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**SPREADEX / SPORTING INDEX: RESPONSE TO THE CMA'S PROVISIONAL FINDINGS**

## 1. INTRODUCTION AND EXECUTIVE SUMMARY

1.1 This document constitutes the response of Spreadex Limited ("**Spreadex**") to the CMA's Provisional Findings Report dated 25 July 2024 ("**PFs**") on the acquisition by Spreadex of the business-to-consumer ("**B2C**") business of Sporting Index Limited ("**Sporting Index**") (the "**Merger**"). Unless otherwise indicated, defined terms in this response have the meaning provided for them in the PFs. Spreadex has not responded to every point in the PFs. Unless expressly indicated, failure by Spreadex to address a point should not be considered as acceptance of the point raised by the CMA.

1.2 Spreadex rejects the CMA's conclusion in the PFs that the Merger has resulted, or may be expected to result, in a substantial lessening of competition ("**SLC**") in the supply of licensed online sports spread betting services in the UK. In particular, Spreadex submits that:

1.2.1 Spreadex never had an express rationale for the Merger, and it had [✂]. It was presented with an opportunity to do so, when Sporting Group sought to sell the B2C Business.

1.2.2 In relation to the counterfactual scenario, Spreadex maintains that:

(A) neither of the Alternative Bidders were credible purchasers of the B2C Business and, absent the Merger, FDJ and Sporting Group would not have proceeded with either of them based on:

(1) the value of their offers which were [✂]; and

(2) the other concerns they expressed about the Alternative Bidders including the risks regarding the ability to obtain FCA approval for the transaction and the long-term commitment that would have been required to support the Alternative Bidders, with Sporting Group themselves noting that maintaining TSAs with either of the Alternative Bidders, even if they had offered the same bid as Spreadex, [✂]

(B) if the Merger had not proceeded, the most likely outcome is that Sporting Group would have closed the B2C Business down due to FDJ's concerns about the ongoing regulatory risk posed by the B2C Business and its parlous financial position. FDJ would then have continued with the sale of the B2B Business.

1.2.3 Spreadex also strongly rejects the CMA's provisional findings on the competitive assessment noting in particular that:

(A) the CMA has relied on limited evidence which has important shortcomings in reaching its conclusion.

(B) the CMA's provisional findings simply do not accord with Spreadex's experience of the market and how it operates its business in practice. Spreadex's own data, including new data that it has been able to put together for this submission (included in **Annex 1**), demonstrate that a significant proportion of its users do see [✂].

(C) Spreadex's own behaviour post-Merger is not consistent with the CMA's PFs. At no point since it acquired Sporting Index, including before it had any reason to expect a CMA investigation, has it behaved as the monopolist that the CMA seeks to characterise it as.

1.2.4 Finally, the CMA's provisional findings on the countervailing factors are inconsistent with those on the provisional counterfactual assessment, failing to properly take into account the challenges faced by the Alternative Bidders in operating a regulated sports spread betting business.

1.3 Spreadex addresses these points and others in the following sections of the PFs in the sections outlined below: Section 2 Parties, Merger & Merger Rationale (section 2 of this response), Section 4 Counterfactual (section 3 of this response), Section 6 Horizontal Unilateral Effects (section 4 of this response) and Section 7 Countervailing Factors (section 5 of this response).

## 2. PARTIES, MERGER & MERGER RATIONALE

2.1 Paragraph 3.8 of the PFs states that "*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*". Spreadex notes that the source and apparent basis for this statement is one of Spreadex's internal documents, [✂] after Spreadex had been approached.[1]

2.2 Spreadex addresses [✂] further at paragraph 4.7 below. However, in terms of its rationale, Spreadex notes that it never sought to acquire, or expressed an interest in acquiring, Sporting Index before it was approached by Sporting Group on 7 February 2023 concerning the B2C Sale Process. Prior to that, Sporting Group had approached [✂] in August 2022[2] (who had also enquired about buying Sporting Index in 2021)[3] as well as [✂][4]

2.3 Spreadex did not therefore have a specific rationale for the Merger before the approach from FDJ: it responded to an opportunistic approach and the "rationale" identified by the CMA is no more than the possible advantages of an acquisition identified from a brainstorming session after that approach. Spreadex was presented with an opportunity to acquire a business that was in financial distress and it was also the only bidder that could realistically operate the B2C Business on a viable and sustainable basis. The Merger therefore represented a chance for Spreadex to grow its revenues without incurring additional costs in challenging circumstances.

## 3. COUNTERFACTUAL

3.1 The CMA's provisional findings on the counterfactual in the PFs are that absent the Merger, the B2C Business would either have been sold to one of the Alternative Bidders or that it would have been sold to another purchaser as part of a broader transaction together with the B2B Business.[5]

3.2 Spreadex strongly contests this assessment of the counterfactual which contradicts the facts, including facts found by the CMA and the CMA's approach in the notice of possible remedies ("**RN**"). In particular, taking into account the third party evidence that has now been made available to Spreadex's advisers, Spreadex submits that:

3.2.1 (for the six principal reasons outlined below) neither of the Alternative Bidders were credible purchasers of the B2C Business (as outlined further at paragraph 3.5 et seq.) and, absent the Merger, FDJ and Sporting Group would not have proceeded with either of them; and

1 [✂].
2 PFs, paragraph 5.11.
3 PFs, paragraph 5.58 (c).
4 PFs, paragraph 5.13.
5 PFs, paragraph 5.112.

3.2.2 if the Merger had not proceeded, the most likely outcome is that Sporting Group would have closed the B2C Business down and FDJ would have continued with the sale of the B2B Business.

