraphs 6.134 to 6.142.6.1346.142

## Internal documents

- 6.121 We consider that many of the Parties' internal documents which are relevant to market definition (see paragraph 6.15 above) are also relevant to our competitive assessment. Where the internal documents anticipate diversion to Spreadex in the event that Sporting Index's quality were to decline, rather than to other competitors, they show an absence of competitive constraints.
- 6.122 Spreadex's internal documents show it was aware that it faced no other licensed sports spread betting competitors, other than Sporting Index. For example, in September 2023, Spreadex reviewed fixed odds competitors' user interface and user experience. A comment in the document stated that '[redacted]'.<sup>431</sup> Spreadex submitted that this was an isolated comment by a [redacted].<sup>432</sup> However, it is consistent

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<sup>427</sup> Spreadex main party hearing transcript, 4 July 2024, page 12, lines 20-22.

<sup>428</sup> Spreadex, 'Spreadex Hearing follow up response - 9 July', 9 July 2024, page 8.

<sup>429</sup> Spreadex, 'Spreadex Hearing follow up response - 9 July', 9 July 2024, page 8.

<sup>430</sup> Spreadex main party hearing transcript, 4 July 2024, page 47, lines 20-22.

<sup>431</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 24 and Annex 24.4.

<sup>432</sup> Spreadex, 'Response to the CMA's Annotated Issues Statement and accompanying Working Papers', 1 July 2024, paragraph 4.31.

with other internal documents, including those made by Spreadex's management (see paragraph 6.97 onwards).

- 6.123 Spreadex submitted multiple internal documents showing that it monitored fixed odds providers.<sup>433</sup> For example, in August 2023, Spreadex conducted an analysis of competitors phone betting services. The competitors included in the analysis were Betfair, Bet365, Sky Bet, Paddy Power, William Hill, Ladbrokes, Bet Victor, BoyleSports, Unibet, Betfred, Coral, Smarkets, and Bwin. The analysis considered whether the service offered was easily accessible and the operating hours.<sup>434</sup> In September 2023, Spreadex reviewed competitors' user interface and user experience. The competitors included in the comparison were fixed odds providers Bet365, Sky Bet, Paddy Power, and 888 Sport. The review compared features such as the availability of odds on the home page, bet builder technology, in-play user interface, live streaming, the level of information, edit bet features, and promotions.<sup>435</sup>
- 6.124 We have not seen any internal documentary evidence of the Parties monitoring financial spread betting providers.

### **Third-party views**

#### *Customers*

- 6.125 Of the 33 respondents to our customer questionnaire, two customers told us that they would switch to fixed odds sports betting if their preferred sports spread betting provider were unavailable. Similarly, only two customers told us that they would switch to unlicensed sports spread betting providers, and only one customer told us that they would switch to a financial spread betting provider.<sup>436</sup>
- 6.126 When asked about their views on the Merger's impact on competition, 12 customers had clear concerns, three had minor or qualified concerns, five were unconcerned. The remaining 13 had no views or gave ambiguous responses. The customers who had clear concerns described the Merger as 'killing the competition', 'reducing competition', 'removing a key competitor' and 'fundamentally detrimental to the industry'. Customers who did not express concerns about the Merger said the Merger 'just takes an irrelevant player out of the market place' and that 'there is always space for new comers'.<sup>437</sup>
- 6.127 Some customers expressed specific concerns that the Merger would prevent them from being able to compare prices, as 'pricing was very competitive between the

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<sup>433</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 24 and Annexes 24.1, 24.3, 24.5, 24.6 and 24.7.

<sup>434</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 24 and Annex 24.2.

<sup>435</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 24 and Annex 24.4.

<sup>436</sup> Customer responses to our questionnaire.

<sup>437</sup> Customer responses to our questionnaire.

two firms before the merger, on many occasions difference of opinion would mean little or no spread on many markets, that does not now seem to be the case', saying that it's a 'shame now only 1 proper spread maker', 'significantly reduced the choices available to the customer... no variability of prices offered' and that 'previously, one spread better has quoted a price that has made it possible to arbitrage a profit for zero risk, based on differing views. This is no longer possible'.

- 6.128 Furthermore, in response to Spreadex's own survey of Sporting Index customers, which was focused on understanding their reaction to changes to the trading platform following the Merger, two customers expressed concerns about the Merger.<sup>438</sup>

### *Betting providers*

- 6.129 As described in paragraphs 6.26 and 6.27, sports fixed odds betting providers submitted that they did not compete with, or only competed 'weakly' with the Parties (and in some cases specified that this was only in relation to the Parties' fixed odds products not their spread betting products).<sup>439</sup> Fixed odds sports betting providers considered there were significant differences between fixed odds sports betting and sports spread betting that distinguished them as separate products.
- 6.130 Evidence from third parties, including fixed odds sports betting providers, shows that there is an overlap in the pricing approach between fixed odds sports betting providers and sports spread betting providers as they use the same market information.<sup>440</sup> As a result, some fixed odds sports betting providers submitted that they occasionally referenced sports spread betting prices when setting fixed odds prices on a small number of 'fixed odds markets'.<sup>441</sup> One third party explained, however, that despite this sports spread betting prices had a minimal overall effect on its trading strategy and that no sports spread market is used to assist with its automated pricing.<sup>442</sup>
- 6.131 One betting provider submitted that the completed acquisition has now removed all competition from the UK sports spread betting segment and removed price differentiation.<sup>443</sup>

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<sup>438</sup> Spreadex received 19 responses to its survey. Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 35 and Annex 35.1.

