

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

Final Report

ME 7085/23

22 November 2024

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The Competition and Markets Authority has excluded from this published version of the Final 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 [X]. Some numbers have been replaced by a range.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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GLOSSARY

SUMMARY

OVERVIEW

1. The Competition and Markets Authority (**CMA**) has 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. Spreadex submitted a proposed remedy intended to address the competition concerns we had provisionally found. Following a thorough assessment of the proposal, including further information-gathering from Spreadex and third parties, we found that a version of this remedy, with some modifications and enhancements, would be sufficient to restore the competition lost as a result of the Merger.

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 £88.9 million 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 was retained by FDJ following a corporate restructure implemented in advance of the Merger, and which it then agreed to sell to another company in August 2024.

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 jurisdiction over the Merger because Spreadex and Sporting Index have a combined share of supply, by revenue, of 100% (with an increment of [REDACTED] [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?

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 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 two hearings 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 a 'natural experiment' conducted by Spreadex, 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).
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, we are not persuaded that, had the Merger not gone ahead, there would not have been an alternative, less anti-competitive purchaser.
21. In view of the above, we conclude that the appropriate counterfactual is that the B2C business, under the ownership of an alternative bidder, would have continued to compete in the supply of licensed online sports spread betting services, broadly in line with the pre-Merger conditions of competition.

What did the evidence tell us?

... about the relevant market?

22. 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.
23. 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), quantitative data and the Parties' internal documents.

24. In relation to sports fixed odds betting, on the basis of the evidence provided to us, our view is 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.
25. 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.
26. On the basis of the evidence provided to us, we have concluded 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?

27. 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 [X] [20-30%] as a result of the Merger).
28. 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?

29. 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 firms.

30. Our assessment of the evidence provided to us is, in summary:

- (a) Spreadex's internal documents show that 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.

31. We therefore concluded 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 firms) are weak.

32. In view of the above, and in particular given the closeness of competition between the Parties, and the absence of sufficient alternative competitive constraints, we have concluded that that 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. Therefore, subject to our findings on countervailing factors, the Merger has resulted, or may be expected to result, in an SLC, with the above resulting adverse effects.

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

33. 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.

34. 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 conclusion is that developing or acquiring the required technology would be a significant barrier to entry, making it very difficult for any entry 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 into the market in a way that would be timely, likely and sufficient to prevent an SLC arising from the Merger. Barriers to expansion may be lower but there are no existing competitors in the UK market for licensed online sports spread betting and so the barriers to entry we have identified would need to be overcome first.
35. 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. We have found that 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.
36. On this basis, we concluded that there are no countervailing factors to prevent or mitigate an SLC arising from the Merger.

DECISION

37. In view of the above, we have found that:
- (a) the Merger has resulted in the creation of a relevant merger situation, and
 - (b) the creation of that situation has resulted, or may be expected to result, in an SLC in the supply of licensed online sports spread betting services in the UK.

HOW WILL WE ADDRESS THE CONCERNS THAT WE HAVE FOUND?

38. Where we conclude that a merger has resulted, or may be expected to result, in an SLC, we are required to decide what, if any, action should be taken for the purpose of remedying, mitigating or preventing that SLC, or any adverse effect resulting from it. In assessing possible remedies, we have sought to identify remedies that will be effective in addressing the SLC and the resulting adverse

effects that we have found and then select the most proportionate remedy that we consider to be effective.

39. Spreadex submitted a divestiture remedy to address the concerns which we had provisionally found, including:
- (a) proposing to divest its shares in the Sporting Index legal entity, including all of the Sporting Index assets which Spreadex had acquired under the Merger (as summarised at paragraph 7);
 - (b) proposing that Spreadex develop a bespoke sports spread betting platform – given that Sporting Index’s pre-Merger platform has not been operational since Merger completion – by re-purposing key elements of Sporting Index’s existing systems, while integrating new technology and developing new components as necessary, to form part of the divestiture package; and
 - (c) proposing that Spreadex provide the purchaser with a TSA to operate the Sporting Index business for a transitional period, while the purchaser makes the investments required to build up the personnel and functions that it did not have, to allow it to operate the business in the manner that Sporting Index had operated it prior to the Merger.
40. Following extensive consultation, including with third parties, and a detailed assessment of the effectiveness of Spreadex’s remedy proposal, we have found that the risks we had provisionally found (for example, in relation to Spreadex’s involvement in the development of a competing betting platform, and the timescales for the development of the bespoke sports spread betting platform) could be mitigated through a number of modifications and enhancements to Spreadex’s remedy proposal.
41. We have therefore concluded that the divestiture remedy proposed by Spreadex, subject to certain modifications and enhancements detailed in our final report, would be an effective and proportionate remedy to address the SLC and the resulting adverse effects.

WHAT HAPPENS NEXT?

42. The CMA will now take steps to implement the remedy described above, and will consult publicly on the approach to be taken.
43. In line with statutory requirements, the CMA will implement its remedy decision by accepting final undertakings or making a final order within 12 weeks of publication of the final report, which may be extended once by up to six weeks if there are special reasons for doing so.

FINAL REPORT

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**),¹ 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**)² 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,³ 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 Having extended the statutory timetable by eight weeks, pursuant to section 39(3) of the Act,⁴ and a further eight days under section 39(4) and (8) of the Act,⁵ the Inquiry Group was required to prepare and publish its final report by 4 December 2024.
- 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 Final Report published and notified to the Parties in line with the CMA's rules of procedure.⁶ Further information relevant to this inquiry, can be found on the CMA webpage.⁷

¹ [Section 22\(1\)](#) of the Act.

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

⁴ 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 CMA, [Notice of extension of inquiry period under section 39\(3\) of the Enterprise Act 2002](#), 25 July 2024).

⁵ CMA, [Termination of extension](#), 8 October 2024.

⁶ CMA, [CMA rules of procedure for merger, market and special reference groups \(CMA17\) \(the Rules\)](#), March 2014, Rule 11.

⁷ 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.⁸ 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.⁹ 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

⁸ 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'.

⁹ 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.¹⁰ 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.¹¹ 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].¹²

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].¹³

¹⁰ Spreadex, Teach-in slides, 1 May 2024, slide 9.

¹¹ Third party hearing transcript.

¹² Spreadex, Teach-in slides, 1 May 2024, slides 17-20.

¹³ 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 2022.¹⁴ 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).¹⁵
- 2.12 The Parties are the only two providers of licensed online sports spread betting services in the UK.¹⁶ 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 2023.¹⁷
- 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 2023.¹⁸

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.¹⁹
- 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

¹⁴ Gambling Commission (**GC**), [Industry Statistics - February 2024 - Correction: Official statistics](#), 1 February 2024 (last accessed 18 November 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 30 September 2024) (last accessed on 18 November 2024).

¹⁵ See: [bet365](#); [Ladbrokes](#); [Sky Bet](#); [BetVictor](#); and [William Hill](#) (all last accessed on 18 November 2024).

¹⁶ See Chapter 6, Horizontal Unilateral Effects.

¹⁷ Spreadex, Response to the CMA's RF12, 2 February 2024, question 5.

¹⁸ 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).

¹⁹ [Sections 19](#) and [21](#) of the Financial Services and Markets Act 2000 (the **FSMA**).

harm.²⁰ The FCA told us that it has a statutory deadline of six months to approve complete applications, and 12 months to determine incomplete applications.²¹

- 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.²²
- 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.²³
- 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.²⁴
- 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.²⁵ 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.²⁶

GC

- 2.21 Sports fixed odds providers wishing to solicit UK consumers must obtain a licence from the GC and adhere to its regulations.²⁷ The application process involves the GC looking at information such as business plans, profit and loss projections, and bank statements.²⁸

²⁰ Third party call note.

²¹ Third party response to the CMA's RFI.

²² Third party call note.

²³ Third party response to the CMA's RFI.

²⁴ Third party response to the CMA's RFI.

²⁵ FCA, [Enforcement](#), 21 April 2016 (last updated 10 October 2024) (last accessed on 18 November 2024).

²⁶ Third party call note.

²⁷ [Section 5](#) of the Gambling (Licensing and Advertising) Act 2014.

²⁸ GC, [Apply for a licence to operate a gambling business](#) (last accessed on 21 October 2024).

- 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,²⁹ or firms providing evidence to the GC, if required, showing how they have satisfied themselves that their terms are not unfair.³⁰
- 2.23 The GC can review the manner in which licensees carry on licensed activities,³¹ 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.³²

²⁹ GC, [Licence Conditions and Codes of Practice \(LCCP\) Condition 3.1.1 - Combating problem gambling](#) (last accessed on 21 October 2024).

³⁰ GC, [LCCP Condition 4.1.1 - Fair terms](#) (last accessed 18 November 2024).

³¹ [Section 116](#) of the Gambling Act 2005.

³² [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.³³
- 3.2 The turnover of Spreadex in its financial year (FY) ended 31 December 2023 was approximately £88.9 million in the UK.³⁴ In 2023, Spreadex earned around £[X] million turnover from the sports spread betting part of its business and almost £[X] 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.³⁵

Sporting Index

- 3.3 Sporting Index³⁶ 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.³⁷
- 3.4 The turnover of Sporting Index in FY22 was around £9.8 million worldwide, almost all of which was earned in the UK.³⁸ In 2023, Sporting Index earned around £[X] million turnover from the spread betting part of its business and almost £[X] million from the fixed-odds betting part of its business.³⁹

The Merger

- 3.5 Prior to the Merger, Sporting Group was the holding company of both:⁴⁰
- (a) Sporting Index, the B2C arm of Sporting Group, which comprised its spread betting and fixed odds betting activities (the **B2C Business**); and

³³ Spreadex, Briefing Paper, 13 July 2023, paragraph 2.4.