3.3 At the outset, and as Spreadex has observed previously, sports spread betting represents a niche, heavily regulated activity with little scope for expansion in the current environment. The trend for the segment is currently one of gradual decline. This is reflected in the overall real term decrease in revenue for online sports spread betting in the past 10 years,[6] Spreadex's [✂] in marketing spend from around £[✂] in 2019 to £[✂] in 2022 onwards [✂], and the admission of [✂] itself that its plans to enter the licensed online sports spread betting market in the UK had been put on hold indefinitely due to the costs that would be involved, relative to the level of demand in the market.[7]

3.4 Within this environment, Sporting Index, [✂], was struggling. It was making significant and increasing losses (£8.2 million in FY2022). This is further demonstrated by the decline in value of the Sporting Index business. In 2021, Sporting Group valued Sporting Index at around [✂] million and [✂] valued it at [✂] million.[8] By March 2023, Sporting Group received offers of £[✂]million from [✂]; £[✂] million from [✂] and £[✂] million from Spreadex.[9]

***Neither of the Alternative Bidders were credible purchasers of the B2C Business***

**The CMA suggests that the divestiture of only the acquired Sporting Index assets is unlikely to be sufficient to address the SLC**

3.5 In the RN, the CMA suggests that the divestiture of solely the Sporting Index assets acquired by Spreadex as part of the Merger is unlikely to be sufficient to address the SLC.[10] The Sporting Index assets that Spreadex acquired were the same as those that would have been on offer to the Alternative Bidders minus some of the potential employees from Sporting Group. In particular, these employees would have included [✂]. Notwithstanding this, neither of the Alternative Bidders appears to have been minded to take all of the employees that were on offer in any event.[11] This proposition – that the Sporting Index assets acquired would *not* constitute a viable business if divested now – fundamentally contradicts and undermines the basis of the CMA's provisional finding on the counterfactual and, hence, its SLC finding. If it is the CMA's view that Spreadex would not now be able sell the Sporting Index assets it acquired to establish a viable independent business, then on the basis of those same assets the Alternative Bidders could never have been credible purchasers of the B2C Business either.

**The Alternative Bidders' offers** [✂]

3.6 The prices offered by both Alternative Bidders for the B2C Business were [✂] that [✂]. The Alternative Bidders' preliminary bid offers, which are set out at paragraph 5.16 of the PFs are [✂]. Spreadex's own offer was effectively equivalent to [✂]. It is therefore not plausible that the Alternative Bidders' offers would have been acceptable to FDJ.

6 As demonstrated in slide 41 of Spreadex's slides for the "teach in" with the CMA on 1 May 2024.
7 PFs, paragraph 7.32 (a).
8 PFs, paragraph 5.58 (c).
9 PFs, paragraphs 5.16 and 5.18.
10 RN, paragraph 19.
11 [✂] indicated that, had they been successful, they would only have taken 17 of the staff included in the B2C perimeter (PFs, paragraph 5.79(b)(ii)) and it can be reasonably surmised that [✂] would not have taken all the employees on offer, since it was their view that Sporting Index had a '*staff count in excess of what was required to manage a business with such a small active customer base*' (PFs, paragraph 5.58(a)). Further, Figure 5.1 of the PFs rates the [✂] of [✂] and Spreadex [✂] indicating that [✂] would likely have taken a similar approach to Spreadex on this.

3.7 The CMA notes that comparing the bid values understates the potential longer-term value to Sporting Solutions of a sale to an Alternative Bidder because of the [✂].[12] However, there are a number of compelling reasons to think that these benefits are overstated. In early 2023, FDJ had made the decision to sell the B2B Business.[13] Entering into a long TSA with Sporting Index's new owner would have encumbered the B2B Business and made that business less attractive to potential purchasers, since Sporting Solutions was looking to pivot away from the B2C Business. Evidence from FDJ / Sporting Group clearly demonstrates that a long-term TSA was [✂]. Paragraph 5.51(a) of the PFs notes Sporting Group's submissions that maintaining TSAs with the Alternative Bidders, even if they had offered the same bid as Spreadex, [✂]. Further, paragraph 5.89 of the PFs refers to statements by FDJ that a TSA with either Alternative Bidder would have been [✂]. This evidence goes to the heart of the counterfactual assessment, but the CMA appears to cite it only to then attach no weight at all to it.

**It is clear from the PFs, that [✂] offer was never attractive to Sporting Group and their commitment to proceeding with such an acquisition was limited**

3.8 Sporting Group noted that under a hypothetical scenario where Spreadex's bid did not exist, it would [✂].[14]

3.9 [✂] themselves only had scope to increase their offer up to £ [✂] million 'under certain circumstances'.[15]

3.10 [✂][16] These costs would have remained if [✂] had acquired Sporting Index, which calls into question their motivation for doing the deal.

3.10.1 The company also operates a [✂] which is operated via its [✂]. [✂] generated annual revenues of only [✂] for the financial year ended 31 March 2022 and according to [✂] only has around [✂] spread betting clients a week via its own spread betting platform. So, it is questionable whether they would have had the capacity to take on the B2C Business.

3.11 All of this calls into question the ability of [✂] to operate Sporting Index and their commitment to acquiring the B2C Business, and therefore by extension, the incentive for Sporting Group and FDJ to continue a sales process with them.

[✂] **offer calls into question its commitment and ability to acquire the B2C Business**

3.12 There were a number of significant downsides to [✂] offer and question marks over its commitment to acquiring the B2C Business (including its ability to do so) and of the motivation and incentive of Sporting Group to complete a transaction with them.

3.12.1 Sporting Group told the CMA that [✂] bid was [✂].[17] The CMA notes that Figure 5.1 (a [✂]) is [✂] about [✂] bid, but this table cannot provide the whole picture, because in spite of the different assessments and in particular the apparent [✂] (according to the document), Sporting Group and FDJ decided to only progress with Spreadex without even inviting [✂] to make an improved offer or undertake further due diligence. The decision was not, therefore, simply a question of progressing with the higher bidder: instead it reflects doubts as to the commitment of [✂] and the viability of its bid.

3.12.2 There would have been an embarrassment factor associated with any sale to [✂] since [✂], presumably compared to what [✂].[18] In the context of what was

12 PFs, paragraph 5.71.
13 PFs, 5.106 (a).
14 PFs, paragraph 5.94.
15 PFs, paragraph 5.72 (a).
16 PFs, paragraph 7.32 (a).
17 PFs paragraph 5.57.
18 PFs paragraph 5.57.

effectively a [✂], Sporting Group and FDJ would therefore have had very little incentive to enter into a transaction with [✂].

3.12.3 [✂] appears to have had limited financial resources to develop and grow the business (with annual revenues of only around £[✂] million).[19]

3.12.4 Paragraph 5.59(c) of the PFs refers to [✂] submission that Sporting Index's financial performance had suffered following FDJ's acquisition of the company through a combination of [✂]. However, even if Sporting Index faced continual and significantly increasing losses since 2019 under FDJ's ownership, Spreadex believes that the business' decline was exacerbated by preceding actions undertaken whilst the company [✂], the founder of [✂]. As outlined in **Table 1** at paragraph 3.14 below, the company faced declining revenues and only a small profit as a result of unsustainable cost reductions and insufficient investment during the period of [✂].