<sup>439</sup> Third party call note; and third party responses to the CMA's RFI. Fixed odds providers were asked whether prior to the Merger they competed with Spreadex and/or Sporting Index; to rate how closely they competed with them (weakly, moderately, closely) and to give an explanation for their answer.

<sup>440</sup> Spreadex and fixed odds providers told us that their prices are calculated using a model with data inputs on the likelihood of an event occurring as well as other third-party data. These modelled prices are then refined by traders before being presented on websites and mobile applications (Spreadex teach-in slides, 1 May 2024, slides 17-20; Third party call note; Third party responses to the CMA's RFI.

<sup>441</sup> Third party responses to the CMA's RFI.

<sup>442</sup> Third party response to the CMA's RFI.

<sup>443</sup> Third party call note.



- 6.132 FDJ submitted that ‘given the niche nature of our product, they [sic] were very few competitors’.<sup>444</sup>
- 6.133 As described in paragraph 6.41, we gathered evidence from three financial spread betting providers who all submitted that they did not compete with sports spread betting providers.<sup>445</sup> No financial spread betting provider told us that they can supply sports spread betting currently, and none told us that they would not consider entering into the supply of sports spread betting, even if spread widths widened.<sup>446</sup>

### **Our assessment**

- 6.134 Spreadex’s own internal documents demonstrate it considered that if it degraded the quality of Sporting Index, it expected customers would switch to Spreadex as a result, showing that it does not face other strong competitive constraints. One internal document described Spreadex as a monopoly following the Merger. Although some documents refer to fixed odds sports betting providers as competitors, this is consistent with competition between Spreadex’s fixed odds business and fixed odds competitors.
- 6.135 Third parties’ views, including the Parties’ customers’ views and the views of those betting providers that Spreadex submitted it competes with (including the views of sports fixed odds betting providers), show that there are no close competitors to the Parties. Third parties considered that sports spread betting and fixed odds sports betting were very different products, and that spread bets could not be replicated using fixed odds bets. Almost half of the customers we contacted about the Merger were concerned about its impact on competition.
- 6.136 In aggregate, the evidence indicates that only a weak constraint is likely to be imposed on Spreadex by potential switching by customers to fixed odds sports betting providers, unlicensed sports spread betting providers and financial spread betting providers. Fewer than 20% of the Parties’ customers who responded to our questionnaire submitted that they would switch to any alternative provider other than a licensed online sports spread betting provider, if their existing provider was unavailable. This is consistent with Spreadex’s own assessment of customer switching (see paragraph 6.16).
- 6.137 Our provisional view is that the evidence the Parties submitted that they use fixed odds prices as inputs when setting their own sports spread betting prices, and that they sometimes monitor fixed odds sports betting competitors, is not persuasive

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<sup>444</sup> Third party response to the CMA’s RFI.

<sup>445</sup> Third party responses to the CMA’s RFI.

<sup>446</sup> Third party response to the CMA’s RFI.

evidence that their sports spread betting business competes with fixed odds sports betting competitors.

- 6.138 Furthermore, Spreadex's actions post-Merger but prior to the CMA's Merger inquiry do not provide material evidence of the alternative competitive constraints the Merged Entity faces. We consider that the period post-Merger but prior to the Merger inquiry was relatively short and, as such, Spreadex would likely not have had a sufficient transition period (for effective customer management purposes) to amend its offering or strategy to take advantage of weakened competitive constraints. Further, the main improvements to Sporting Index which Spreadex made post-Merger came about due to its decision to service Sporting Index customers using a 'white label' version of Spreadex's technology (see paragraph 5.23), which was a low cost approach which we provisionally consider Spreadex would follow even in the absence of strong competitive constraints.
- 6.139 As regards the existence of customer churn, our provisional view is that this is not material evidence of competitive pressure on the Parties in sports spread betting. That is because customers ceasing to demand a product can be for many reasons, such as changes in personal preferences and priorities.
- 6.140 We have sought to test the extent of competition between fixed odds sports betting and sports spread betting further using the Parties' betting activity data without clear results.<sup>447</sup> The Parties have not provided empirical data showing any constraint from fixed odds sports betting on sports spread betting.
- 6.141 Part of Spreadex's rationale for the Merger was to remove the prospect of greater competition from Sporting Index under an alternative acquirer. This shows that Spreadex considered that the removal of Sporting Index comprised a material change in its competitive constraints which other constraints would not be sufficient to replace.
- 6.142 In view of the above, our provisional conclusion is that the remaining out-of-market competitive constraints on the Parties following the Merger (including unlicensed sports spread betting firms, financial spread betting firms and sports fixed odds betting providers) are weak.