³⁴ Spreadex, [Spreadex Limited Annual Report and Financial Statement for the year ended 31 May 2023](#), page 11 (last accessed on 18 November 2024).

³⁵ Spreadex, Response to the CMA's RF12, 2 February 2024, 2 February 2024, question 5.

³⁶ Sporting Index is referred to in some internal documents as 'SPIN'.

³⁷ Spreadex, Briefing Paper, 13 July 2023, paragraph 2.1.

³⁸ Sporting Index, [Sporting Index Limited Annual report and financial statements for the year ended 31 December 2022](#), page 13 (last accessed on 18 November 2024). Spreadex, Briefing Paper, 13 July 2023, paragraph 4.1 and Table.

³⁹ Spreadex, Response to the CMA's RF12, 2 February 2024, question 5.

⁴⁰ Sporting Group, [Sporting Group Holdings Limited Annual report and financial statements for the year ended 31 December 2022](#), page 1 (last accessed on 18 November 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,⁴¹ and later sold to Betsson Group in August 2024.⁴²

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.⁴³

Merger Rationale

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.⁴⁴

3.9 In response to the provisional findings report⁴⁵ (the **Provisional Findings**), Spreadex submitted that the document cited by the CMA as the basis for the provisional finding that the Merger rationale was in part to remove a competitive threat, had been prepared after Spreadex had been approached by Sporting Group/FDJ as part of the sales process.⁴⁶ Spreadex therefore submitted that it did not have a specific rationale for the Merger before being approached, that it had responded to an opportunistic approach, and that the ‘rationale’ identified by the CMA was no more than a statement of the possible advantages of an acquisition.⁴⁷

3.10 While the timing and circumstances of Spreadex’s bid for Sporting Index are relevant to the CMA’s assessment, and are discussed in more detail in Chapter 5, the Counterfactual, the fact that Spreadex’s reasons for the Merger were only discussed or recorded after an approach had been made by the sellers, does not mean that such reasons can be discounted. Further discussion of the document in

⁴¹ 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.

⁴² FDJ, Press release, 1 August 2024 (see: [FDJ sells its Sporting Solutions Services subsidiary to the Betsson group - FDJ \(groupefdj.com\)](#). (last accessed on 18 November 2024).

⁴³ The remaining employees of the pre-Merger Sporting Index business were not acquired by Spreadex [X].

⁴⁴ Spreadex, Response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103.

⁴⁵ CMA, [Provisional Findings Report](#), 25 July 2024.

⁴⁶ Further discussion of the timeline of the sales process can be found in Chapter 5, the Counterfactual.

⁴⁷ Spreadex, [Response to the CMA’s Provisional Findings](#), 30 August 2024, paragraphs 2.1-2.3.

question, and the weight that we have attached to it, can be found in Chapter 6, Horizontal Unilateral Effects.

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.⁴⁸
- 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;⁴⁹ and
 - (b) the turnover test and/or the share of supply test is satisfied.⁵⁰
- 4.3 We address each of these elements in turn below.

Enterprises ceasing to be distinct

Enterprises

- 4.4 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’.⁵¹ 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’.⁵²
- 4.5 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.⁵³
- 4.6 We conclude 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

⁴⁸ [Section 35](#) of the Act and Appendix A, Terms of Reference.

⁴⁹ [Sections 23](#) and [24](#) of the Act.

⁵⁰ [Section 23](#) of the Act.

⁵¹ [Section 129\(1\)](#) of the Act.

⁵² [Section 129\(1\)](#) of the Act.

⁵³ 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. Sporting Index does not include the B2B assets formerly held by Sporting Index, which were retained by FDJ following a corporate restructure implemented in advance of the Merger, and which were later sold to Betsson Group in August 2024.

activities of each of Spreadex and Sporting Index constitute an 'enterprise' for the purposes of the Act.

Ceasing to be distinct

4.7 The Act provides that any two enterprises cease to be distinct if they are brought under common ownership or common control.⁵⁴ 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.

4.8 Accordingly, we conclude 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

4.9 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.⁵⁵ The four-month period may be extended under section 25 of the Act.⁵⁶

4.10 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**).⁵⁷ 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 2024.⁵⁸

4.11 We therefore conclude 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.

⁵⁴ [Section 26](#) of the Act.

⁵⁵ [Section 24](#) of the Act.

⁵⁶ [Section 25](#) of the Act.

⁵⁷ [Sections 25\(4\)](#) and [73A\(1\)](#) of the Act.

⁵⁸ See Chapter 1, The Reference and Appendix A, Terms of Reference

Turnover test or share of supply test

- 4.12 The turnover test is met where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.⁵⁹ As the turnover of Sporting Index in its last financial year prior to the merger agreement was around £9.8 million worldwide, almost all of which was earned in the UK,⁶⁰ the turnover test is not met.
- 4.13 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 description⁶¹ 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.⁶² 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.
- 4.14 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 [~~8~~] [20-30%] arising from the Merger). Accordingly, we conclude that the share of supply test in section 23 of the Act is met,⁶³ and therefore the second limb of the RMS test is met.

Conclusion on the relevant merger situation

- 4.15 In view of the above, we conclude that the Merger has resulted in the creation of an RMS.

⁵⁹ [Section 23\(1\)\(b\)](#) of the Act.

⁶⁰ Spreadex, Briefing Paper, 13 July 2023, paragraph 4.1 and Table.

⁶¹ 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).

⁶² [Sections 23\(2\), \(3\)](#) and [\(4\)](#) of the Act.

⁶³ [Section 23](#) of the Act.

5. COUNTERFACTUAL

- 5.1 This Chapter sets out our assessment and 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.⁶⁴ 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) 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.⁶⁵
- 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.⁶⁶ The CMA also seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger,⁶⁷ and the

⁶⁴ CMA, Merger Assessment Guidelines, 18 March 2021 (CMA129) ([MAGs](#)), paragraph 3.1.

⁶⁵ [MAGs](#), paragraph 3.13.

⁶⁶ [MAGs](#), paragraphs 3.7 and 3.9.

⁶⁷ [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.⁶⁸

- 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.⁶⁹
- 5.6 The time horizon for considering the counterfactual will be consistent with the time horizon used in the CMA's competitive assessment.⁷⁰
- 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:⁷¹
- (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, in our view, are relevant to our consideration of the appropriate counterfactual.
- 5.9 FDJ stated 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.⁷² 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.⁷³

⁶⁸ [MAGs](#), paragraph 3.8.

⁶⁹ [MAGs](#), paragraph 3.14.

⁷⁰ [MAGs](#), paragraph 3.15.

⁷¹ [MAGs](#), paragraph 3.21.

⁷² Third party response to the CMA's RFI.

⁷³ Third party call note.

- 5.10 FDJ stated that it had explored a number of different sale options for the B2C Business,⁷⁴ 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.⁷⁵ 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).⁷⁶
- 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.⁷⁷
- 5.12 Sporting Group stated that a decision was taken on 15 December 2022 to pursue a sale process of the B2C Business.⁷⁸ 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 **2023 Sale Process**).⁷⁹
- 5.13 FDJ stated that it first approached two potential purchasers who had 'showed inbound interest for a transaction' before the 2023 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'.⁸⁰ According to Sporting Group's 'contacts database' for the 2023 Sale Process:⁸¹
- (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 2023 Sale Process at the ICE London exhibition;⁸²

⁷⁴ Third party response to the CMA's RFI. Third party response to the CMA's RFI.

⁷⁵ Spreadex, Response to the Enquiry Letter, 14 December 2023, Annex 32 and third party response to the CMA's RFI.

⁷⁶ Spreadex, Response to the Enquiry Letter, 14 December 2023, Annex 32 and third party response to the CMA's RFI. Following the Provisional Findings, in light of representations that had been made, the CMA exchanged emails with each of FDJ and Spreadex on the topic of whether pricing functionality had been included in the B2C-dedicated Perimeter as part of the Merger. FDJ clarified that such pricing functionality had *not* been included in the B2C-dedicated Perimeter (Third party response to the CMA's RFI). The CMA subsequently informed Spreadex of FDJ's clarification, and Spreadex's response to that clarification is set out in paragraph 5.31.

⁷⁷ Third party call note.

⁷⁸ Third party response to the CMA's RFI

⁷⁹ Third party response to the CMA's RFI.

⁸⁰ Third party response to the CMA's RFI.

⁸¹ Third party response to the CMA's RFI.

⁸² See: [About the Exhibition | a Gaming Showcase | ICE London 7-9 February 2023 at ExCeL London UK \(icegaming.com\)](#) (last accessed on 18 November 2024).