**Neither Alternative Bidder could take an informed view of the potential transaction or the viability of a TSA**

3.13 Neither Alternative Bidder had a chance to take an informed view on the potential transaction or assess the viability of operating subject to a TSA or negotiating an acceptable TSA, including as to price. Greater due diligence would have revealed the extent of the potential issues facing the bidders.

3.14 The costs of the B2C Business presented by Alix Partners to [✂] from around £[✂] to £[✂][20] during the initial negotiations, which were still [✂] the actual costs reported for FY22 in Sporting Index's annual accounts of around £18 million. The CMA calls into question this figure on the basis of the AlixPartners' analysis of the 'pro forma' costs for the standalone B2C Business [✂], but this ignores AlixPartners and FDJ's incentive to present a more favourable picture of the costs to attract higher offers and/or more bids. In contrast, the figure cited by Spreadex comes from the actual Annual Report and Accounts for Sporting Index for FY2022, which would not have been available at the time of the negotiations (as the accounts were only issued on 25 April 2023 and published on 11 May 2023).[21] It should be noted that accounting standards dictate that costs incurred in relation to the B2B business be recognised in the Sporting Solutions Services Limited statutory accounts (alongside the revenue) and not in Sporting Index Limited's. As such, the Sporting Index Limited statutory accounts will represent the relevant B2C Business costs. The £18 million costs reported include c. £2 million for costs of sales and £16 million for pure administrative expenses. Given the synergies with the B2B Business available to the B2C Business while under joint ownership of FDJ, these costs (excluding costs of sales) will have been shared with another legal entity. It is therefore also likely that these reported costs are understated. Looking at the costs of Sporting Index over the past 9 years and excluding the shortened financial year ending 31 December 2017, the average annual administrative costs were £15.4 million (with additional average cost of sales of £2.6 million) which is consistent with Spreadex's cost estimate and [✂] the figures presented by AlixPartners. It should be noted that the regulatory environment has become much tougher, which is why Spreadex estimates that, if anything, the costs of a standalone Sporting Index business under alternative ownership would be greater than these recent figures suggest.

**Table 1**: Revenues, Costs and Profit/Loss of Sporting Index Limited (FY2015 - FY2022)

[19] PFs, paragraph 5.59 (a).

[20] PFs paragraph 5.79 (a)(i).

[21] See: https://find-and-update.company-information.service.gov.uk/company/02636842/filing-history

| **Financial period end date** | **Reported revenues (millions)** | **Cost of Sales / betting duties (millions)** | **Operating / administrative costs (millions)** | **Operating profit / (loss) (millions)**[22] |
|---|---|---|---|---|
| Year ending 31 May 2015 | 21.6 | (2.4) | (17.3) | 1.9 |
| Year ending 31 May 2016 | 17.6 | (2.2) | (17.2) | (1.7) |
| Year ending 31 May 2017 | 22.5 | (3.9) | (12.7) | 5.9 |
| 7-month period ending 31 December 2017 | 13.4 | (2.1) | (7.3) | 4.0 |
| Year ending 31 December 2018 | 22.2 | (3.4) | (13.3) | 5.5 |
| Year ending 31 December 2019 | 18.0 | (2.6) | (17.1) | (1.8) |
| Year ending 31 December 2020 | 15.6 | (2.5) | (14.9) | (1.7) |
| Year ending 31 December 2021 | 14.3 | (2.1) | (14.6) | (2.4) |
| Year ending 31 December 2022 | 9.8 | (1.7) | (16.2) | (8.1) |

Source: Annual reports for Sporting Index Limited available on Companies House.

3.15 Similarly, the PFs confirm that neither Alternative Bidder was provided with a full and fully costed TSA. [✂] as provided with a document covering the broad scope of a possible TSA,[23] whilst [✂] was provided with broad details of the possible types of TSA services available.[24] [✂] was not provided with potential TSA fees, whereas [✂] was provided with an initial TSA fee of £[✂] million per year, which was then [✂] to around £[✂] million per year.[25]

3.16 The CMA notes that the TSA fee offered to [✂] differs [✂] from what was offered to Spreadex. However what Spreadex was offered was not comparable with any cost estimate provided to another bidder – Spreadex was offered an advanced TSA which included costings, whereas FDJ indicated that it just provided [✂] with 'some preliminary task listing and cost assessment to measure the magnitude of it'.[26] FDJ also noted that a TSA with [✂] would have been 'more complex and longer'.[27] It is almost certain therefore that if FDJ had entered into TSA discussions, the final fees would have been greater than the initial costings offered.

3.17 Even if the TSA fee for [✂] or [✂] had been closer to [✂] it would still have represented a substantial portion of Sporting Index's revenues of £9.8 million for FY2022 ([✂]). This cost

22 Operating Profit/(Loss) is stated before interest and tax.
23 PFs paragraph 5.90.
24 PFs paragraph 5.88 (a).
25 PFs paragraph 5.88 (b).
26 PFs paragraph 5.89.
27 PFs paragraph 5.89.

alongside the broader costs of running a regulated business would still make it very difficult for Sporting Index to be run profitably, even if the costs were slightly lower than those estimated by Spreadex in Annex 1 to its letter of 9 July 2024. It is not possible to know for certain what [✂] or [✂] would have paid for a TSA from Sporting Group. However, using the best-case figures provided to [✂], the costs of running Sporting Index would still exceed the FY2022 revenues by around [✂].[28] So, even in the most favourable light, [✂] would still have had to almost [✂] Sporting Index's revenues to break even.

3.18 The CMA contests Spreadex's assessment of the costs involved in running a regulated online sports spread betting business noting that Spreadex's estimate of Sporting Index's ongoing cost base requirement is "*significantly higher*" than Sporting Index's reported FY22 costs, the annual costs presented in the Silver Teaser Document, and in AlixPartners' analysis of the pro forma costs for the standalone B2C Business. As stated at paragraph 3.14 above, Sporting Index's reported FY22 costs (excluding costs of sales), which are the basis for Spreadex's assessment of the costs, are likely to be understated, given that they will have been shared with the B2B Business and therefore another legal entity. However, there is also good reason to be sceptical about what was presented to bidders about Sporting Index. As noted at paragraph 5.9 of the PFs, FDJ engaged AlixPartners to carry out its cost analysis of Sporting Group and its business lines in June 2022, in relation to the formal sale process. It is entirely normal for sellers to provide a rose-tinted picture of the target business in this context, but this picture is inconsistent with that reported in the statutory accounts of Sporting Index Limited.