## **Provisional conclusion**

- 6.143 In view of the above, and in particular given the closeness of competition between the Parties, and the absence of sufficient alternative competitive constraints, our provisional conclusion is that the Merger raises competition concerns in the supply

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<sup>447</sup> In addition to data about overall betting activity on the Parties' platforms, we requested data on the Parties' promotional activity and changes to customer stake limits. The frequency of the Parties' promotions and customers' betting, and the absence of data on stake limits targeted to spread betting specifically, prevented us from carrying out event analyses using this data to test closeness of competition between spread betting and fixed odds betting.

of licensed online sports spread betting services in the UK, with resulting adverse effects in terms of one or more of worse range, user experience and prices than would otherwise have been, or be, the case absent the Merger.

- 6.144 In Chapter 5, Counterfactual, we provisionally concluded that the appropriate counterfactual is one where Sporting Index, under the ownership of an Alternative Bidder, would continue to compete in the supply of licensed online sports betting services, broadly in line with the pre-Merger conditions of competition. For the avoidance of doubt, although we have assessed the competitive effects of the Merger against the pre-Merger conditions of competition, our provisional view is also that even if it were the case that, absent the Merger, Sporting Index would likely have been a weaker competitor under new ownership, then given that apart from Spreadex and Sporting Index there are no other providers of licensed online sports spread betting services in the UK, the Merger would raise competition concerns in the supply of licensed online sports spread betting services in the UK with the same resulting adverse effects referred to above.
- 6.145 In view of the above, we provisionally conclude that, subject to our provisional findings on countervailing factors, the Merger has resulted, or may be expected to result, in an SLC in the supply of licensed online sports spread betting services in the UK. We next consider whether there are any countervailing factors that prevent or mitigate an SLC arising from the Merger.

## 7. COUNTERVAILING FACTORS

### Introduction

- 7.1 In this chapter, we consider whether there are any countervailing factors that prevent or mitigate any SLC arising from the Merger.<sup>448</sup>
- 7.2 There are two main ways in which this could happen:
- (a) **Entry and/or expansion:** the effect of a merger on competition may be mitigated if effective entry and/or expansion by third parties occurs as a result of the merger and any consequent adverse effect (eg a price rise).<sup>449</sup>
  - (b) **Merger efficiencies:** rivalry-enhancing efficiencies – ie efficiencies that change the incentives of the merger firms and induce them to act as stronger competitors to their rivals – may prevent an SLC by offsetting any anticompetitive effects of a merger.<sup>450</sup>
- 7.3 This chapter therefore assesses the potential for entry and/or expansion and merger efficiencies to mitigate the loss of competitive constraint resulting from the Merger.

### Entry and/or expansion

- 7.4 In this chapter, we consider the possibility of entry into the relevant market by a new market entrant, triggered by the Merger, and whether this would replace the constraint eliminated by the Merger and therefore would constitute a countervailing factor to prevent or mitigate any SLC arising from the Merger.<sup>451</sup> This assessment is distinct from our assessment set out in Chapter 5, Counterfactual, where we have considered the scenario, in the absence of the Merger, in which a potential purchaser may have acquired Sporting Index or its assets.

### Framework of assessment

- 7.5 If effective entry and/or expansion occurs as a result of the merger and any consequent adverse effect (for example, a price rise), the effect of the merger on competition may be mitigated. In these situations, the CMA might conclude that no SLC arises as a result of the merger.<sup>452</sup>

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<sup>448</sup> MAGs, paragraph 8.1.

<sup>449</sup> MAGs, paragraph 8.28.

<sup>450</sup> MAGs, paragraphs 8.3-8.4.

<sup>451</sup> MAGs, paragraphs 4.16(b) and 8.1.

<sup>452</sup> MAGs, paragraph 8.28.

7.6 The CMA considers that entry and/or expansion preventing an SLC from arising would be rare.<sup>453</sup>

7.7 The CMA will use the following framework to determine whether entry or expansion would prevent an SLC. The entry or expansion must be:

(a) timely;

(b) likely; and

(c) sufficient to prevent an SLC.<sup>454</sup>

7.8 These conditions are cumulative and must be satisfied simultaneously.<sup>455</sup> The CMA will seek to ensure that the evidence is robust when confronted with claims of entry or expansion being timely, likely and sufficient to prevent an SLC from arising.<sup>456</sup>

### **Timely**

7.9 What is considered to be timely in order to prevent or mitigate the adverse effects of a merger will depend on the industry and the characteristics and dynamics of the market, and the timeframe over which the CMA expects an SLC to result from a merger. The CMA guidance provides that 'typically, entry or expansion being effective within two years of an SLC arising would be considered by the CMA to be timely although, depending on the nature of the market, the CMA may consider a period of time shorter or longer than this'.<sup>457</sup>

### **Likely**

7.10 The CMA must be satisfied that potential rivals or existing rivals have both the 'ability and incentive' to enter or expand. The CMA will consider the scale of any barriers to entry and/or expansion.<sup>458</sup>

### **Sufficient**

7.11 Entry or expansion should be of sufficient scope and effectiveness to prevent an SLC from arising as a result of the merger.<sup>459</sup> Small-scale entry that is not comparable to the constraint eliminated by the merger is unlikely to prevent an SLC. In a differentiated market, entry into a market niche may be possible, but to

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<sup>453</sup> MAGs, paragraph 8.29.

<sup>454</sup> MAGs, paragraph 8.31.

<sup>455</sup> MAGs, paragraph 8.32.

<sup>456</sup> MAGs, paragraph 8.30.

<sup>457</sup> MAGs, paragraph 8.33.

