

## Covering email received by the CMA on 7 August 2024

**From:** [✂]

**Sent on:** Wednesday, August 7, 2024 7:32:06 PM

**To:** [✂]

**CC:** [✂]

**Subject:** RE: Spreadex / Sporting index: Invitation to a call with the Case Team

**Attachments:** Star Racing Comments on the CMA's Remedies Notice.docx (23.37 KB)

Hi [✂],

Star Racing are interested in pursuing a divestiture package that will help correct the SLC caused by the merger between Sporting Index and Spreadex.

Due to the point at which this merger has now progressed to, the package itself will need to be creative and diverse. Elements of both Spreadex's assets and Sporting Index's assets must be included.

Star's principal concern here, to be discussed with the CMA, is the state of the Sporting Index asset portfolio. We already know that Spreadex has released most of the Sporting Index workforce, however there is less clarity around assets such as customer lists and platform technology. We also have fears over the damage to the Sporting Index brand that has been caused.

Nonetheless, Star recognises the importance of competition in this industry. Within the Star Group we have a Spreads betting business as well as fixed odds betting expertise and experience. We have assets of our own that we could integrate into Sporting Index, assisting in creating a more potent and viable competitor.

We have attached our comments to the CMA's Remedies Notice. We would welcome a discussion with yourselves over these findings, and potential divestiture packages to remedy this SLC.....

Kind regards,

[✂]

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### **Star Racing – Comments on the Remedies Notice**

#### **Divestiture remedy options**

15. In defining the scope of a divestiture package that will satisfactorily address an SLC, the CMA will normally seek to identify the smallest viable, standalone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. The CMA will generally prefer the divestiture of an existing business, which can compete effectively on a standalone basis independently of the merger parties, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.

16. In the present case, to ensure that the remedy is comprehensive, the divestiture package would need to be capable of competing effectively under separate ownership. We would therefore need to be confident that the divestiture package contained all the assets, staff and capabilities necessary to be able to continue to compete effectively, and that the process of separating these assets from the relevant Party's business would not risk materially impairing the competitive capabilities of the divested business.

17. At this stage, we have identified the following potential structural remedies:

(a) Requiring the divestiture of some, or all, of Sporting Index's assets acquired by Spreadex as part of the Merger to a potential purchaser approved by the CMA. This includes:

(i) the Sporting Index legal entity (that is, Sporting Index Limited);

(ii) the Sporting Index brand;

Star is interested in the Sporting Index brand. However, there are concerns over the damage caused to the brand by Spreadex. Star feels that Spreadex has devalued the brand by moving customers over from proprietary technology to a standardised 'white label' product, by wiping out almost the entire Sporting Index workforce, and (as a result) providing clients with an overall lesser service. This will have to factor into our remedial proposal.

(iii) the source code for the spread betting platform used by Sporting Index pre-merger (the pre-Merger Sporting Index Spread Betting Platform);

Star will require an expert to analyse the source code that Spreadex purchased, as well as the pieces not purchased from FDJ. We need to determine whether the pre-merger platform can be made operational again. If it can - what will it take in time, cost, and resources. We need to understand who is responsible for making the platform operational, if it even can be (ie. the cost, time, etc).

(iv) the sports spread betting and sports fixed odds betting customer list (including all trading history to ensure Spreadex could meet the requirements of the Financial Conduct Authority (FCA), which regulates sports spread betting, and the Gambling Commission (GC), which regulates fixed odds betting);

Star will need this customer list defined. Given the progress of this merger already, the Sporting Index specific customer list might have been tampered with. Star will need visibility of the pre-merger customer list and the customer's Sporting Index have gained (if any) and lost because of this merger. In the circumstance of any confusion or controversy, Star may need visibility of Spreadex's customer list – to ensure a fair SLC. Star would also want clarity on whether the Sporting Index customer list has any crossover with Spreadex, ie. have any of the Sporting Index customers become active or have had increased play with Spreadex since the merger. In tandem, if this is the case, has their play with Sporting Index decreased.

A total analysis is needed.