(c) between [REDACTED].⁸³

- 5.14 Spreadex submitted that prior to being contacted by Andy Wright, the Sporting Group CEO, it had not considered purchasing Sporting Index.⁸⁴
- 5.15 On 15 February 2023, during FDJ's investor presentation on its FY22⁸⁵ 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 2023.⁸⁶
- 5.16 Sporting Group received three preliminary bids, a bid from Spreadex on around 23 February 2023 to acquire Sporting Index for between £[REDACTED] million and £[REDACTED] million,⁸⁷ and a bid from each of the following bidders (referred to collectively in this Chapter as the **Alternative Bidders**):
- (a) [REDACTED], which bid £[REDACTED] million [REDACTED],⁸⁸ an increase on [REDACTED] initial intended bid of £[REDACTED] million;⁸⁹ and
 - (b) [REDACTED], which bid £[REDACTED] million [REDACTED] (which was later confirmed, subject to minor non-price amendments, on 24 March 2023).⁹⁰
- 5.17 An internal FDJ document dated 23 February 2023 evaluated the preliminary bids from Spreadex, and the Alternative Bidders.⁹¹
- 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 £[REDACTED] million.⁹²
- 5.19 Around the end of March 2023, in a document prepared by Oakvale Capital for FDJ, recommendations were made to:⁹³
- (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.

⁸³ [REDACTED]. Third party response to the CMA's RFI.

⁸⁴ Spreadex, response to the CMA's s109 notice 01, 24 April 2024, question 4

⁸⁵ FDJ's financial year ended 31 December 2022.

⁸⁶ See: [Webcast of FDJ Annual Results 2022](#), 16 February 2023 (from 1:17:40 to 1:19:19) (last accessed on 18 November 2024).

⁸⁷ Third party response to the CMA's RFI.

⁸⁸ Third party response to the CMA's RFI.

⁸⁹ Third party call note.

⁹⁰ Third party response to the CMA's RFI.

⁹¹ Third party response to the CMA's RFI.

⁹² Third party response to the CMA's RFI.

⁹³ Third party response to the CMA's RFI.

- 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 (three in Customer Services, two in Marketing and one in Customer Relations).⁹⁴ On 30 June 2023, the Spreadex Board approved the Merger for an estimated consideration of £[~~8~~] 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.⁹⁵
- 5.21 Spreadex's proposed acquisition of Sporting Index was approved:
- (a) by FDJ's Investment Committee in June 2023;⁹⁶
 - (b) by the Sporting Solutions Board on 5 July 2023;⁹⁷ and
 - (c) by the Sporting Index Board on 5 July 2023.⁹⁸
- 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 stated that it was having conversations with potential bidders and was populating vendor data rooms for buyer due diligence.⁹⁹ FDJ commented that [~~8~~].¹⁰⁰ FDJ provided us with a subsequent update on its sale process for the B2B Business, namely that on 1 August 2024 it announced that it had signed an agreement to sell the B2B Business to Betsson Group.¹⁰¹
- 5.23 Spreadex submitted that although it acquired Sporting Index's Atlas spread betting platform, which had been offered as part of the B2C-dedicated Perimeter given that the B2B Business 'would no longer need it',¹⁰² 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'.¹⁰³ 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

⁹⁴ CMA [Derogation Letter](#), 15 January 2024.

⁹⁵ Spreadex, response to the Enquiry Letter, 14 December 2023, Annex 8. CMA approval was not a condition to closing.

⁹⁶ Third party response to the CMA's RFI].

⁹⁷ Spreadex, response to the Enquiry Letter, 14 December 2023, Annex 7.

⁹⁸ Spreadex, response to the Enquiry Letter, 14 December 2023, Annex 6.

⁹⁹ Third party response to the CMA's RFI.

¹⁰⁰ Third party response to the CMA's RFI.

¹⁰¹ FDJ, Press release, 1 August 2024 (see: [FDJ sells its Sporting Solutions Services subsidiary to the Betsson group - FDJ \(groupefdj.com\)](#)). (last accessed on 18 November 2024).

¹⁰² Spreadex, Response to the CMA's RFI1, 10 January 2024, question 11.

¹⁰³ CMA [Derogation Letter](#), 15 January 2024.

require a TSA from Sporting Group.¹⁰⁴ FDJ stated 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'.¹⁰⁵

5.24 The Merger completed on 6 November 2023.¹⁰⁶

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. As set out in the MAGs, when considering any exiting firm argument, the CMA will usually attach greater weight to evidence that has not been prepared in contemplation of the merger.¹⁰⁷

5.26 As set out in paragraph 5.7 above, when forming a view on an 'exiting firm' scenario (that is, whether, absent the merger, one of the merger firms is likely to have exited the market), the CMA will use the following framework of cumulative conditions:¹⁰⁸

- (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).

Spreadex's submissions on the counterfactual

5.27 Spreadex submitted that absent the Merger, 'FDJ would have closed Sporting Index and there would not have been an alternative purchaser'.¹⁰⁹ Spreadex's submissions on each of the two conditions of the so-called 'exiting firm' counterfactual are provided below.

¹⁰⁴ Spreadex, Response to the CMA's RF11, 10 January 2024, question 12.

¹⁰⁵ Third party response to the CMA's RFI.

¹⁰⁶ 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) (CMA, [Derogation Letter](#), 15 January 2024). Spreadex also acquired the B2C application code for the Atlas spread betting platform (Spreadex, Response to the CMA's RF11, 10 January 2024, question 11).

¹⁰⁷ [MAGs](#), paragraph 3.24.

¹⁰⁸ [MAGs](#), paragraph 3.21.

¹⁰⁹ Spreadex, Letter to the Inquiry Group, 25 April 2024.

Spreadex's submissions on the Exit Condition

- 5.28 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 Index¹¹⁰ since its acquisition by FDJ in 2019, where its last profit was recorded in FY18.¹¹¹ It submitted 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;¹¹²
 - (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.¹¹³ For example, Spreadex told us that FDJ's FY22 financial statements had reclassified Sporting Index as 'assets held for disposal';¹¹⁴
 - (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;¹¹⁵
 - (d) an increasingly rigorous regulatory environment in the UK, which would have limited Sporting Index's ability to improve its profitability;¹¹⁶ and
 - (e) FDJ's subsequent strategic decision to divest Sporting Group's B2B arm, ie Sporting Solutions.¹¹⁷

Spreadex's submissions on the Alternative Purchaser Condition

- 5.29 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

¹¹⁰ Spreadex, Letter to the Inquiry Group, 25 April 2024. Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.4.

¹¹¹ Sporting Index's financial year ended 31 December 2018.

¹¹² Spreadex, Briefing Paper, 13 July 2023.

¹¹³ Spreadex, Letter to the Inquiry Group, 25 April 2024.

¹¹⁴ Spreadex, CMA Issues Meeting, 11 March 2024, slide 6.

¹¹⁵ Spreadex, CMA Issues Meeting, 11 March 2024, slide 7 (FDJ, '[Webcast of FDJ Annual Results 2022](#)', 16 February 2023 (last accessed on 18 November 2024)).

¹¹⁶ Spreadex, CMA Issues Meeting, 11 March 2024, slide 6. Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.3.

¹¹⁷ See: SBC News, [FDJ to sell Sporting Solutions as future lies in B2C growth](#), 19 February 2024 (last accessed on 18 November 2024).

question the ability of the Alternative Bidders successfully to enter the market via the acquisition of Sporting Index'.¹¹⁸

- 5.30 Spreadex submitted that it believed that 'there were no viable alternative bidders that would have been capable of running Sporting Index'.¹¹⁹ 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',¹²⁰ and added that no other 'alternative transaction perimeter would have been commercially viable'.¹²¹
- 5.31 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'.¹²² 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).¹²³ In this regard, Spreadex submitted that FDJ's confirmation that spread pricing functionality had not been included in the B2C-dedicated Perimeter implied that 'the assets, as put up for sale, were never capable of being operated in their own right'.¹²⁴ Our assessment of the counterfactual, including whether the Alternative Bidders were capable of operating the target business are addressed in further detail below.
- 5.32 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 they would not have been invited to engage in routine due diligence and/or to submit improved offers'.¹²⁵
- 5.33 Spreadex also submitted that based on its 'knowledge of [X], [X] 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

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

¹¹⁹ Spreadex Letter to the Inquiry Group, 25 April 2024.

¹²⁰ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024.

¹²¹ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024.

¹²² Letter from Spreadex to the CMA's Mergers Intelligence Committee, 6 December 2023.

¹²³ Spreadex Letter to the Inquiry Group, 25 April 2024.

¹²⁴ Email from [X], Spreadex, 4 October 2024.

¹²⁵ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024. Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.20-3.32.

reached the same conclusion'.¹²⁶ 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:¹²⁷

- (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'.

5.34 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]'.¹²⁸ Spreadex submitted that the potential TSA would have covered [redacted]. Spreadex submitted that this would have cost around £[redacted] million [redacted].¹²⁹ 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].¹³⁰

5.35 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.¹³¹ Spreadex submitted 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

¹²⁶ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024. Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.6-3.12.

¹²⁷ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024.

¹²⁸ Spreadex, Letter to the Inquiry Group, 25 April 2024.

¹²⁹ Spreadex, Response to the CMA's RF11, 10 January 2024, question 12.

¹³⁰ Spreadex, CMA Issues Meeting, 11 March 2024, slide 16.

¹³¹ Spreadex, Response to the CMA's RF11, 10 January 2024, question 12.

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.¹³²

- 5.36 Spreadex submitted that it was 'not possible to assess the 'credibility of [X] and [X] 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'.¹³³
- 5.37 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)¹³⁴ due to:¹³⁵
- (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.
- 5.38 Spreadex told us that 'the costs of the TSA that was offered to Spreadex were simply not sustainable' (costing around £[X] 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',¹³⁶ and estimated this to be around £[X] million a year, based on Spreadex's FY24 cost base for its 'Sports' business line of around £[X] million plus around £[X] million of [X].¹³⁷

¹³² Spreadex, Letter to the Inquiry Group, 25 April 2024. Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.13-3.19.