<sup>458</sup> MAGs, paragraph 8.35.

<sup>459</sup> MAGs, paragraph 8.37.

the extent the niche product may not necessarily compete strongly with other products in the overall market, it may not constrain incumbents effectively.<sup>460</sup>

## **Our assessment**

7.12 In Chapter 6, Horizontal Unilateral Effects, we explained the basis on which we have provisionally found competition concerns in the market for the supply of licensed online sports spread betting services in the UK. In this chapter, we consider (a) potential barriers to both entry and expansion into that market; and (b) any evidence, and possible sources, of recent entry and/or expansion into that market.

### **Potential barriers to entry and expansion**

7.13 As set out in Chapter 6, Horizontal Unilateral Effects, our provisional view is that there are primarily three relevant parameters of competition in the supply of licensed online sports spread betting in the UK: (a) price, (b) range of ‘spread markets’, and (c) customer experience. With this in mind, we have considered what features, assets or expertise a new entrant, or a company looking to expand, would need in order to compete effectively with the Merged Entity on these parameters.

7.14 Having considered the evidence provided to us by the Parties, third parties and other industry participants,<sup>461</sup> our provisional view is that in order to exert an effective competitive constraint on the Merged Entity in the supply of licensed online sports spread betting services in the UK, a competitor (after its entry or expansion) would need to have the following:

- (a) the required regulatory licence to solicit customers (in this case from the FCA);
- (b) the technology to, amongst other things, manage the underlying sports data, generate spreads, comply with FCA regulations, and engage customers; and
- (c) staff with the necessary industry expertise, including sports traders, IT staff and compliance staff.

7.15 Our assessment therefore considers the following possible barriers to entry and expansion in the supply of licensed online sports spread betting services in the UK:

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<sup>460</sup> MAGs, paragraph 8.39.

<sup>461</sup> For example: Spreadex response to the CMA’s s109 notice 01, 24 April 2024, question 26; Third party responses to the CMA’s competitor questionnaire.

- (a) the costs and timescales to obtain the required regulatory licence from the FCA;
- (b) the costs and timescales to develop and/or acquire the required technology; and
- (c) the costs and timescales to develop and/or acquire the required industry expertise.

7.16 Spreadex told us that it was aware of two types of providers who could feasibly enter the licensed online sports spread betting market within the next two years, namely: (a) sports fixed odds betting providers; and (b) financial leveraged trading providers.<sup>462</sup> We are therefore considering potential barriers to entry and/or expansion against hypothetical entry primarily from these two types of providers.

7.17 We provisionally consider that these two types of providers would likely be best placed to enter the licensed online sports spread betting market in the UK, given their industry knowledge and overlaps in required regulatory compliance and have focused our assessment on these providers as a result. Therefore, if we conclude that we do not expect entry and/or expansion from these two types of providers to be timely, likely and sufficient to prevent an SLC arising from the Merger, then we provisionally consider that this is also likely to be the case for any other type of provider.

*Costs and timescales to obtain the relevant regulatory licence from the FCA*

7.18 Sports spread betting providers wishing to solicit UK consumers must obtain a licence from the FCA and adhere to its regulations.<sup>463</sup> We consider the costs and timescales to obtaining this licence as a potential barrier to entry below.

**Spreadex's and third parties' views**

7.19 Spreadex told us that there were at least 15 financial leveraged trading providers with the FCA licence required to offer sports spread betting services should they wish to do so.<sup>464</sup>

7.20 With regards to sports fixed odds betting providers, Spreadex told us that it did not see acquiring an FCA licence to be a significant barrier to entry, on the basis that: (a) sports fixed odds betting providers were generally experienced at acquiring licences; (b) it would likely take 6–12 months for a company to get approved by the FCA; and (c) the costs associated with obtaining a licence were relatively

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<sup>462</sup> Financial leveraged trading is a form of financial trading that includes financial spread betting. Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 25.

<sup>463</sup> Sections 19 and 21 of the FSMA.

<sup>464</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 26.

minimal, primarily consisting of management time and an application fee of £10,000.<sup>465</sup>

- 7.21 The FCA told us that it had a statutory deadline of six months to approve complete applications, and 12 months to determine incomplete applications. It also told us that the costs borne by a firm making an application would vary based on factors such as the size of the business, its complexity, and whether it sought any external support, and that the application cost was approximately £10,000.<sup>466</sup>
- 7.22 One sports fixed odds betting provider told us that it saw obtaining an FCA licence to be a significant barrier to entry, but that it was a barrier that could be overcome and that the technological barrier (referred to below in paragraphs 7.27 to 7.41) was ‘the bigger stumbling block’. This provider also told us that it believed it would take six to nine months to obtain a licence.<sup>467</sup> One sports betting B2B provider told us that it considered obtaining an FCA licence to be a barrier to entry, but that it was not the major barrier.<sup>468</sup>
- 7.23 We have also been told by third parties that there are also ongoing costs to regulatory compliance with the FCA that have acted as a barrier to entry. FDJ (the former owners of Sporting Index) told us that there were higher barriers to entering the supply of sports spread betting compared to the rest of sports betting, as sports spread betting companies were required to take a different approach to risk management, including having more upfront cash and insurance against losses.<sup>469</sup> Sporting Group told us that there was an FCA regulatory requirement to have £10 million cash on demand which had to be left untouched, and that this was a difficult requirement for any potential purchaser of the pre-Merger Sporting Index business given the size of the business and its potential for growth in the future.<sup>470</sup>

### **Our assessment**

- 7.24 On the basis of the above submissions, our provisional view is that obtaining an FCA licence would not be a lengthy and/or costly process. We understand that it would take 6–12 months and that this would not be a costly process on its own, with an approximate cost of just £10,000.
- 7.25 We note the third-party evidence that obtaining an FCA licence is a significant barrier to entry. However, we also note that the third party considered that this

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<sup>465</sup> Spreadex response to the CMA’s s109 notice 01, 24 April 2024, question 26.