(v) the five current employees (in Customer Relations, Customer Services and Marketing);

Star would be interested in these employees. However, there would be significant employment gaps in areas such as trading, compliance, and IT services. With ex-Sporting Index employees let go, Star might need to acquire Spreadex employees in these areas to establish a genuine competitor in the

market. Star would need to understand what the employee list looked like pre-merger, who was let go & why.

(vi) intellectual property (IP) and web domain names;

(vii) regulatory licences with the FCA and the GC;

Star would require multiple high-level employees to satisfy all the FCA's regulations and standards for processes. Sporting Index seemingly does not have this talent, so assets from Spreadex would be needed.

(viii) unrecognised deferred tax losses; and

Star would need more detail here.

(ix) trade debtors and trade creditors/accruals.

Star would need more detail here.

(b) Requiring the divestiture of a combination of Sporting Index assets (including the Sporting Index legal entity) and Spreadex assets. This may include for example some of the Sporting Index assets acquired by Spreadex under the Merger, supplemented by some Spreadex staff, and either a reconstituted IT platform and applications including (but not limited to) the pre-Merger Sporting Index Spread Betting Platform, or a clone of Spreadex's spread betting platform.

Star is in full agreement.

The only concern to raise here is that a Spreadex cloned platform may cause issues in the future, as Spreadex will be managing the development/management of said platform. Naturally we cannot assume they will be forthcoming to working with a competitor and wouldn't provide the necessary technical support.

The other option is that Sporting Index, if purchased by Star Racing, is given the source code to the Spreadex platform and were able to then manage/develop it ourselves.

Ultimately, this reformed Sporting Index entity will need absolute and complete control of whichever platform it ends up with.

18. We note that prior to the Merger, and during the sale process for Sporting Index, the seller (Sporting Group) had offered Spreadex and other potential purchasers a Sporting Index business which, under a transitional services agreement (TSA), could be operated as a standalone business, including transferring staff and IT applications; and offering technical support under a TSA. However, under the Merger agreement, Spreadex: acquired just six employees; did not acquire some of the IT sports spread betting applications; and did not require a TSA.

We imagine that Star would require a TSA here with Spreadex over a potential remedy. We will rely on our legal advice.

19. Given the limited Sporting Index assets acquired by Spreadex as part of the Merger, and the fact that any potential purchaser is likely to have fewer (and potentially different) synergies than those between Spreadex and Sporting Index, it is our initial view that the divestiture of solely the Sporting Index assets acquired by Spreadex as part of the Merger is unlikely to be sufficient to constitute the

divestment of a standalone business and be an effective remedy in addressing the SLC and/or any resulting adverse effects that we have provisionally identified. Therefore, it is our initial view that the divestiture of a combination of Sporting Index assets and Spreadex assets (including the Sporting Index legal entity) for the purpose of establishing a standalone business would represent an effective structural remedy.

**Star agrees here. Spreadex assets, as well as Sporting Index's, will be required to redress the balance caused by the SLC.**

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

### **Behavioural remedy options**

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

**We agree here. We also do not believe that a behavioural remedy will effectively deal with the SLC.**

### **Other remedy options**

22. More generally, we will consider any other practicable remedies that the Parties, or any interested third parties, may propose that would be effective in addressing the SLC and/or any resulting adverse effects that we have provisionally identified.

23. Where the merger parties propose remedy options for the CMA's consideration, the CMA's engagement on remedies with limited prospect of being effective can reduce the CMA's ability to focus on remedies that have a greater prospect of being effective. Therefore, in keeping with the CMA's guidance on remedies and in view of the statutory deadline for us to publish our final decision on any SLC and remedies, we will not conduct a detailed consideration of proposed remedies unless those proposing remedy options can demonstrate that their proposed remedy options will satisfactorily address the SLC and/or any resulting adverse effects identified in the Provisional Findings Report.

24. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role<sup>16</sup> to safeguard the effectiveness of any structural remedies. We will evaluate the impact of any proposed combination of measures on the SLC and/or any resulting adverse effects that we have provisionally identified.

### **Invitation for comments on a possible divestiture remedy**

25. In evaluating possible divestitures as a remedy to the SLC and/or any adverse effects that have been provisionally identified, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, the CMA will have regard to the following critical elements of the design of divestiture remedies:

- (a) the scope of the divestiture package;
- (b) identification of a suitable purchaser; and
- (c) ensuring an effective divestiture process.