¹³³ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024.

¹³⁴ 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 18 November 2024).

¹³⁵ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 28.

¹³⁶ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024.

¹³⁷ Spreadex, Main party hearing, Opening Statement Accompanying Slides, 4 July 2024; Spreadex, Hearing follow up response, 9 July 2024.

5.39 In response to the Provisional Findings, Spreadex submitted that the Sporting Index assets it acquired as part of the Merger, and the assets offered to potential purchasers during the 2023 Sale Process were materially equivalent, and therefore, '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'.¹³⁸ We address this submission in paragraphs 9.69 to 9.74 of Chapter 8, Remedies.

FDJ's submissions on the counterfactual

5.40 FDJ submitted 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].¹³⁹ In this regard, FDJ told us that [redacted].¹⁴⁰ FDJ told us that [redacted].¹⁴¹

Assessment of the appropriate counterfactual

5.41 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 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.

5.42 In considering Spreadex's submissions that both the Exit Condition and the Alternative Purchaser Condition have been met, we have also considered evidence from the seller (FDJ and Sporting Group) and each of the Alternative Bidders. We have carefully evaluated the weight that it is appropriate to place on the different evidence provided to us. We have had regard to the extent to which the party had knowledge of the situation relevant to our assessment, and the extent to which the evidence is consistent with other evidence provided to us. In this regard, we have placed greater weight on the evidence from the seller given that:

- (a) Spreadex was not involved in the seller's internal decision-making about the future of Sporting Index absent the Merger such as to be in a position to substantiate its claim that the firm was likely to have exited absent the Merger; and

¹³⁸ Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.5.

¹³⁹ Third party response to the CMA's RFI.

¹⁴⁰ Third party response to the CMA's RFI.

¹⁴¹ Third party response to the CMA's RFI.

- (b) Spreadex is not in a more informed position than the seller to evaluate the feasibility of an alternative transaction absent the Merger, such as to be in a position to substantiate its claim that there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question (ie Spreadex).

Our assessment of the Exit Condition

- 5.43 In assessing the Exit Condition, it is necessary to consider whether Sporting Index would likely have exited the market absent the Merger.¹⁴² In assessing this, we have considered whether Sporting Index was able to meet its financial obligations in the near term or in any event, and since it was part of a larger corporate group, whether Sporting Group and/or FDJ had the ability and incentive to provide continued financial support.¹⁴³ We have also considered whether, even if this was the case, Sporting Index would likely have exited the market for strategic rather than financial reasons absent the merger.¹⁴⁴ We note that when considering an exiting firm argument, it can be particularly important to understand the rationale for the sale.¹⁴⁵ As such, we set out the seller's submissions on the rationale for the sale of the B2C Business first.

Seller's submissions on the rationale for the sale of the B2C Business

- 5.44 FDJ submitted 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 further submitted 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 compliance requirements led to a significant loss in premium customers, who were very hard to replace given their specific 'VIP' profiles. It submitted that the B2C Business relied on [redacted] that were [redacted]. Moreover, it submitted 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 submitted that these factors led to significant losses, which led to the decision to sell.¹⁴⁶
- 5.45 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

¹⁴² [MAGs](#), paragraphs 3.21 (a) and 3.26.

¹⁴³ [MAGs](#), paragraph 3.28.

¹⁴⁴ [MAGs](#), paragraph 3.29.

¹⁴⁵ [MAGs](#), paragraph 3.24.

¹⁴⁶ Third party response to the CMA's RFI.

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.¹⁴⁷

Our assessment

- 5.46 The evidence 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. 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 [X] who led [X] bid during the 2023 Sale Process (the **Former [X] 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.
- 5.47 Based on Sporting Index’s annual accounts for FY21 and FY22, Sporting Index generated an operating loss (before recurring items) of -£2.4 million in FY21 and -£6.7 million in FY22.¹⁴⁸ Although Sporting Index was a loss-making division within FDJ, its annual accounts show that Sporting Index had received financial support from FDJ to enable it to continue its operations. In this regard, in Sporting Index’s FY21 and FY22 accounts, no material concerns were raised about its ability to meet its liabilities and remain as a going concern, 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.¹⁴⁹
- 5.48 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 also consider the parent

¹⁴⁷ Third party hearing transcript.

¹⁴⁸ Sporting Index, Annual report and financial statements for the year ended 31 December 2021; Sporting Index, Annual report and financial statements for the year ended 31 December 2022.

¹⁴⁹ Sporting Index, [Sporting Index Limited Annual report and financial statements for the year ended 31 December 2021](#) and Sporting Index, [Sporting Index Limited Annual report and financial statements for the year ended 31 December 2022](#) (last accessed on 18 November 2024).

company's ability and incentive to provide continued financial support.¹⁵⁰ In the present case, although Sporting Index was a loss-making division within FDJ,¹⁵¹ Sporting Index had received financial support from FDJ, and FDJ was able to continue to support it given the group's financial resources.¹⁵² However, the evidence shows that FDJ was incentivised to complete a sale of the B2C Business, given FDJ's concerns about the ongoing regulatory risks associated with owning Sporting Index, which was seen as a non-core business from FDJ's perspective.

- 5.49 Sporting Group 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.¹⁵³ FDJ told us that in the event Spreadex had not bid or had dropped out of the process, it would have looked to 'close the deal' with [redacted] or [redacted] (although this would be subject to agreeing on a TSA), and that it was committed to disposing of the B2C Business, because Sporting Index was [redacted] and the situation was [redacted]. It added that if a TSA with the Alternative Bidders could not be agreed, then [redacted] would have been an option.¹⁵⁴
- 5.50 We note that when FDJ 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'.¹⁵⁵ At its hearing, Sporting Group also told us that it did not have an internal deadline to complete the sale of Sporting Index.¹⁵⁶ Sporting Group also told us that under a hypothetical scenario where Spreadex's bid did not exist, [redacted].¹⁵⁷
- 5.51 Based on the above, our view is that while FDJ would have tried to, and taken steps to, sell the B2C Business as quickly as it could have, it was not under any time constraints to do so given FDJ's ability to continue to provide financial

¹⁵⁰ MAGs, paragraph 3.28.

¹⁵¹ 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 18 November 2024)).

¹⁵² FDJ Consolidated financial statements for the year ended 31 December 2022.

¹⁵³ Third party response to the CMA's RFI

¹⁵⁴ FDJ and Sporting Group, Remedies call note.

¹⁵⁵ FDJ, '[Webcast of FDJ Annual Results 2022](#)', 16 February 2023 (from 1:17:40 to 1:19:19) (last accessed on 18 November 2024).

¹⁵⁶ Third party hearing transcript.

¹⁵⁷ Third party hearing transcript.

support. As such, our view is that absent the Merger, FDJ would have had sufficient time to consider the bids from the Alternative Bidders, and other purchasers if necessary. It is also our view that FDJ would have had sufficient time to consider pursuing alternative transaction options (noting that FDJ had considered ‘multiple scenarios’ for the sale of the B2C Business,¹⁵⁸ see also paragraph 5.49).

- 5.52 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.^{159, 160}
- 5.53 Based on the evidence provided to us, our view is that if FDJ could not have achieved a sale of the B2C-dedicated Perimeter with either of the Alternative Bidders, then FDJ would most likely have reached out to other potential purchasers, or it could have considered a differently configured transaction perimeter for the sale of the B2C Business.
- 5.54 While there is uncertainty in relation to whether FDJ would have ultimately decided to exit the market, the Alternative Bidders had made bids for the B2C Business during the 2023 Sale Process. Therefore, in the present case, the question of whether the Alternative Purchaser Condition is met is at the core of the counterfactual assessment. Since the conditions of the ‘exiting firm’ scenario are cumulative, if we were to conclude that the Alternative Purchaser Condition has not been met, then the ‘exiting firm’ scenario could not constitute the appropriate counterfactual, irrespective of whether the Exit Condition has been met. Therefore, in those circumstances, it would not be necessary for us to consider in more detail and reach a conclusion on whether the Exit Condition has been met.

Our assessment of the Alternative Purchaser Condition

- 5.55 In the present case, our view is that the appropriate starting point for our assessment of the Alternative Purchaser Condition is the commencement of the 2023 Sale Process in early January 2023, prior to Spreadex’s involvement in February 2023.
- 5.56 As noted at paragraph 5.33 above, Spreadex submitted that it did not consider the Alternative Bidders to be ‘credible purchasers’,¹⁶¹ 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

¹⁵⁸ Third party response to the CMA’s RFI.

¹⁵⁹ Third party response to the CMA’s RFI.

¹⁶⁰ Third party response to the CMA’s RFI.

¹⁶¹ Spreadex, Response to the CMA’s Annotated Issues Statement and accompanying Working Papers, 1 July 2024.

assessed the long-term viability of operating the business in the current market and under current regulatory conditions'.¹⁶²

5.57 As noted at paragraph 5.7 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.¹⁶³ In the present case, it is relevant to note in particular the following points set out in the MAGs. The CMA may consider 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.¹⁶⁴ It will consider alternative purchasers that would have operated the business as a competitor.¹⁶⁵ 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.¹⁶⁶ When considering any exiting firm argument, the CMA will usually attach greater weight to evidence that has not been prepared in contemplation of the merger.¹⁶⁷

5.58 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 [~~✂~~] 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'.¹⁶⁸
- (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, [~~✂~~], and therefore it would have undertaken an 'in-depth analysis' prior to making any decision to pursue a sale.¹⁶⁹

5.59 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

¹⁶² Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024.