<sup>466</sup> Third party response to the CMA’s RFI.

<sup>467</sup> [redacted]. Third party call note; and third party response to the CMA’s RFI.

<sup>468</sup> Third party call note.

<sup>469</sup> Third party response to the CMA’s RFI.

<sup>470</sup> Third party hearing transcript.



barrier could be overcome, and that it considered obtaining a licence to be a less onerous process than it had initially thought.<sup>471</sup>

- 7.26 It is therefore our provisional view that the costs and timescales involved in obtaining the required regulatory licence from the FCA do not represent a significant barrier to entry or expansion on their own, and firms that already hold this licence (such as financial leveraged trading providers) would not face this barrier at all. However, we note that there are other barriers which an entrant would need to overcome, including the costs required to comply with the FCA's regulatory requirements on an ongoing basis, which are considered in more detail below.

#### *Costs and timescales to develop and/or acquire the required technology*

- 7.27 As set out in more detail below, we understand that in order for a new entrant to provide licensed online sports spread betting services, it would require: (a) sports data feeds; (b) a sports spread betting trading platform to generate prices from these data feeds; (c) a back-end management platform to comply with the FCA's regulatory requirements; and (d) a front-end technology platform to display sports spread betting prices and engage directly with customers, by receiving and managing customer funds for example. We consider the costs and timescales involved to develop and/or acquire these below.

#### **Spreadex's and third parties' views**

- 7.28 Spreadex told us that a financial leveraged trading provider would not have the sports-specific trading technology and applications to provide sports spread betting services. Spreadex told us that it considered that a minimum upfront technical investment in excess of £20 million over three years would be required to provide a service comparable to that of Sporting Index pre-Merger.<sup>472</sup>
- 7.29 Spreadex told us that this investment would be needed to recruit, train and develop an equivalently sized and skilled IT team to that of Spreadex in order to build the technology and infrastructure required. Spreadex also told us that it was unaware of any other third-party company who would be able to provide the technology needed to provide the level of service its customers expect in a manner that would sufficiently meet the FCA's regulatory requirements.<sup>473</sup>
- 7.30 Spreadex told us that sports fixed odds betting providers would not have the infrastructure in place to comply with the FCA's 'regulated concepts or technology', and that it considered that a technical investment of over £20 million would be

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<sup>471</sup> Third party call note and third party response to the CMA's RFI.

<sup>472</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 26.

<sup>473</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 26.

required to adjust the existing underlying systems of sports fixed odds betting providers so as to offer sports spread betting in a manner that was compliant with the FCA's regulations.<sup>474</sup>

- 7.31 Spreadex told us that this investment would involve extensive changes to customer **UX/UI** (User Experience/User Interface), redesigning a large number of back-end management systems, and updating sports fixed odds betting pricing models such that this could offer sports spread betting prices.<sup>475</sup> Spreadex also told us that different and generally more complex calculation methodologies are required to create sports spread betting markets, which would require extra technological development and investment.<sup>476</sup>
- 7.32 Third parties generally agreed that acquiring or developing the required technology would be a substantial barrier to entry:
- (a) One sports fixed odds betting provider told us that it had plans to enter the licensed online sports spread betting market in the UK, but it had put these plans on hold indefinitely due to the costs that would be involved, relative to the level of demand in the market, in developing and acquiring the technology needed to provide sports spread betting services in a manner that could compete with Spreadex. It also told us that developing or acquiring this technology was not the barrier to entry, but rather the cost and operational strain that would be involved from doing so.<sup>477</sup>
  - (b) One sports betting B2B provider told us that developing the necessary trading technology was the most significant barrier to entry given the financial investment and the timeframes that would be required, and added that it did not consider it economically viable to enter the market organically by building this technology from scratch.<sup>478</sup>
  - (c) Another sports fixed odds betting provider told us that third-party spread betting software and pricing could be bought from third parties, but its view was that successful and valuable operations required a sports spread betting provider to have its own technology and in-house trading expertise, and considered this to be a highly significant barrier to entry.<sup>479</sup>
  - (d) Another sports fixed odds betting provider told us that if it were to offer sports spread betting services, it would need to develop its own sports spread

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<sup>474</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 26.

<sup>475</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 26.

<sup>476</sup> Spreadex response to the CMA's RFI4, 22 April 2024, question 4.

<sup>477</sup> Third party call note; and third party response to the CMA's RFI.

<sup>478</sup> Third party call note.