### **The scope of the divestiture package**

26. To be effective and not raise any composition risk, any divestiture package would need to be appropriately configured to address the SLC and/or adverse effects that we have provisionally identified and be attractive to potential purchasers in order to enable the purchaser to operate effectively as an independent competitor.

27. The CMA's Initial Order (see paragraph 2 above) is intended to preserve Sporting Index's viability and competitive independence until our determination of the reference. However, at the time when the Initial Order was imposed, Sporting Index had already been largely integrated into Spreadex's operations and given the limited number of assets and employees acquired by Spreadex as part of the Merger, Sporting Index currently relies on Spreadex for its continued viability and does not operate on a standalone basis.

28. We also understand that the pre-Merger Sporting Index Spread Betting Platform (which was used by Sporting Index pre-merger and was acquired by Spreadex as part of the Merger) is currently not operational, as Spreadex did not acquire certain IT components from FDJ that are required for the pre-merger Sporting Index Spread Betting Platform to be operational, nor elect to take the TSA offered by Sporting Group. Sporting Index has therefore been operating using a 'white label' version of Spreadex's website, which is running on the same database and underlying technology stack, as well as the same operational applications as Spreadex's own website.

29. It is our initial view that a divestiture package should have the requisite functions and capabilities to allow a purchaser to compete as a standalone business. In our initial view, this would include (but not be limited to):

- (a) the reconstitution or re-creation of the IT platform, applications and other technology used by Sporting Index prior to the Merger and including but not limited to, the pre-Merger Sporting Index Spread Betting Platform, or otherwise a cloning of the Spreadex spread betting platform;

We would require our IT and technology experts to advise here. If the pre-merger Sporting Index platform cannot be recreated, a clone of Spreadex's platform would certainly have to be considered. Alternatively, as suggested above, a copy of Spreadex's platform source code might have to be discussed as an option.

In either case, given the absence of any IT staff within Sporting Index currently, the divestiture package will absolutely have to contain IT and technical staff from Spreadex.

Star would need full confidence that the IT team assembled as part of this package would be well equipped to handle either platform and allow the business to operate as a genuine competitor to Spreadex.

(b) ensuring the divestiture package has sufficient numbers of key employees such as sports traders, compliance staff, IT staff, and customer account managers to enable Sporting Index to operate as a competitor in the Relevant Market, and that these employees have suitable retention incentives; and

This point is touched on above. Star are in the position where we would be able to dissolve our existing spread betting business (Star Spreads) and migrate that workforce over to Sporting Index.

However, this would not be enough to satisfy the rigours of running a larger business. The divestiture package would need to include the 5 existing Sporting Index members of staff, and several of Spreadex's staff resources – across trading, compliance, IT and customer service.

Given the personal nature of this business, the right staff make up would be essential in creating a viable competitor in the market to Spreadex. Star would need to see the current levels of business at Sporting Index to gauge what resource would be needed on top of the current team available at Star Spreads.

(c) ensuring that the key Sporting Index assets (including the Sporting Index legal entity) acquired by Spreadex as part of the Merger are included in the divestiture package.

We understand that key assets such as the brand, license, legal entity and remaining workforce are to be included in the divestiture package.

30. As set out in paragraph 19, it is our initial view that in order to allow a purchaser to compete as a standalone business, divestiture of a combination of Sporting Index assets and Spreadex assets represents an effective structural remedy. We invite views on what would need to be included within the scope of the divestiture package from Spreadex and/or Sporting Index as part of such a combination.

31. In particular:

(a) What categories of employees would be required, and how many of these employees would be required?

Sporting Index would require additional staff in the following areas:

- Trading
- Customer Service
- Compliance
- IT
- Risk Analysis
- Marketing (possibly, more analysis needed)
- Senior Management

(b) With respect to reconstituting or recreating the IT platform, applications and other technology used by Sporting Index prior to the Merger, including but not limited to, the pre-Merger Sporting Index Spread Betting Platform:

(i) What technology, applications and IT platforms would be required?