¹⁶³ [MAGs](#), paragraph 3.21(b).

¹⁶⁴ [MAGs](#), paragraph 3.30.

¹⁶⁵ [MAGs](#), paragraph 3.30.

¹⁶⁶ [MAGs](#), paragraph 3.31.

¹⁶⁷ [MAGs](#), paragraph 3.24.

¹⁶⁸ Third party response to the CMA's RFI.

¹⁶⁹ Third party response to the CMA's RFI.

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'.¹⁷⁰

- 5.60 To assist with our assessment of the Alternative Purchaser Condition (that is, that there would not have been an alternative, less anti-competitive purchaser for the firm or its assets (in this case, Sporting Index) to the acquirer in question (in this case, Spreadex), we have considered the following questions, on the basis of the evidence provided to us, to determine whether none of the Alternative Bidders, or another potential purchaser, would have acquired Sporting Index:
- (a) Would the seller have continued discussions with the Alternative Bidders under a hypothetical scenario where Spreadex had not bid?
 - (b) Were the Alternative Bidders credible, including being capable and committed to completing a transaction?
 - (c) Would the seller have agreed to bids from the Alternative Bidders, on the basis of the identity of the Alternative Bidders and the details of the bids submitted by the Alternative Bidders?
 - (d) Would any TSAs required by the Alternative Bidders have been viable, both from the perspective of the Alternative Bidders and the seller?
 - (e) Would the Alternative Bidders have acquired the business at any price above liquidation value?
 - (f) Were there any obstacles to the Alternative Bidders obtaining the required regulatory approvals?
- 5.61 These questions are addressed throughout the remainder of this section, under the following headings:
- (a) the Alternative Bidders' commitment to complete a transaction (see paragraphs 5.62 to 5.74);
 - (b) the Alternative Bidders' bids (see paragraphs 5.75 to 5.91);
 - (c) the TSAs required by the Alternative Bidders (see paragraphs 5.92 to 5.116); and
 - (d) the Alternative Bidders' plans for the B2C Business (see paragraphs 5.117 to 5.129).

¹⁷⁰ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024.

Alternative Bidders' commitment and capability to complete a transaction

- 5.62 We are considering whether each of the Alternative Bidders were committed to completing an acquisition of the B2C Business.
- 5.63 We note that prior to the 2023 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, including the sale of the Sporting Index legal entity and all B2C-dedicated assets.¹⁷¹ Sporting Group confirmed that the B2C Business offered to potential purchasers during the 2023 Sale Process was in line with AlixPartners' recommendations.¹⁷² 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.¹⁷³
- 5.64 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].¹⁷⁴
- 5.65 In relation to [REDACTED] commitment and capability to complete a transaction under the 2023 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,¹⁷⁵ 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 ended [REDACTED].¹⁷⁶ [REDACTED] operates in [REDACTED] sports spread betting.^{177, 178} The Former

¹⁷¹ Third party call note.

¹⁷² Third party hearing transcript.

¹⁷³ Third party call note.

¹⁷⁴ Third party hearing transcript.

¹⁷⁵ Third party call note, and third party response to the CMA's RFI.

¹⁷⁶ [REDACTED].

¹⁷⁷ [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.

¹⁷⁸ [REDACTED].

[REDACTED] MD told us that [REDACTED] generated annual revenues of around £[REDACTED] million.¹⁷⁹

- (b) [REDACTED] told us that [REDACTED] operated its own spread betting platform and had around [REDACTED] spread betting clients a week.¹⁸⁰ [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].¹⁸¹
- (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.¹⁸² 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.¹⁸³
- (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'.¹⁸⁴ [REDACTED] told us that while [REDACTED] was able to [REDACTED], it required an FCA licence to carry out marketing activities directed at UK customers.¹⁸⁵
- (e) [REDACTED] told us that during the 2023 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'.¹⁸⁶
- (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].¹⁸⁷

¹⁷⁹ Third party call note.

¹⁸⁰ Third party call note.

¹⁸¹ Third party call note.

¹⁸² Third party call note.

¹⁸³ Third party call note.

¹⁸⁴ Third party call note.

¹⁸⁵ Third party call note.

¹⁸⁶ Third party call note.

¹⁸⁷ Third party call note.

- (g) The Former [X] MD told us that given [X] management decision structure, [X] did not require approval from [X] shareholders to progress the transaction, and added that the transaction would have been [X].¹⁸⁸
- (h) The Former [X] MD also told us that he was aware of [X] potential interest in acquiring the B2C Business in the future if it became available for sale.¹⁸⁹

5.66 In the case of [X], we note that:

- (a) [X], registered in [X], is a [X] sports betting operator and [X],¹⁹⁰ with annual revenues of around £[X] million. [X] told us that it operated a similar business to [X].¹⁹¹
- (b) [X].¹⁹² [X] also told us that it provided similar [X] services [X].¹⁹³ In view of this and 5.66(a) above, we conclude that [X] has prior experience of running [X] betting business, and is currently active in the supply of [X] services.
- (c) [X] told us that [X] was primarily driven by the opportunity to take advantage of the high business valuations attributed to gambling operators at the time, [X]. It told us that following [X], which developed its [X] capabilities organically and through acquisitions (eg acquiring [X]). It told us that under FDJ's ownership, through a combination of [X], Sporting Index's financial performance had suffered. [X] told us that the sale of the B2C Business would have given it an opportunity (if it were to acquire it) to [X] 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.¹⁹⁴
- (d) [X] told us that it already had the capabilities from its existing business to [X] spreads [X],¹⁹⁵ and that while it did not yet have the capabilities to [X] spreads [X], it was 'already committed' to developing these capabilities.¹⁹⁶
- (e) [X] told us that given its [X], 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.¹⁹⁷

¹⁸⁸ Third party call note.

¹⁸⁹ Third party call note.

¹⁹⁰ See: [X].

¹⁹¹ Third party call note.

¹⁹² Third party call note.

¹⁹³ Third party call note.

¹⁹⁴ Third party call note.

¹⁹⁵ Third party response to the CMA's RFI.

¹⁹⁶ Third party call note.

¹⁹⁷ Third party call note.

- (f) [redacted] told us that it considered its bid to be a ‘strong one’.¹⁹⁸ [redacted] also told us that its controlling shareholder 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.¹⁹⁹

5.67 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).²⁰⁰

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

[redacted]

Source: Third party response to the CMA’s RFI, [redacted].

- 5.68 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.²⁰¹
- 5.69 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.²⁰²
- 5.70 We note that the ratings given to [redacted] bid in Figure 5.1 appear to contradict Sporting Group’s comment that with [redacted].²⁰³ Spreadex submitted that this comment reflected doubts as to the commitment of [redacted] and the viability of its bid, and that Figure 5.1 ‘cannot provide the whole picture’ on the basis that despite the ‘apparent [redacted] (according to the document), Sporting Group and FDJ decided to only progress with Spreadex without even inviting [redacted] to make an improved offer or undertake further due diligence’. Spreadex added that there would have been an ‘embarrassment factor’ for FDJ as part of any sale to [redacted], as [redacted] compared to what [redacted], and that ‘in the context of what was effectively a [redacted], Sporting Group and FDJ would therefore have had very little incentive to enter into a transaction with [redacted].²⁰⁴

¹⁹⁸ Third party call note.

¹⁹⁹ Third party call note.

²⁰⁰ Third party response to the CMA’s RFI.

²⁰¹ Third party call note.

²⁰² Third party response to the CMA’s RFI.

²⁰³ Third party hearing transcript.

²⁰⁴ Spreadex, [Response to the CMA’s Provisional Findings](#), 30 August 2024, paragraph 3.12.

- 5.71 We have considered the Alternative Bidders' bids on the basis of their bid values in paragraphs 5.75 to 5.91 below, but in relation to Sporting Group's comment on [REDACTED] above, we note that at the time of the 2023 Sale Process: (a) FDJ continued to engage with [REDACTED] throughout the process; (b) FDJ's assessment of [REDACTED] bid in Figure 5.1 implies that this was a viable bid; and (c) we have not been provided with any contemporaneous evidence that [REDACTED] would have been a reason for FDJ to exclude [REDACTED] from the sales process. Therefore, while we acknowledge that this was likely a drawback of [REDACTED] bid from FDJ's perspective, in our view this was not a significant issue, nor do we think that this reflects material doubt as to the commitment of [REDACTED] and the viability of its bid.
- 5.72 In relation to Spreadex's submissions on Figure 5.1, we acknowledge that this document is unlikely to provide a complete picture on FDJ's assessment of the three bids, on the basis that it was prepared at a relatively early stage of the 2023 Sale Process and FDJ continued to have discussions with the three bidders about their bids after this document had been prepared. However, we have not been provided with any evidence that these ratings would have changed at a later stage of the process, nor have we been provided with any evidence that FDJ considered the Alternative Bidders' bids not to be credible. We also note that Figure 5.1 does not fully capture the ultimate benefits of Spreadex's bid; in particular, we note that from FDJ's perspective the 'CMA risk' of Spreadex's bid was mitigated by Spreadex and Sporting Index completing the Merger prior to notifying the CMA, and we also note that the benefits to FDJ of it not requiring a TSA with Spreadex (as discussed further below at paragraphs 5.92 to 5.116) are not captured by this document. Therefore, our view is that FDJ's decision to progress with Spreadex's bid without inviting [REDACTED] back into the process was not due to any perceived lack of credibility of [REDACTED] bid, particularly under a hypothetical scenario where Spreadex had not bid, nor does FDJ's decision to progress with Spreadex undermine the ratings given to [REDACTED] bid in Figure 5.1.
- 5.73 Spreadex also submitted that [REDACTED] 'commitment to proceeding with such an acquisition was limited', on the basis that [REDACTED], and that 'these costs would have remained if [REDACTED] had acquired Sporting Index, which calls into question their motivation for doing the deal'.²⁰⁵ We note however that absent the Merger, [REDACTED] would have been able to acquire the Sporting Index assets included as part of the transaction perimeter, including the sports spread betting technology used by Sporting Index pre-Merger, and given the Parties are the only two providers of online sports spread betting in the UK, our view is that this is a materially different scenario to that of [REDACTED]. Therefore, our view is that [REDACTED] is not relevant to its commitment and capability to complete a transaction acquiring Sporting Index under the hypothetical scenario in which Spreadex had not bid for Sporting Index.