3.19 The Alternative Bidders would then have had to undertake significant investments in the platform in order to viably compete with Spreadex. Paragraph 6.100 of the PFs refers to statements made by AlixPartners in a September 2022 report commissioned by FDJ, which indicates clearly that Sporting Index's underinvestment in technology was material enough to result in "*significant customer attrition*" with there being "*few updates since started in 2019*".

**FDJ and Sporting Group would not have proceeded with the Alternative Bidders, regardless of their commitment to the transaction**

3.20 Regardless of the Alternative Bidders' commitment to proceeding with a transaction, it is clear from the following evidence (which is included in the PFs yet apparently disregarded by the CMA) that even if the Alternative Bidders were themselves committed to the transaction, FDJ/ Sporting Group would not have proceeded with them.

3.21 Sporting Group's "*primary concern*" in relation to both [✂] and [✂] was that neither company was currently FCA-regulated. Based on submissions by both Alternative Bidders referred to in the PFs, and Spreadex's own experience of complying with FCA regulation, Spreadex also considers strongly that there are real concerns relating to any possible future FCA approval of both Alternative Bidders:

3.21.1 As a fixed odds betting business in the UK, [✂] is currently only regulated by the Gambling Commission. In addition to its lack of experience of FCA regulation, Spreadex believes that [✂] would have found it challenging to meet the FCA's approval test including whether the senior personnel were fit and proper. At paragraph 5.99 of the PFs, the CMA refers to previous submissions made by Spreadex that [✂].

3.21.2 At paragraph 5.59(b) of the PFs, the CMA provides its provisional view that [✂] has "prior experience of running [✂] betting business and is currently active in the supply of [✂] services." Whilst Spreadex recognises [✂] previous [✂] experience, as a current [✂] only operator, [✂] would still have faced significant scrutiny from

28 Based on revenues of £9.8 million, the second set of annual costs presented to [✂] (£[✂] million), and revised TSA costing (£[✂] million).

the FCA on any regulatory approvals and material changes would likely need to be made in advance of FCA regulatory approval being granted. In addition, the regulatory environment has changed significantly since [✂]. As Spreadex has previously explained,[29] the FCA has since introduced the Consumer Duty as well as increased requirements around customer vulnerability. The requirements of the Consumer Duty are vast. It has led to a major shift in financial services and sets higher and clearer standards of consumer protection across financial services firm. As a result, [✂] previous experience would not necessarily equip it to run the business profitably and sustainably in the current environment.

3.22 Sporting Group and FDJ's internal documents demonstrate that they did not consider [✂] as a viable purchaser. As noted at paragraph 5.57 of the PFs, [✂]

3.23 An important factor for Sporting Group was that they would also have had to receive a sufficiently attractive offer to proceed with either of them. Paragraph 5.61 of the PFs refers to Oakvale Capital's view that if [✂] had [✂], it would have progressed [✂] with further due diligence. [✂] have told the CMA that [✂] for Sporting Index (see paragraph 3.9 above) and so would never have been in the running. The CMA has also not supplied any evidence that [✂] would have increased its bid to the level of Spreadex's.

3.24 If Spreadex had not been involved in the process, the threshold for progressing with one of the Alternative Bidders might have been lower, but these bids would still have had to exceed the potential liquidation value for Sporting Index. As the Merger Assessment Guidelines note ("**MAGs**"):

> *"When considering if there were alternative purchasers, the CMA will seek to identify who the alternative purchaser(s) might have been and take this into account when determining the counterfactual. The CMA may consider the marketing process for the target firm as well as offers received for it. 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 <u>at any price above liquidation value</u>."*[30]

3.25 The CMA's provisional view 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*"[31] is not consistent with the evidence provided to the CMA. It is implausible to conclude that there was any potential long term financial benefit offered by the Alternative Bidders for the following reasons:

3.25.1 In order for the Alternative Bidders to operate profitably, the TSA would almost certainly need to have been priced at or close to cost (at most). As noted at paragraph 3.17 above, even on the most optimistic basis (assuming that the costs of running Sporting Index were lower than they in fact were pre-Merger), substantial revenue growth would have been required for an Alternative Bidder to operate profitably subject to the TSA that was potentially on offer and based on the costs of running the Sporting Index business (even on the most optimistic case presented by FDJ and AlixPartners). Therefore, a successful Alternative Bidder would have required a very low-cost TSA to make this work and such a TSA would not have offered Sporting Group the long term value it would have required to agree to it. Spreadex maintains that the actual fees of a TSA with one of the Alternative

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29 Spreadex Response to the CMA's AIS and accompanying Working Papers, paragraph 3.4.

30 CMA129, MAGs, paragraph 3.30.

31 PFs, paragraph 5.76.

Bidders would have been [✂] than what was disclosed to them, since neither bidder actually discussed any specifics with Sporting Group about the TSA.

3.25.2 FDJ had taken a decision to sell the B2B Business at around the time the Merger was being negotiated, so it would not have benefitted from any long-term value that a TSA might have offered and a TSA might have obstructed the B2B Business sale.

3.25.3 This view also contradicts the evidence from Sporting Group that [✂].[32] In other words, maintaining the TSA over the longer term would also have resulted in costs to the Sporting Group business including the diversion of resources and attention away from the core B2B Business. These costs would [✂] have pushed them towards rather than away from liquidation (absent the Merger).

3.26 At paragraph 5.75, the PFs state that Sporting Group would likely have incurred higher redundancy costs (i.e. 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. However, at the time it was evaluating the bids, Sporting Group would not have known exactly how many staff Spreadex wanted to keep. In any event both of the Alternative Bidders indicated that they would not be taking on all the B2C Business staff - [✂] confirmed in its preliminary bid that it did not intend to acquire all Sporting Index employees and possibly only 17 employees, and [✂] was given [✂] in FDJ's assessment of the bids of 23 February 2023.[33] So whichever option FDJ had selected there would have been redundancy costs. The CMA's assessment therefore overstates the value of such costs in assessing the overall bid value.