<sup>479</sup> Third party response to the CMA's competitor questionnaire.

betting technology at great expense. It estimated that the development of this technology would be several million pounds.<sup>480</sup>

- (e) One third-party financial leveraged trading provider told us that if it were to provide sports spread betting services, this would require an enhancement to its bespoke in-house proprietary trading platform. It also told us that it would estimate a development timeline of two to three years and cost of around £1.4 million, with the caveat that it did not have a pre-determined methodology to estimate such an endeavour.<sup>481</sup>
- (f) A third-party provider of an execution only platform including the provision of leveraged financial products told us that it would need to acquire or develop data feeds for sports odds from reliable sources in order to provide sports spread betting services in the UK. It also told us that it believed that its current technology platform, which had the capability of offering financial spread betting products, would have the functionality to accommodate the general operational requirements to provide these services.<sup>482</sup>

### **Our assessment**

- 7.33 As set out in paragraph 7.16, we assess below the costs and timescales to obtain the required technology with respect to financial leveraged trading providers and sports fixed odds betting providers specifically.
- 7.34 Our provisional view is that in order for a competitor to exert an effective competitive constraint on the Merged Entity in the supply of licensed online sports spread betting services in the UK, it would require the technology to: (a) comply with the FCA's regulated requirements; and (b) offer spread betting prices in a manner that is sufficiently comprehensive to compete with the Merged Entity. A new entrant would need to offer services comparable to those of Sporting Index pre-Merger to prevent an SLC arising from the Merger.
- 7.35 In our view, a financial leveraged trading provider looking to start supplying sports spread betting in the UK would need to incur significant investment to acquire, and in addition over multiple years to develop, the technology required to provide sports specific spread betting services. This would include costs to: (a) either acquire third-party sports data feeds or develop these sports data feeds in-house; and (b) adjust the spread betting technology it has such that it can use this data feed to provide sports-specific spread betting prices.
- 7.36 While financial leveraged trading providers may be better placed than other providers to develop this technology due to the general spread betting overlaps

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<sup>480</sup> Third party response to the CMA's RFI.

<sup>481</sup> Third party response to the CMA's RFI.

<sup>482</sup> Third party response to the CMA's RFI.

between the platforms it already owns and the platform required to generate sports spread betting prices, the evidence is that an investment of at least several millions over multiple years would still be required in order to provide a sports spread betting service comparable to that of Sporting Index pre-Merger.<sup>483</sup>

- 7.37 We consider that a sports fixed odds betting provider would also need to incur significant investment over multiple years to provide licensed online sports spread betting services in the UK, in order to: (a) adjust its existing technology such that this is compliant with the FCA's regulatory requirements; and (b) develop or acquire a platform that can generate spread betting prices.<sup>484</sup> On the basis of the evidence, hiring the relevant IT staff to make these changes would require an investment of at least several millions of pounds over multiple years.
- 7.38 We also consider that after the initial upfront technological investment required for a new entrant to start supplying sports spread betting services in the UK comparable to those of Sporting Index pre-Merger, both sports fixed odds betting providers and financial leveraged trading providers would then need to incur costs on an ongoing basis to develop this technology in order to ensure that it is: (a) an effective competitor to Spreadex's sports spread betting services; and (b) compliant on an ongoing basis with the FCA's regulatory requirements.
- 7.39 We note that both sports fixed odds betting providers and financial leveraged trading providers may be able to enter in a more timely manner than other entrants should it be possible to procure from a third party the technology platform required to provide sports spread betting services, rather than developing this technology in-house. However, the evidence is mixed on whether there is any third-party technology which can provide a similar level of service to that of Sporting Index pre-Merger, and one third party told us that acquiring this technology would incur a significant cost.<sup>485</sup>
- 7.40 We also note Spreadex's assessment that a new entrant would require technological investment in excess of £20 million over three years to provide a service comparable to that of Sporting Index pre-Merger. We consider that this investment in comparison to a market size of £[~~20~~] million in 2022 and £[~~20~~] million in 2023 (see paragraph 2.12) represents a significant barrier to entry.
- 7.41 It is therefore our provisional view that, relative to the size of the licensed online sports spread betting market in the UK, the costs and timescales to develop and/or acquire the required technology to provide a licensed online spread betting service in the UK that is compliant with the FCA's regulatory requirements and sufficiently

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<sup>483</sup> See paragraphs 7.28, 7.29, and 7.32(e).

<sup>484</sup> See paragraphs 7.30, 7.31, 7.32(a), 7.32(c), and 7.32(d).

<sup>485</sup> See paragraph 7.32(a).

comprehensive to exert an effective competitive constraint on the Merged Entity represents a significant barrier to entry or expansion.

*Costs and timescales to develop and/or acquire the required industry expertise*

- 7.42 As set out in more detail below, we understand that in order for a new entrant to provide licensed online sports spread betting services in the UK, it would require: (a) IT staff to develop the required technology; (b) sports traders to help determine sports spread betting prices; (c) compliance staff to enable the competitor to comply with the FCA's regulatory requirements; and (d) VIP customer account managers to enable a competitor to build and manage personal relationships with key high value (VIP) customers. We consider the costs and timescales involved to develop and/or acquire these below.