²⁰⁵ Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.10.

- 5.74 Based on the above, we conclude 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 2023 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) 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 2023 Sale Process.

Alternative Bidders' bids

- 5.75 Sporting Group submitted 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.²⁰⁶ However, it submitted 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].²⁰⁷
- 5.76 In our view, a simple comparison of headline bid values between Spreadex and the Alternative Bidders would not take into account the consequential costs (or benefits) associated with different transaction structures. For example, our view is 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 5.94(a)(ii) and 5.94(b)(ii));
 - (b) AlixPartners' December 2022 report prepared for FDJ prior to the 2023 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

²⁰⁶ Third party response to the CMA's RFI.

²⁰⁷ Third party response to the CMA's RFI.

perimeter scenario, Sporting Group ‘would be [redacted]’ compared with a sale involving the [redacted];²⁰⁸ and

- (c) FDJ told us that in relation to restructuring costs as a result of the sale to Spreadex, ‘[r]estructuring costs related to [the] Sporting Index disposal amounted to £[redacted] in FDJ Group accounts (mostly redundancy costs)’ and ‘Specifically, amounts paid in severance amounted to £[redacted]’.²⁰⁹

- 5.77 Spreadex submitted that ‘whichever option FDJ had selected there would have been redundancy costs’, as ‘[redacted] confirmed in its preliminary bid that it did not intend to acquire all Sporting Index employees and possibly only [redacted] employees’, and in Figure 5.1, [redacted] was given [redacted] in FDJ’s assessment of the bids of 23 February 2023. Spreadex therefore submitted that the Provisional Findings overstated the value of such costs in assessing the overall bid value.²¹⁰
- 5.78 While we accept that both of the Alternative Bidders would likely not have acquired all of the B2C-dedicated staff on offer and there would therefore likely have been some redundancy costs associated with the Alternative Bidders’ bids, our view is that the Alternative Bidders would likely have acquired a materially higher number of the B2C-dedicated staff than Spreadex,²¹¹ and therefore this would likely have resulted in materially lower redundancy costs.
- 5.79 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 than 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.²¹²
- 5.80 Therefore, consideration of the Alternative Bidders cannot be excluded on the basis that they had submitted [redacted] bids than Spreadex.
- 5.81 We first note that FDJ and Sporting Group had not considered the liquidation value of Sporting Index, and we have been provided with no evidence that it would have been higher than the bids from the Alternative Bidders:
- (a) In this regard, Sporting Group told us that a liquidation value for Sporting Index had not been prepared or estimated,²¹³ 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

²⁰⁸ Third party response to the CMA’s RFI.

²⁰⁹ FDJ, Response to RFI, question 4(b)(iv).

²¹⁰ Spreadex, [Response to the CMA’s Provisional Findings](#), 30 August 2024, paragraph 3.26.

²¹¹ [redacted] told us that it would have acquired around [redacted] staff from FDJ, source: third party call transcript.

²¹² MAGs, paragraph 3.30.

²¹³ Third party hearing transcript.

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'.²¹⁴

- (b) [REDACTED].²¹⁵ While it is unclear whether the ratings for the Alternative Bidders would have been more positive in the absence of Spreadex's [REDACTED] bid, Sporting Group did not prepare or estimate a liquidation value for Sporting Index, and we have not been provided with any contemporaneous evidence that Sporting Group would have considered [REDACTED] bid of £[REDACTED] million to be below liquidation value.

5.82 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'.²¹⁶ Spreadex further submitted in response to the Provisional Findings that 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', and that a 'valuation of customer lists in the gambling industry can easily be market tested by comparing this with examples'.²¹⁷

5.83 FDJ told us that 'the net book value in FDJ Group accounts (IFRS [International Financial Reporting Standards]) of customer base for B2C was [REDACTED]£ [£[REDACTED]] at closing date', but that '[t]he CMA should carefully consider that over the course of time the sale of operator client lists has become [REDACTED] to prospective purchasers. This is due to General Data Protection Regulation (GDPR) and other regulations requiring the customer to insert their banking details and deposit new funds, which is effectively the biggest drop off point in any acquisition stream. In this context, the majority of client lists are now sold on an affiliate model basis'.²¹⁸ Noting the GDPR and regulatory issues outlined by FDJ in relation to acquiring operator client lists, our view is that the £[REDACTED] net book value of the B2C customer base in FDJ's Group accounts is not relevant to the value of the customer list under a liquidation scenario. We also note that Spreadex had acquired Sporting Index for around £[REDACTED] million, considerably less than £[REDACTED]; and one sports fixed odds provider, who had expressed interest in the Sporting Index fixed odds business, had looked at the Sporting Index fixed odds customer list and it told us that it did not consider

²¹⁴ Third party hearing transcript.

²¹⁵ Third party response to the CMA's RFI.

²¹⁶ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024.

²¹⁷ Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraphs 3.28 and 3.29.

²¹⁸ Third party response to the CMA's RFI, [REDACTED].

this customer list to be particularly valuable, which is why it did not ultimately submit a bid for this customer list.²¹⁹

- 5.84 As set out in paragraph 5.79 above, the MAGs state that for the purpose of determining the counterfactual, the CMA will assess whether ‘there was an alternative purchaser willing to acquire the firm at any price above liquidation value’.²²⁰ We note that the existence and level of a liquidation value would rely on the existence of another purchaser (other than Spreadex) placing value on the liquidated assets, and given that: (a) Sporting Index had not entered into any such liquidation process; and (b) Sporting Group had not prepared or estimated a liquidation value for Sporting Index, we have not been provided with any contemporaneous evidence on what this liquidation value would have been. Given that Sporting Group continued to engage with the Alternative Bidders throughout the sales process based on the bids they submitted, and in the absence of contemporaneous evidence to the contrary, we infer that the Alternative Bidders’ bids were not at a level that would have caused FDJ to question whether the bids were at or below liquidation value. In any event, and in particular given that Sporting Group had not prepared or estimated a liquidation value, it is neither necessary nor appropriate, for the purposes of the counterfactual, for the CMA to engage in speculation or estimation of what the liquidation value would have been.
- 5.85 Notwithstanding the absence of any estimated liquidation value for Sporting Index, in our view there were benefits to FDJ of getting a deal done quickly and the potential longer term economic value associated with each of the Alternative Bidders’ bids. We address this in further detail in paragraphs 5.86 to 5.91 below.
- 5.86 We first note that FDJ told us that it was incurring significant losses from continuing to run the Sporting Index business, and that as part of any economic evaluation of the Alternative Bidder’s bids, it would have considered the benefit of quickly offloading a non-core and loss-making business by completing a deal more quickly.²²¹ Our view is that a simple comparison of headline bid values understates the value to FDJ and Sporting Group of concluding a sale of a non-core and loss-making business.
- 5.87 We also 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].²²² 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

²¹⁹ Third party call note.

²²⁰ MAGs, paragraph 3.30.

²²¹ FDJ and Sporting Group, Remedies call note.

²²² Third party response to the CMA’s RFI.

to be a long term client due to competing interests and Spreadex own capabilities'.²²³

5.88 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;²²⁴ 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.²²⁵

5.89 We note Sporting Group's submission that the need to maintain TSAs with the Alternative Bidders '[REDACTED]',²²⁶ and Spreadex's submission that based on this evidence, Sporting Group maintaining a TSA with the Alternative Bidders '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'.²²⁷ FDJ also told us that a TSA would have needed to be only in the short term to facilitate a sale, as FDJ was not interested in remaining as a spreads B2B provider given the small market, and that the only benefit of the TSA would be to ease the sale of the B2C Business.²²⁸

5.90 On the basis of the evidence from FDJ, our view is that it is unlikely that FDJ would have been looking to enter into a long term TSA with the Alternative Bidders for services specific to sports spread betting, as the evidence is that this would not have been in line with FDJ's long term business plans. However, we note that there are services offered by Sporting Group that are not specific to sports spread betting, which an Alternative Bidder could have utilised. For example, FDJ told us that Sporting Index's pre-Merger spread pricing was derived from fixed odds pricing and market data from the fixed odds market,²²⁹ and as set out in paragraphs 2.8 to 2.10 above, we note that [REDACTED]. We also note that Sporting Group is still an active B2B supplier in the sports fixed odds betting market, and we have not been provided with evidence that this was not part of Sporting Group's long term plans at the time of the 2023 Sale Process. Therefore, our view is that, in addition to the weight placed on [REDACTED] in FDJ's internal documents (as discussed above), Sporting Group would have taken this [REDACTED] into consideration as part of

²²³ Third party response to the CMA's RFI.