3.27 In the PFs, the CMA goes on to say that their expectation is that "*any proceeds [from the liquidation of the B2C Business assets] would be low*".[34] The CMA supports this view by relying on FDJ's submission that it considered [✂] and that it did not have a [✂] for the sale of Sporting Index.[35] This fails to take into account comments by Sporting Group that [✂] offered to acquire the B2C business [✂][36] Whilst the value of the bid would presumably not have been the only factor behind this comment, it indicates that [✂] valuation would also have been considered insufficient.

3.28 The absence of an estimated liquidation value for Sporting Index on the part of FDJ does not exclude the need for an assessment of what the liquidation value would have been, pursuant to the MAGs. In previous cases, where the seller has not provided an estimated liquidation value, the CMA has itself provided an estimate based on the value of the relevant acquired assets.[37] Spreadex has provided the CMA with reasonable estimates of an appropriate liquidation value for the Sporting Index business based on the acquired assets. Spreadex maintains that FDJ would have been able to calculate with relative ease a liquidation value, and that as a reasonable proxy, Spreadex would estimate the total liquidation value of Sporting Index to be c. £[✂] million. This estimate is based on the balance sheet Spreadex ultimately acquired (with net assets of c. £[✂] million) and applying a prudent valuation to the Sporting Index brand and customer list of c. £[✂] million.

3.29 A valuation of customer lists in the gambling industry can easily be market tested by comparing this with examples. For example, BetFred acquired MoPlay's customer list in 2020

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32 PFs, paragraph 5.51 (b).

33 PFs, paragraph 5.79 and Figure 5.1.

34 PFs, paragraph 5.74.

35 PFs, paragraph 5.47.

36 PFs, paragraph 5.63.

37 CMA129, MAGs, footnote 74, and Case ME/6442-16 *East Coast Buses Limited/First Scotland East Limited,* Phase 1 Decision, paras 50 – 53.

for c. £[✂] million (for 45,000 customer details) or a rate of around £[✂] per customer[38]. Similarly, the cost per acquisition for a new sportsbook account (acquired via organic acquisition from affiliates, customer sign-ups, etc.) would average c. £100 in the industry. There were [✂] customers on the Sports Index customer lists (all of whom were eligible to place fixed odds bets). This is more than [✂] times larger than the customer lists BetFred acquired from MoPlay. Not all of these customers will be contactable: for example, some may have changed their email address or mobile telephone number and some may no longer gamble. However, even on a cautious basis one would only need to assume that 15% ([✂]) of these customers were contactable, at a value of [✂] per customer, to value the customer list at £[✂] million. Spreadex invites the CMA to test this with the third parties it has contacted in the course of its investigation.

3.30 Based on AlixPartners' assessment from December 2022 that the most marketable Sporting Index assets were [✂] the CMA provisionally assesses that the proceeds from any liquidated assets would be low, because of the limited number of possible buyers (other than Spreadex).[39] However the Sporting Index brand would still have value to unregulated providers of online sports spread betting and to companies in the wider fixed odds market place. Similarly, the technology would potentially have value to similar companies. The customer data would also have value to unregulated sports spread betting providers. [✂] themselves told the CMA that Sporting Index's value lay in its '*database of historical, inactive customers*,'[40] so clearly that data would have been valuable to them. Such customer details would also have been of interest to fixed odds sports betting providers. These customers are [✂], so they would certainly have been of interest to some potential buyers. The customer list also included fixed odds only customers. It is Spreadex's assessment that this portion of the list alone would have had a value of over £[✂] million. However, even if FDJ had not been able to get anything for the customer list and the Sporting Index brand, the value of the assets would still have been around £[✂] million. As noted at paragraph 3.29, there is an identifiable market value for customers in the gambling industry, so the CMA can verify for itself that Spreadex's estimate for the value of these details is reasonable.

3.31 [✂] this valuation of the net assets of the B2C Business that Spreadex acquired (c. £[✂] million). This figure is based on the net asset position of Sporting Index's balance sheet at acquisition (i.e. cash and debtors less creditors and accruals), of which c. £[✂] represents the value of fixed assets (the technology). The valuation of the net assets did not include valuations for the Sporting Index brand and customer list. Spreadex valued these assets – the brand and customer list - at approximately £[✂] million. Therefore, even if Sporting Group received nothing for the brand and customer list, [✂] based on net asset value, with or without the brand and customer list. For this reason, the Alternative Bidders were not alternative purchasers willing to acquire the firm [✂].

3.32 For all of these reasons, a transaction for the B2C Business with either of the Alternative Bidders would never have been viable.

**If the Merger had not proceeded, the most likely outcome is that Sporting Group would have closed the B2C Business down and FDJ would have continued with the sale of the B2B Business**

3.33 The CMA's alternative theory is that, absent the Merger, the B2C Business would have been combined with the B2B Business and sold to another purchaser.[41]

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38 https://www.freebetoffers.org.uk/betfred-acquires-moplays-uk-database-while-owner-buys-stake-in-william-hill/

39 PFs, paragraph 5.74.

40 PFs, paragraph 5.97 (a)(i).

41 PFs paragraph 5.112.

3.34 Whilst FDJ may have considered such an alternative transaction,[42] it is more likely than not that the preferred option for FDJ would have been to close down the B2C Business. The CMA has concluded that one of FDJ's primary concerns was 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, and the potentially significant negative repercussions for FDJ's broader strategy and wider core business.[43]

3.35 FDJ decided to sell the B2B Business in *'early 2023*' and Spreadex understands that it has recently agreed a deal to sell the B2B Business to Betsson Group, subject to regulatory approvals. By the time this transaction completes, it will most likely have taken at least 18 months since the time when the Merger would have fallen through (assuming that Spreadex had not bid). Given the financial state of the B2C Business pre-Merger and FDJ's concern about the potential regulatory breaches, it is implausible that they would not have closed down the B2C Business in this scenario. [✂], which was much more valuable, it would not have made any sense to keep the B2C Business going for 18 months or more.