**Spreadex's and third parties' views**

- 7.43 As set out in paragraph 7.29, Spreadex told us that financial leveraged providers would need to recruit, train and develop an equivalently sized and skilled IT team to that of Spreadex in order to build the technology and infrastructure required to provide a service comparable to that of Sporting Index pre-Merger.<sup>486</sup> Spreadex also told us that its IT staff and trading staff have long standing experience of working on its technology that cannot be replicated on the open market.<sup>487</sup>
- 7.44 Spreadex told us that trading in larger sports fixed odds betting firms had become more operational and marketing focused, and so its experienced sports traders were relatively unique in the industry and would be difficult to replace directly.<sup>488</sup>
- 7.45 Spreadex told us that there was a high degree of competition in the industry for compliance staff, given the FCA's increasingly onerous regulatory requirements and a finite pool of staff to choose from. Spreadex also told us that sports spread betting was a very nuanced FCA-regulated activity, and so even staff with FCA experience faced a steep learning curve.<sup>489</sup>
- 7.46 FDJ told us that there had been an increase in licensed online sports spread betting regulations, particularly with regards to source of wealth and safer gambling requirements, and because of this, most customers were unwilling to provide the required documentation for Sporting Index (under FDJ's ownership pre-Merger) to allow them to continue to trade and place bets. FDJ also told us that sports spread betting companies faced 'an additional hurdle' in comparison to

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<sup>486</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 26.

<sup>487</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 27.

<sup>488</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 27.

<sup>489</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 27.

wider sports betting, with regards to educating customers on how spread betting products work and explaining how a customer could lose more than their outlay.<sup>490</sup>

- 7.47 Sporting Group (a subsidiary of FDJ) told us that that entertaining VIP customers and building a personal relationship with these customers was a significant part of the business. However, Sporting Group dialled down this aspect of the Sporting Index business pre-Merger, in order to ensure that it was compliant with the rules and regulations regarding how it managed its VIP customers, which involved requiring Sporting Group to not over-incentivise any of its customers.<sup>491</sup>
- 7.48 A third-party financial leveraged trading provider told us that sports spread betting was a very specialised activity with substantial barriers to entry, including recruiting individuals with industry knowledge.<sup>492</sup>
- 7.49 Another third-party sports fixed odds betting provider told us that the expense required to build the expertise and to obtain the relevant FCA licence to provide sports spread betting was unlikely to be recouped in what appears to be a small and shrinking segment. It also told us that while it would have the industry expertise needed to supply licensed online sports spread betting services in the UK (because of its established trading teams in sports betting), a firm entering from a standing start would require a large amount of time, investment and development of expertise to succeed in the market.<sup>493</sup>

### **Our assessment**

- 7.50 As set out above, in our provisional view, in order for a firm to offer an effective competitive constraint in the licensed online sports spread betting market, it would need to acquire or develop industry expertise in the form of: (a) IT staff to develop the required technology; (b) sports traders to help determine sports spread betting prices; (c) compliance staff to enable the competitor to comply with the FCA's regulatory requirements; and (d) VIP customer account managers to enable a competitor to build and manage personal relationships with key high value (VIP) customers. We consider that both financial leveraged trading providers and sports fixed odds providers currently lack this expertise.
- 7.51 We consider that firms would need to incur significant costs to hire the required staff at a sufficient scale to enable them to replicate the constraint posed by Sporting Index pre-Merger. We also consider that acquiring the expertise to reach the required scale would likely take a number of years, on the basis that the

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<sup>490</sup> Third party response to the CMA's RFI.

<sup>491</sup> Third party hearing transcript.

<sup>492</sup> Third party response to the CMA's competitor questionnaire.

<sup>493</sup> Third party call note and third party response to the CMA's RFI.

licensed online sports spread betting market is a relatively niche market with specialised and highly skilled staff members that are difficult to find.

- 7.52 It is therefore our provisional view that, relative to the size of the licensed online sports spread betting market in the UK, the cost and timescales to develop and/or acquire the required industry expertise to provide a licensed online sports spread betting service that is compliant with the FCA's regulatory requirements and sufficiently comprehensive to exert an effective competitive constraint on the Merged Entity represents a significant barrier to entry or expansion.

*Provisional view on potential barriers to entry and/or expansion*

- 7.53 Based on our assessment set out above, it is our provisional view that the following constitute barriers to entry and/or expansion in the licensed online sports spread betting market in the UK:

- (a) developing and/or acquiring the required technology; and
- (b) developing and/or acquiring the required industry expertise.

- 7.54 It is our provisional view that the costs and timescales involved in obtaining the required regulatory licence from the FCA do not represent a significant barrier to entry or expansion on their own, and firms that already hold this licence (such as financial spread betting providers) would not face this barrier at all.

- 7.55 Our provisional view is that the barriers to entry and/or expansion set out in paragraph 7.53 above would make it very difficult for any entry and/or expansion to be timely, likely and sufficient to prevent an SLC arising from the Merger.

**Previous examples of entry and/or expansion and possible sources of entry and/or expansion**

- 7.56 We consider below Spreadex's submissions in relation to potential entry, the previous examples of entry and/or expansion, and possible sources of entry and/or expansion.

- 7.57 As set out in paragraph 7.16, Spreadex told us that it was aware of two types of providers who could feasibly enter the UK licensed online sports spread betting market within the next two years, namely: (a) sports fixed odds betting providers; and (b) financial leveraged trading providers. Spreadex added that it considered it would be very challenging to enter the licensed online sports spread betting market in the UK in the next two years in a financially viable way, given current market conditions and the increasingly stringent regulatory requirements.<sup>494</sup>

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<sup>494</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 25.