²²⁴ Third party call note.

²²⁵ Third party response to the CMA's RFI.

²²⁶ Third party response to the CMA's RFI.

²²⁷ Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.25.

²²⁸ Call note, FDJ and Sporting Group.

²²⁹ Call note, FDJ and Sporting Group.

assessing the Alternative Bidders' bids. There is no evidence that this [X] would not have been regarded as a material benefit.

- 5.91 Taking the above evidence in the round, we conclude that given the benefits to FDJ of getting a deal done quickly and 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.

TSA's required by the Alternative Bidders

- 5.92 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:²³⁰
- (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';
 - (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'.
- 5.93 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',²³¹ 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 £[X] million a year. Spreadex based this figure on Spreadex's own FY24 cost base for its 'Sports' (spread betting) business line of around £[X] million (including staff and IT costs) plus around £[X] million of '[X]'. Spreadex noted that while Sporting Index's FY22 total cost base was around £18 million²³² (split £[X] million in cost of sales and £[X] 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

²³⁰ Spreadex, Hearing follow up response, 9 July 2024, page 1.

²³¹ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024.

²³² Sporting Index, '[Sporting Index Limited Annual report and financial statements for the year ended 31 December 2022](#)' (last accessed on 18 November 2024)).

reconciled with the limited revenue available in the declining spread betting segment of the wider sports betting market'.²³³

5.94 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;²³⁴ and the annual costs presented in the [redacted] Document²³⁵ and in AlixPartners' analysis of the 'pro forma' costs for the standalone B2C Business ([redacted]).²³⁶ 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 costs (down to EBITDA) of around £[redacted] million.²³⁷ 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.²³⁸ 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.²³⁹
- (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'.²⁴⁰

²³³ Spreadex, Hearing follow up response, 9 July 2024, page 2.

²³⁴ Sporting Index, [Sporting Index Limited Annual report and financial statements for the year ended 31 December 2022](#) (last accessed on 18 November 2024).

²³⁵ Spreadex, Response to the Enquiry Letter, 14 December 2023, Annex 31.

²³⁶ Third party response to the CMA's RFI.

²³⁷ Third party response to the CMA's s109 notice.

²³⁸ Third party response to the CMA's s109 notice.

²³⁹ Third party response to the CMA's s109 notice.

²⁴⁰ Third party response to the CMA's s109 notice.

- (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.^{241, 242}
 - (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] [[REDACTED]] would take the necessary staff (to be decided) to manage the day-to-day operations of the business, and dedicated tech-support to manage day to day support and possible short term tech development. [REDACTED] [[REDACTED]] would inherit all TUPE costs on migrated/employed staff’, and ‘Sporting Group to supply: [REDACTED] for 1 year [and] [REDACTED] for 1 year’.²⁴³

5.95 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]’.²⁴⁴
- (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]’.²⁴⁵

5.96 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

²⁴¹ Third party response to the CMA’s s109 notice.

²⁴² Third party response to the CMA’s s109 notice.

²⁴³ Third party response to the CMA’s s109 notice.

²⁴⁴ Spreadex, Response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103.

²⁴⁵ Spreadex, Response to the Enquiry Letter, 14 December 2023, question 22, email 103.

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.

5.97 In response to the Provisional Findings, Spreadex submitted that weight placed on the £[redacted] million cost figure presented to [redacted], and the evidence from AlixPartners' on costs for the standalone B2C Business ([redacted]) 'ignores AlixPartners and FDJ's incentive to present a more favourable picture of the costs to attract higher offers and/or more bids', and that the figures presented were '[redacted] the actual costs reported for FY22 in Sporting Index's annual accounts of around £18 million... 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)'. Spreadex added 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' and so 'the Sporting Index Limited statutory accounts will represent the relevant B2C Business costs'. It also submitted that the costs of operating Sporting Index are likely to be significantly higher than these reported costs, given 'these costs (excluding costs of sales) will have been shared with another legal entity' due to 'the synergies with the B2B Business available to the B2C Business while under joint ownership of FDJ', and after acquiring Sporting Index, the 'Alternative Bidders would then have had to undertake significant investments in the platform in order to viably compete with Spreadex'.²⁴⁶

5.98 We address Sporting Index's cost base under the ownership of the Alternative Bidders as part of our assessment of the Alternative Bidders' plans for the B2C

²⁴⁶ Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.14.

Business in paragraphs 5.117 to 5.129 below, but in relation to Spreadex's submissions above, we note Sporting Group's comment 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'.²⁴⁷ We have not been provided with any contemporaneous evidence that the pre-Merger costs for running the B2C Business would have been closer to the figure outlined in the FY22 Sporting Index accounts, or materially higher than the costs presented to [redacted], and in any case we note that the figure in Sporting Index's FY22 accounts would be significantly lower than Spreadex's cost base. We have also not been provided with any contemporaneous evidence that the costs outlined in Sporting Index's FY22 accounts are likely to be understated, or that 'significant investments in the platform' would be required for the Alternative Bidders' to carry on the Sporting Index business as a competitor to Spreadex.

5.99 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.²⁴⁸ However, we have not been provided with any 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.

5.100 We also consider that, as set out in paragraph 5.96, 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.

5.101 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]',²⁴⁹ 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, we have not been provided with any 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

²⁴⁷ Third party hearing transcript.

²⁴⁸ Spreadex, Main party hearing transcript, 4 July 2024, page 8, lines 4-16. Spreadex, Hearing follow up response, 9 July 2024, page 8.

²⁴⁹ Third party response to the CMA's RFI.

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.²⁵⁰ We note however that the evaluation had not been carried out and the likely outcome of such evaluation remains uncertain to Sporting Group.

- 5.102 Following our Provisional Findings, Sporting Group told us that it had de-commissioned its spread pricing models following the Merger, as this was no longer required following the disposal of its spread betting activity and the lack of any TSA with Spreadex. Sporting Group added that it could not imagine an economic case to 'bring that back online', particularly given that it no longer has the appropriate staff, and decommissioning this functionality [REDACTED] for the remaining B2B Business.²⁵¹ FDJ told us that a TSA would have needed to be only in the short term to facilitate a sale, as FDJ was 'not interested in remaining as a spreads B2B provider given the small market', and that it was ready to compare the economic option of a TSA with the Alternative Bidders versus closing Sporting Index down because the TSA may not have been affordable, but it reiterated that it had not conducted any such evaluation.²⁵²
- 5.103 Notwithstanding this new evidence from FDJ and Sporting Group, it is still the case that Sporting Group had not carried out an economic evaluation of a TSA with the Alternative Bidders. We have not been provided with any contemporaneous evidence on the likely outcome of any evaluation exercise, nor any evidence that Sporting Group would not have been able to agree on a TSA with the Alternative Bidders. We also note that Sporting Group's decision to de-commission its spread pricing was taken following the Merger, on the basis that this was no longer required, and we have not been provided with any evidence that it planned to do so at the time of the Sporting Index sales process. On the contrary, we note that Sporting Group continued to engage with the Alternative Bidders on the terms and costs of a TSA throughout the sales process, prior to deciding to progress with Spreadex's bid.
- 5.104 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.²⁵³ 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,²⁵⁴ and while the Former [REDACTED] MD told us

²⁵⁰ Third party hearing transcript.

²⁵¹ Call note, Sporting Group.

²⁵² Call note, FDJ and Sporting Group.

²⁵³ Third party response to the CMA's RFI.

²⁵⁴ Third party call note.

that the TSA was not an aspect of the transaction that had been considered in detail by [REDACTED].²⁵⁵ [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.²⁵⁶

- 5.105 We have also considered whether the terms of the TSA would have rendered the Alternative Bidders’ bids unviable, as Spreadex has submitted.
- 5.106 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’.²⁵⁷ 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]’.²⁵⁸ We note from [REDACTED] submission that since it was Sporting Group (and not [REDACTED]) who had initially proposed a TSA for two to three years with [REDACTED], 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.²⁵⁹ 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 Atlas spread betting software and had the option to acquire certain additional and necessary B2C applications²⁶⁰ (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 [REDACTED].²⁶¹
- 5.107 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’.^{262, 263}
- 5.108 In this regard, we note the following:
- (a) The Former [REDACTED] MD told us that while [REDACTED] 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 [REDACTED] had not received the details of the

²⁵⁵ Third party call note.

²⁵⁶ Third party response to the CMA’s s109 notice.

²⁵⁷ Spreadex, Response to the CMA’s Annotated Issues Statement and accompanying Working Papers, 1 July 2024.

²⁵⁸ Spreadex, Main party hearing transcript, 4 July 2024, pages 62-63.

²⁵⁹ Third party call note.

²⁶⁰ Spreadex, Response to the Enquiry Letter, 14 December 2023, Annex 32.

²⁶¹ Third party response to the CMA’s RFI.

²⁶² Third party response to the CMA’s RFI.

²⁶³ Third party response to the CMA’s RFI.