(ii) What steps would be involved as part of this process?

- (iii) Approximately how long would this process be estimated to take?
- (iv) How costly would this process be?
- (v) Approximately how long would it take to integrate this platform into a prospective purchaser's business?
- (vi) After integrating this platform into a prospective purchaser's business, what would be then required for the prospective purchaser to maintain and develop this platform?
- (vii) What would be the principal risks to completing this process effectively and in a timely manner?

We would require our IT and technical experts to analyse the full extent of the situation here. Star would need to know what is currently available before being able to comment.

(c) Based on the description of the Sporting Index assets acquired by Spreadex as part of the Merger set out at paragraph 17(a) above, are there other parts of the Sporting Index business which would need to be reconstituted or recreated in order to form a viable divestment business? What steps would be required to do so and how long would this process take? How costly would this process be?

Star believes that the Sporting Index brand (17a(ii)) would need to be reconstituted to a certain extent – however we recognise that this is more abstract than tangible.

The customer lists (iv) might have to be recreated – we do not know how diluted, polluted or altered the Sporting Index customer lists have been by Spreadex. We also do not know to what extent this list has been migrated across to the core Spreadex business. If the recreation of the Sporting Index customer list (pre-merger) is too abstract an idea, Star believes that part of, if not all, of Spreadex's customer list should be part of the divestiture package. Due to the nature of spread betting, customer lists are paramount, and a competitive list would be essential to redressing the balance following the SLC.

As stated above, the Sporting Index workforce (v) would have to be reconstituted. With only 5 employees remaining, the workforce would have to be recreated through including Spreadex employees in the divestiture package.

(d) With respect to cloning the Spreadex spread betting platform (in the event that a divestiture including Spreadex assets is required):

- (i) What technology, applications and IT platforms would be required?
- (ii) What steps would be involved as part of this process?
- (iii) Approximately how long would such a process be expected to take?
- (iv) How costly would this process be?
- (v) Approximately how long would it take to integrate this platform into a prospective purchaser's business?
- (vi) After integrating this platform into a prospective purchaser's business, what would be then required for the prospective purchaser to maintain and develop this platform?
- (vii) What would be the principal risks to completing this process effectively and in a timely manner?

We would require our IT and technical experts to analyse the full extent of the situation here.

(e) Is it necessary for the divestiture package to be configured to allow a prospective purchaser to provide sports fixed odds betting services in addition to providing sports spread betting services, either in order to operate a viable sports spread betting business (eg because sports fixed odds

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

We do believe that providing sports fixed odds betting services is a necessary piece of this divestiture package – to truly fix the SLC and provide Spreadex with genuine competition in the market.

We feel that no potential purchaser is better placed to provide experience in this area than the Star Group. Star operates both a UK GC licenced sports fixed odds betting business (Star Sports) and an Irish licenced sports spread betting business (Star Spreads).

(f) Would a TSA with Spreadex be required, and if so, what should the scope and duration of any such TSA involve?

(g) If the divestment of assets from either Spreadex, Sporting Index, or a combination of both would be effective in addressing the SLC and/or any resulting adverse effects that we have provisionally identified, should Spreadex be able to propose and specify which assets should be divested?

We do not believe so.

Spreadex are part of the merger group under investigation here – therefore we do not believe their opinion to be a fair representation of what is best to remedy the SLC.

(h) Are there any other elements that would be required to be part of the divestiture package to ensure that it can compete effectively in the Relevant Market?

We believe we have addressed all relevant elements of the divestiture package above.

32. We note that the scope of the divestiture package needed to allow a purchaser to compete as a standalone business will rely to some extent on the identity and capabilities of the purchaser. However, our initial view is that as a starting point, the scope of the package should be sufficiently broad to address the risk that the scope will be too constrained or not appropriately configured to attract a suitable purchaser.

We believe that the scope of the divestiture package and our experience here makes Star an appropriate purchaser.

33. We will consider using the full extent of our remedial powers to ensure that the divestiture package represents an effective standalone competitor and supplier of licensed online sports spread betting services in the UK, in particular that it will continue to innovate and develop its services.