3.36 The B2C Business would also have depressed the value of the B2B Business and it would have cost FDJ the amount of money the business was losing in the time it took to complete a sale. Based on its pre-Merger profitability, between March 2023 and August 2024 (when the Betsson Group acquisition was announced) the B2C Business would have lost more money than Spreadex paid to acquire the B2C Business. Therefore, keeping the B2C Business running would not have made financial sense. The possibility of a sale of the combined B2C and B2B Businesses would also have to assume that Betsson Group or another buyer of the B2B Business would have been a buyer also for the combined B2C and B2B Businesses, for which there is no evidence. Furthermore, Sporting Group informed the CMA that [✂].[44]

3.37 For these reasons, Spreadex strongly disagrees with the CMA's provisional conclusion on the counterfactual. On a balance of probabilities, Spreadex submits that, absent the Merger, FDJ and Sporting Group would not have been able to agree the terms of a deal with the Alternative Bidders, after which it would have reached a decision to close the B2C Business.

## 4. HORIZONTAL UNILATERAL EFFECTS

4.1 As regards horizontal unilateral effects, the CMA has provisionally concluded that the Parties were each other's closest competitors and in the absence of sufficient alternative competitive constraints, the Merger raises competition concerns in the supply 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.[45]

4.2 Spreadex disagrees with the CMA's provisional findings in this respect.

4.2.1 First, Spreadex notes that the CMA has relied on limited evidence in reaching this conclusion which has important shortcomings.

4.2.2 Second, the CMA's provisional findings simply do not accord with Spreadex's experience of the market and how it operates its business in practice. Spreadex's own data, including new data that it has been able to put together for this submission, demonstrate that its users do see [✂].

42 Sporting Group also informed the CMA that under a hypothetical scenario where Spreadex's bid did not exist, [✂] (PFs, paragraph 5.110 (a)).

43 PFs, paragraph 5.110 (b).

44 PFs, paragraph 5.104 (b).

45 PFs, paragraph 6.143.

4.2.3 Third, Spreadex's own behaviour post-Merger is not consistent with the CMA's provisional findings. At no point since it acquired Sporting Index has it behaved as the monopolist that the CMA seeks to characterise it as.

*Relevant market*

**The extent to which fixed odds bets can replicate spread bet outcomes is not determinative as to the substitutability of the products**

4.3 To evidence its provisional view that there is differentiation between spread betting and fixed odd betting, the CMA notes at paragraph 6.31 of the PFs that "*most customers*" told them that they "*"cannot replicate" sports spread betting through sports fixed odds betting "markets"*".

4.4 At the outset, Spreadex notes that substitutability is not determined on the basis that each service can be perfectly replicated by another. Without prejudice to the submissions on the inadequacy of the customer survey responses below, the CMA's statement at paragraph 6.31 of the PFs fails to take into account that the majority of responding customers in fact considered that at least some if not all types of spread bets could be replicated using fixed odd bets.[46] In any event, in order to be an effective substitute for spread betting, fixed odds betting does not have to be able to replicate every spread bet. There just needs to be a sufficient overlap in relation to the main markets (used by the most customers), that it would not be profitable overall for the spread betting providers to flex their pricing to customers' detriment because there is a constraint from fixed odds providers. Further, Spreadex has previously provided the CMA with examples, which demonstrate that fixed odd bets and spread bets can achieve the same outcome for customers.[47]

**The CMA's customer questionnaire is inadequate to support the CMA's provisional findings**

4.5 To support its provisional view that customers do not see sports fixed odd products as close alternatives to sports spread betting products,[48] the CMA received and reviewed only 33 responses to its customer questionnaire – amounting to only a 27% response rate. The CMA provisionally concludes that whilst the responses "*may not be representative*" of Spreadex's and Sporting Index's customer base, the response rate to the customer questionnaire is "*not materially low in this context*".[49] Regardless of the context of the customer survey, the sample size of responses is extremely small and therefore any responses would be within the margin of error. This factor alone means that the customer survey responses constitute an inadequate basis for the CMA to support its provisional view.

4.6 It is also irrational for the CMA to not have conducted a more meaningful and substantive customer survey of a larger group of customers, which might have provided stronger evidence.

**The CMA has drawn unreasonable conclusions from Spreadex's internal documents**

4.7 In terms of assessing the extent of the competition between Spreadex and Sporting Index, the CMA has placed excessive reliance on a single Spreadex internal document to reach the provisional conclusion that competition from sports fixed odds betting competitors is not strong. The CMA relies on an initial brainstorming document regarding Spreadex's possible initial bid for the B2C Business (the Initial Bid Proposal Document). The CMA disregards the context of this document and considers that the document represents "*relevant evidence of the preliminary views (albeit for discussion purposes) of important members of Spreadex's*

46 PFs, paragraph 6.24.
47 See Spreadex Response to CMA RFI dated 10 January 2024, Question 3.
48 PFs, paragraph 6.37 (a).
49 PFs, footnote 302.

*team, including in some cases its senior management, on the competitive processes in spread betting*".[50]

4.8 As stated above at 4.7 Spreadex strongly maintains that statements made by its senior management and sports trading managers in the Initial Bid Proposal Document neither record a final decision by Spreadex's senior management, nor reflect how Spreadex has behaved in the context of the Merger. Spreadex has in fact significantly increased the level of service offered to Sporting Index customers following the Merger. Examples of such actions are provided at paragraph 4.21 below.

4.9 The CMA also unreasonably discounts other Spreadex internal documents. Such documents clearly evidence that Spreadex assesses and responds to the behaviours of fixed odd providers in its <u>spread betting</u> offering. This includes via the monitoring of fixed odd providers' pricing and also their user experience offerings, such as their user interfaces. The CMA has dismissed this evidence on the basis that it "*is consistent with competition between Spreadex's fixed odd business and fixed odds competitors, and does not demonstrate the closeness of competition between sports fixed odds betting and sports spread betting*".[51] This assertion is incorrect. Spreadex's primary business is the provision of spread betting, [✄]. In its user experience offering, Spreadex operates only one user interface, which is available to both fixed odds and spread bet customers. It makes no commercial sense that Spreadex would draw comparisons with fixed odd providers only for the purposes of its own fixed odds business when the majority of its business relates to spread betting.

4.10 The Initial Bid Proposal Document was also prepared in the context of a possible purchase of Sporting Index and the individuals were brainstorming in that specific context. The ideas expressed do not reflect how Spreadex sees and runs it business on normal a day-to-day basis. Documents prepared before the transaction was in contemplation would offer better evidence of how Spreadex sees the relevant market.