Spreadex also told us that there have been no new entrants in the last ten years.<sup>495</sup>

- 7.58 Due to the factors identified above, and in particular the significant technological investment that would be required (as discussed in paragraphs 7.27 to 7.41), our provisional view is that any entry from sports fixed odds betting providers or financial leveraged trading providers would not be timely, likely and sufficient to prevent an SLC arising from the Merger.
- 7.59 One third party told us that it had plans to enter the supply of licensed online sports spread betting services in the UK, but that it had put those plans on hold with no timeline for when these plans might move forward again.<sup>496</sup> We have not seen any other evidence that any other third parties may be looking to enter the market for licensed online sports spread betting in the UK.
- 7.60 As we have set out in Chapter 6, Horizontal Unilateral Effects, we note that unlicensed sports spread betting providers are relatively well positioned to enter the licensed sports spread betting market in the UK if they were to obtain an FCA licence, as they already have the relevant technology to provide these services. However, we have not seen any evidence that an unlicensed provider plans to enter in a timely, likely and sufficient manner.
- 7.61 We therefore provisionally conclude that on the basis of the evidence provided to us and the significant entry barriers we have identified above, we would not expect any sources of entry and/or expansion to be timely, likely and sufficient to prevent an SLC arising from the Merger.

### **Provisional conclusion on entry and/or expansion as a countervailing factor**

- 7.62 Based on our assessment above and in the light of the evidence provided to us, we provisionally conclude that entry and/or expansion would not be timely, likely and sufficient to prevent an SLC arising from the Merger.

### **Efficiencies**

- 7.63 We also consider whether there are any efficiencies arising from the Merger which could be considered a potential countervailing factor to an SLC arising from the Merger. The details of our assessment are set out below.

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<sup>495</sup> Spreadex response to the CMA's s109 notice 01, 24 April 2024, question 29.

<sup>496</sup> Third party call note.



## Framework for assessment

- 7.64 Efficiencies arising from a merger can enhance rivalry with the result that a merger does not give rise to an SLC. In order for that to be the case, the efficiencies must:
- (a) enhance rivalry in the supply of those products where an SLC may otherwise arise;
  - (b) be timely, likely and sufficient to prevent an SLC from arising;
  - (c) be merger-specific; and
  - (d) benefit customers in the UK.<sup>497</sup>
- 7.65 The MAGs state that merger firms who wish to make efficiency claims are encouraged to provide verifiable evidence to support their claims in line with the CMA's framework.<sup>498</sup> The MAGs note that it is for the merger firms to demonstrate that the merger will result in efficiencies and the CMA must be satisfied that the evidence shows that the above criteria are met.<sup>499</sup>

### Spreadex's views

- 7.66 Spreadex told us that the Merger had and would continue to bring positive changes from a customer perspective, as Sporting Index customers had and would continue to benefit from a significantly improved product, user experience and interface, with an increased number of markets, betting opportunities and payment and withdrawal options. Spreadex also told us that Sporting Index customers benefit from additional regulatory protections due to the Gambling Commission's regulatory requirement to share vulnerability and safer gambling concerns across the Spreadex and Sporting Index brands.<sup>500</sup>

### Our assessment

- 7.67 We consider whether each of the efficiencies submitted by the Parties would meet the cumulative criteria set out in paragraph 7.64.
- 7.68 Our provisional view is that the efficiency arguments submitted by Spreadex to date do not meet the above criteria for the following reasons:
- (a) The claimed efficiencies are not merger-specific, as the customer benefits described above would have been available to Sporting Index customers had

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<sup>497</sup> [MAGs](#), paragraph 8.8.

<sup>498</sup> [MAGs](#), paragraph 8.7.

<sup>499</sup> [MAGs](#), paragraph 8.15.

<sup>500</sup> Spreadex Letter to the Inquiry Group, 25 April 2024, page 1.

they switched to Spreadex and this option would have existed with or without the Merger.

- (b) The claimed efficiencies also do not enhance rivalry in the market for licensed online sports spread betting in the UK, given that the Merger has resulted in Spreadex acquiring the only other licensed sports spread betting provider in the UK, and the lack of any other effective competitive constraint on the Merged Entity.

### **Provisional conclusion on efficiencies as a countervailing factor**

7.69 Based on our assessment above and in light of the evidence provided to us, we provisionally conclude that the claimed efficiencies would not be merger specific or enhance rivalry in the UK licensed online sports spread betting market, such as to prevent an SLC arising from the Merger.

### **Provisional conclusion on countervailing factors**

7.70 Based on our assessment set out in this chapter, it is our provisional conclusion that there are no countervailing factors to prevent or mitigate an SLC arising from the Merger.

## **8. PROVISIONAL CONCLUSION**

8.1 As a result of our assessment set out in the preceding chapters, we have provisionally concluded that:

- (a) the completed acquisition of Sporting Index by Spreadex has resulted in the creation of an RMS; and
- (b) the creation of that RMS has resulted, or may be expected to result, in an SLC in the supply of licensed online sports spread betting services in the UK.