4.11 In the exhaustive searches carried out by Spreadex to respond to the CMA's information requests, no other documents were identified showing that Spreadex considers and monitors a market for online regulated sports spread betting services or that it adjusts its behaviour (e.g. its promotions or range of markets (i.e. sports)). Indeed, Spreadex's principal "price", the spread width, has effectively remained constant for the major markets.[52] This included a period during which Spreadex was the smaller operator in the sports spread betting segment (compared to Sporting Index). More generally over time, Spreadex has continued to expand the number of markets and types of bet it covers without any reference to Sporting Index (which pre-Merger was reducing the number of markets covered).

**The CMA has not treated the third-party feedback in a balanced way**

4.12 A number of the third-party submissions on the scope of the relevant market, including those from [✄][53] and [✄][54] acknowledged that there was some overlap and that fixed odds was an alternative for spread betting customers. A number of the respondents ([✄]) also had an interest in the outcome of the CMA's review. It is not clear from the PFs that the CMA has properly taken into account the more supportive feedback provided nor the motivation of the respondents when weighing up the evidence.

4.13 Some of the questions asked by the CMA to third parties also would not have made sense to the parties that they were asking (fixed odds providers), e.g. how they would behave if the width of spreads increased by 5%.[55] Gambling is a complex heavily regulated business – the trigger point for increased entry would be if they could see that sports spread betting was

50 PFs, paragraph 6.17.
51 PFs, paragraph 6.18.
52 See slide 40 of the slide deck for the CMA Issues Meeting of 11 March 2024.
53 PFs, paragraph 6.27 (b).
54 PFs, paragraph 6.27 (h).
55 PFs, paragraph 6.28.

becoming a more profitable area to justify the investment required to enter. This could be because the area was becoming less regulated. The CMA's question to third parties (as articulated) does not address that.

**Spreadex holds substantive data, which demonstrates that spread bet and fixed odds bet products are substitutable**

4.14 In light of the CMA's limited customer responses, Spreadex has itself carried out further analysis of a much broader data set, which captures all clients that have [✂]. This analysis is provided at **Annex 1**. The data set captures [✂] cases of [✂] across three years. This is a significant sample size, which clearly demonstrates that when sport betting customers are confronted with a [✂], they switch to spread betting as a substitute.

4.15 As Annex 1 shows, [✂].

4.16 The analysis considers clients' betting activity on Spreadex's sports spread products where those clients have faced [✂]. The analysis clearly demonstrates that in the significant number of cases observed [✂] when clients experienced [✂], **both the number of clients placing a spread bet** [✂] **and the total number of spread bets placed** [✂] **increased by** [✂]. The total gross bet value of spread bets placed from these **clients also increased, by** [✂]**.** This is all despite the [✂] being roughly three quarters as long as the period of comparison before the [✂]. The **true effect then would have been an even larger increase** in spread betting business as a result of the [✂]. This clearly demonstrates that when sport betting customers are confronted with [✂], they switch to spread betting as a substitute.

4.17 The following points also demonstrate that the true substitution effect is likely to have been even greater than as set out at paragraph 4.16 above:

4.17.1 Not all clients who [✂] will have had spread betting activated on their account. Therefore, if such clients wished to use this product as a substitute good, they would have faced an extra level of friction, namely the requirement to (i) answer additional questions ensuring they understand the risks of the product and (ii) provide additional financial information (if not already provided by the client).

4.17.2 The figures provided above do not show that there would also have been some natural churn from spread betting clients. Therefore, the substituted business moved over from fixed odds will be higher than these figures suggest (i.e. to counter this churn).

4.17.3 It is likely that some clients in this dataset would also have been [✂] and would not have had the opportunity to place further spread bets.

4.17.4 In approximately a quarter of the observed cases, clients were [✂]. This will have naturally led to reduced activity and lost business.

4.18 Conversely, the total number of ([✂]) clients placing a spread bet after the [✂] fell by [✂]. The total number of spread bets placed fell by [✂] and the total spread gross bet value from these bets fell by [✂].

4.19 Given all of the above, Spreadex believes that its analysis provides clear and extensive behavioural evidence of actual conduct that sports betting customers use spread betting and fixed odds betting as substitute products. It is a more extensive and meaningful analysis than the CMA's customer questionnaire (which by its nature relied on customers responses to a hypothetical scenario).

4.20 As Spreadex has noted 90% of its customers use fixed odds and spread betting[56] and Spreadex has also provided multiple case studies of its customers doing so

56 PFs, paragraph 6.11 (b).

interchangeably.[57] The new evidence in Annex 1, further demonstrates that Spreadex's customers do not see a distinction between the types of betting; both fixed odds betting and spread betting products are simply all substitutable goods which satisfy a customer's desire to have a financial wager on a sporting event.

*Nature of competition*

**Considering the parameters of competition identified by the CMA, Spreadex's actions before and after the Merger are not consistent with those of a monopolist**

4.21 The CMA provisionally concludes that there are primarily three relevant parameters of competition in the supply of licensed online sports spread betting products in the UK, namely (i) price, (ii) range of 'spread markets' and (c) user experience.[58] The CMA dismissed the fact that Spreadex has kept its spread widths constant as evidence of the wider constraint exercised by fixed odds betting providers on the basis that there are other parameters of competition to be flexed beyond spread widths.[59] However, of the parameters the CMA has provisionally identified, Spreadex has expanded its product range and improved its user experience to match fixed odds providers before and after the Merger. Prior to the Merger, this has included: (i) the introduction of livestreaming services; (ii) improvement to Spreadex's user interface; and (iii) the introduction of player details and statistics. In the period following the Merger but prior to the CMA's Merger inquiry, such actions have included (i) improvement to pricing, whereby spread widths were maintained whilst promotional generosity increased versus pre-transaction levels; (ii) improvement to user experience and user interface; (iii) offers of additional markets; and (iv) the provision of additional regulatory protections to consumers. Spreadex strongly maintains that these actions are not consistent with those of a monopolist.

4.22 Since Spreadex has not “flexed” these other parameters of competition there is, contrary to the CMA's contention in paragraph 6.33 of the PFs, no reasonable explanation for Spreadex's decision not to move spread widths, other than the pressure Spreadex faces from the wider market.

4.23 Spreadex disagrees with the CMA's observations at paragraph 6.138 of the PFs, including that the relevant period where Spreadex took actions following the Merger was *'relatively short'* and that Spreadex would likely not have had a sufficient transition period to amend its offering or strategy to take advantage of weakened constraints. Rather, Spreadex maintains that this period is in fact the truest representation of its behaviour, given that Spreadex had no reason to believe that the Merger would later be reviewed by the CMA. Spreadex had plenty of time to plan for the steps it would take on completion and on completion, it would have been free to take such steps as it saw fit.

If Spreadex really believed that the market it operated in was very narrow and that it then held a monopoly, there would have been no reason to expand the number of events that Sporting Index customers could bet on. This would just have been an unnecessary cost for Spreadex to incur, when, in a true monopoly those customers would just have switched across to Spreadex to bet on the events that Sporting Index did not cover. Although the period was relatively short, Spreadex used its time, energy and resources to improve Sporting Index.

**The CMA has failed to take into account the evidence provided by Spreadex about the impact of the churn of its customer base**

4.24 At the Main Parties Hearing and in its follow up response of 9 July 2024, Spreadex provided the CMA with evidence demonstrating that Spreadex and Sporting Index lose [✂] of their

57 See slides 79-82 of the slide deck for the CMA Issues Meeting of 11 March 2024, responding to the CMA's Issues Letter.
58 PFs, paragraph 6.64.
59 PFs, paragraph 6.33.

customer base each year and the [✂] to combat that churn. The CMA did not provisionally consider this material evidence of competitive pressure on the Parties in sports spread betting because customers ceasing to demand a product can be for many reasons, such as changes in personal preferences and priorities.[60]

4.25 In reaching this provisional conclusion, the CMA has failed to consider [✂]. It is in direct competition with the main fixed odds sports betting providers for these customers. It is therefore critical for Spreadex that its product is competitive with those products, in terms of the user experience, the odds available to customers and the promotions for customers. This is also why Spreadex sets its spreads by reference to fixed odds providers. In this way the fixed odds providers clearly constrain Spreadex and Sporting Index.

*Closeness of competition*

**The CMA has not taken into account the full dynamics of the market for online sports betting**

4.26 In its assessment of the closeness of competition at paragraphs 6.92 to 6.115 of the PFs, the CMA has failed to take into account the wider dynamics in the market where changes are driven by, and focus on, large, fixed odds providers. Instead, it has incorrectly focussed on the closeness and similarities between only Spreadex and Sporting Index.

4.27 At the Main Parties Hearing on 4 July 2024, Spreadex explained how the market is driven by innovations that come from large, fixed odds providers. Spreadex has also explained to the CMA how [✂] is one of its most important competitors and that it is imperative for them to try to match [✂]'s offering. In the Main Parties Hearing, Spreadex explained how important innovations (including the "Bet Builder" and "Livestreaming") were introduced by Spreadex because [✂] (<u>not</u> Sporting Index) was offering those products. In a market that just comprised Spreadex and Sporting Index, Spreadex would not have had to include those innovations because no one else would have offered them and obtained a competitive advantage over Spreadex.

4.28 Spreadex would also note that some of the sources for the CMA's assessment on the closeness of competition were [✂]. At paragraph 6.104 of the PFs, the CMA relies on submissions by third parties that the "*Merger would create a monopoly in the supply of sports spread betting as it removed Spreadex's only competitor.*" [✂] Further, and as already stated at paragraph 4.21 above, Spreadex strongly maintains that it does not consider itself to be a monopoly and continues to face competitive constraints from fixed odd providers.

## 5. COUNTERVAILING FACTORS

5.1 At paragraphs 7.40 of the PFs, the CMA has acknowledged Spreadex's submissions that the costs for developing or acquiring the required technology and industry expertise would be extensive. Spreadex maintains that such barriers to entry for online sports spread betting are not insurmountable, rather the cost of entry is not worthwhile relative to the potential benefit of entering the segment at this time. In addition, so long as the challenging regulatory environment remains in place, sports spread betting companies will struggle to grow their businesses, which means that this area is not attractive for entrants for now.

5.2 This assessment appears to be consistent with the third-party feedback received by the CMA. However, Spreadex notes that [✂] of the third parties whose evidence the CMA relies on were [✂] who cite the costs and challenges faced by [✂] including the cost and operational strain involved in developing or acquiring the technology needed to provide sports spread betting services[61] and developing the necessary trading technology.[62] It is important for the CMA to understand that if either of the Alternative Bidders had acquired

[60] PFs, paragraph 6.139.
[61] PFs, 7.32 (a).
[62] PFs, 7.32 (b).

Sporting Index, they would have had to undertake the development of the relevant technology and the associated investment themselves, whilst Sporting Group provided support in the interim via the TSA. There is therefore an inconsistency in the CMA relying on this evidence in support of its position around barriers to entry whilst not acknowledging that this would also have been a barrier to the Alternative Bidders being able to successfully run Sporting Index.

5.3 Spreadex strongly maintains that the Alternative Bidders would face a prohibitive minimum cost to operate in the market, whether this was via proprietary technology and staff, via a TSA, or a combination of both.

## 6. CONCLUSION

6.1 In conclusion, Spreadex rejects the CMA PFs findings. It remains Spreadex's strong view that the Merger has not resulted in a SLC. The real dynamics of competition in the market and the behaviour of Spreadex's own customers both in terms of naturally churning over time and using spread betting and fixed odds betting interchangeably means that Spreadex behaviour in the market has not been driven by rivalry with Sporting Index, but instead by the innovation which has been led by large, fixed odds players.

6.2 Even if the CMA concludes that there has been a lessening of competition, on the balance of probabilities the most likely counterfactual outcome of the sale of the B2C Business (if Spreadex, who was the [✂] potential buyer to be approached according to the PFs, had not participated) would have been the winding up of that business, because (i) the Alternative Bidders' offers were [✂]; (ii) it would have been very difficult to negotiate a TSA that did not divert too much of Sporting Group's time and resources for a considerable period and that would have been priced at a level that would have allowed Sporting Index to operate profitably; and (iii), if a transaction with the Alternative Bidders had fallen through, it is inconceivable that FDJ would have kept the business (running at a loss and posing significant regulatory risk) within the transaction perimeter for the sale of the B2B Business, as it sought to complete that sale.