TSA fees. However, the Former [REDACTED] 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 [REDACTED] MD told us that if [REDACTED] had successfully 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.²⁶⁴

- (b) [REDACTED] told us that Sporting Group had initially quoted an indicative annual TSA fee of around £[REDACTED] 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 £[REDACTED] million. [REDACTED] told us that it had factored this updated TSA fee into its valuation when it confirmed its £[REDACTED] million bid on 24 March 2023.²⁶⁵ [REDACTED] told us that despite this late increase in the TSA fee, [REDACTED] remained committed to completing the deal. [REDACTED] 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.²⁶⁶ [REDACTED] 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 [REDACTED] on the TSA.²⁶⁷

5.109 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 [REDACTED] or [REDACTED] would have been much ‘more complex and longer’, FDJ told us that it had not developed the TSA services it would have offered [REDACTED] or [REDACTED], but instead provided them with ‘some preliminary task listing and cost assessment to measure the magnitude of it’.²⁶⁸ 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.²⁶⁹

5.110 Based on a document sent by Sporting Group to [REDACTED] covering the scope of the TSA, the contemplated TSA would cover the following four broad service categories:

- (a) [REDACTED];

²⁶⁴ Third party call note.

²⁶⁵ Third party call note.

²⁶⁶ Third party call note.

²⁶⁷ Third party call note.

²⁶⁸ Third party response to the CMA’s RFI.

²⁶⁹ Third party call note.

- (b) Technology services, eg services relating to the spread betting platform (Atlas) and the [REDACTED];
- (c) [REDACTED]; and
- (d) [REDACTED].²⁷⁰
- (e) Further details on each TSA service category are provided in Appendix D.

5.111 We also note that the [REDACTED] Document (which [REDACTED] [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:^{271, 272}

- (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 – ‘Atlas’ – 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’.

5.112 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 Spreadex²⁷³ and required the Atlas spread betting technology (which Spreadex acquired but did not require given the availability of its own spread betting technology²⁷⁴), we would expect the scope and terms of any TSA offered to each Alternative Bidder to be different from those offered to Spreadex. In our view, 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.

5.113 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

²⁷⁰ Third party response to the CMA’s RFI.

²⁷¹ Spreadex, Response to the Enquiry Letter, 14 December 2023, Annex 31.

²⁷² Third party response to the CMA’s RFI.

²⁷³ 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) (CMA, [Derogation Letter](#), 15 January 2024).

²⁷⁴ In this regard, we note that Spreadex told us that post-Merger, the Atlas 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).

outlined TSA services it would not require.²⁷⁵ [X] also told us that as it already had some [X], this would reduce the scope and duration of any TSA requirement. For example, in relation to the TSA service category, '[X]' (see also Appendix D), [X] told us that there were three 'types' of services that combined to form the Sporting Index offering:²⁷⁶

- (i) Those sports for which Sporting Index was able to offer independently, including horse and greyhound racing for example. [X] would have acquired the capability for offering these sports.
 - (ii) Those sports which Sporting Index consumed from Sporting Solutions, which were also available from [X]. These included most major, global sports – football, tennis, basketball, etc. [X] told us that it would have replaced Sporting Solutions as the supplier of these sports for Sporting Index. However, for business continuity, [X] told us that until [X] 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 [X]. These included sports such as Cricket and Rugby. [X] told us that these sports would have formed the main sports required under the ongoing pricing services of the TSA, until [X] could supply them.
- (b) In relation to [X]:
- (i) [X] told us that [X] used feed providers to create pricing and employees from its team in [X] to price and create spreads manually for some '[sports] markets'. It also told us that [X] and [X] used different 'tech houses' to develop their respective platforms, with [X] using [X], and [X] using [X].^{277, 278} [X] holds an [X]% stake in [X].²⁷⁹
 - (ii) The Former [X] 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 [X] commercial relationship with Sporting Solutions [X].²⁸⁰

²⁷⁵ Third party call note.

²⁷⁶ Third party response to the CMA's RFI.

²⁷⁷ See also [X] and [X].

²⁷⁸ Third party call note.

²⁷⁹ Third party response to the CMA's RFI.

²⁸⁰ Third party call note.

- 5.114 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'.²⁸¹ 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 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 [X] against the other strategic options [X]', or 'some kind of restructure of the business'.²⁸² 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.
- 5.115 In response to the Provisional Findings, Spreadex submitted that the TSA fee it was offered 'was not comparable with any cost estimate provided to another bidder', as Spreadex was offered an 'advanced TSA, which included costings', while the Alternative Bidders were only given 'some preliminary task listing and cost assessment to measure the magnitude of it'. Spreadex submitted that given FDJ's comment that a TSA with the Alternative Bidders would have been 'more complex and longer' than a TSA with Spreadex, it was 'almost certain therefore that if FDJ had entered into TSA discussions, the final fees would have been greater than the initial costings offered'.²⁸³ As noted in paragraph 5.112 above, in our view, the scope and costs of any TSA would have been tailored to the specific needs of each bidder, and we have not been provided with any contemporaneous evidence that the cost of a TSA with [X] would have been materially higher than the cost figure that was presented to [X].
- 5.116 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 2023 Sale Process, Sporting Group was prepared to be flexible in relation to the scope of the TSA services required by potential purchasers (see paragraph 5.111). Taking the evidence in the round, we conclude 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

²⁸¹ Third party response to the CMA's RFI.

²⁸² Third party hearing transcript.

²⁸³ Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.16.

Alternative Bidders and that both sides would have been incentivised to come to such an agreement. We also note that Sporting Group did not engage in a detailed discussion on the scope, duration and pricing of a TSA with the Alternative Bidders, and we have not been provided with any contemporaneous evidence that Sporting Group would not have been able to reach an agreement with one of the Alternative Bidders on a TSA.

Alternative Bidders' plans for the B2C Business

- 5.117 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.²⁸⁴
- 5.118 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.²⁸⁵ 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';²⁸⁶
 - (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;²⁸⁷ 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].²⁸⁸

²⁸⁴ MAGs, paragraph 3.30.

²⁸⁵ Third party call note.

²⁸⁶ Third party call note.

²⁸⁷ Third party call note.

²⁸⁸ Third party call note.

- (b) [X] told us that it had submitted a bid to purchase Sporting Index as it believed that it could combine its current [X] expertise with Sporting Index's strong brand to develop a product to compete in the UK B2C sports spread betting segment.²⁸⁹ [X] 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'. [X] 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'. [X] told us that [X] had 'a lot of expertise in this area of understanding risk and setting strong prices'.²⁹⁰

5.119 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) [X] told us that it believed that Sporting Index's profitability had been 'negatively impacted by [X] 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 [X].²⁹¹
- (b) Similarly, the Former [X] 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 failings within the Sporting Index business that could 'devalue' FDJ and undermine its US entry plans.²⁹²
- (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).²⁹³

5.120 In response to the Provisional Findings, Spreadex submitted that using the 'best-case' figures provided to [X], based on the £[X] million annual Sporting Index cost base and £[X] million TSA fee presented to [X], the 'costs of running Sporting Index would still exceed the FY2022 revenues by around £[X]', and so 'even in the most favourable light, [X] would still have had to almost [X] Sporting Index's revenues to break even'.²⁹⁴

²⁸⁹ Third party call note.

²⁹⁰ Third party call note.

²⁹¹ Third party call note.

²⁹² Third party call note.

²⁹³ Third party call note.

²⁹⁴ Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.17.

- 5.121 In relation to the £[redacted] million annual Sporting Index cost base presented to [redacted], we note that this was a Sporting Group estimate based on the business on offer,²⁹⁵ and noting (i) the potential cost savings identified by [redacted] above, and (ii) its submissions that it would have acquired around [redacted] staff from FDJ,²⁹⁶ we have not been provided with any contemporaneous evidence on what Sporting Index's cost base would have been under [redacted] ownership. We acknowledge that a £[redacted] million TSA fee makes up a significant proportion of Sporting Index's FY22 revenues, and it would likely have continued to do so under [redacted] ownership for the duration of the TSA. However, we note that [redacted] had identified potential cost savings, and in any case, it is our view is that [redacted] could have been willing to accept losses over the short/mid-term to generate returns in the longer term as it moved away from a TSA. Therefore, our view is that these figures do not cast material doubt over [redacted] ability to operate the B2C Business as a competitor to Spreadex.
- 5.122 Sporting Group told us that its 'primary concern' in relation to the Alternative Bidders was that neither [redacted] nor [redacted] were currently FCA-regulated.²⁹⁷ 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 [redacted] referring to its '[redacted]' as a factor in its ability to compete with Spreadex. Spreadex submitted that it could 'be inferred from this that [redacted] strategy would likely have been to [redacted], if it had been successful in acquiring Sporting Index'. It added that '[redacted] proposed approach to running Sporting Index seems similarly to involve [redacted]'.²⁹⁸
- 5.123 As we set out in paragraph 5.65(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'.²⁹⁹ 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

²⁹⁵ Third party response to the CMA's s109 notice.

²⁹⁶ Third party call transcript.

²⁹⁷ Third party hearing transcript.

²⁹⁸ 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 [redacted]. Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024. See further, Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraph 3.21.

²⁹⁹ Third party call note.

likely influence that the acquirer will have over the UK FCA regulated firm and disregard the economic needs of the market.^{300, 301}

- 5.124 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 5.123 above. As we set out in paragraph 5.96 above, in our view, the Alternative Bidders were well-informed bidders each of whom would have considered its prospects for obtaining the regulatory approvals, including the costs required to obtain such regulatory approvals. We have not been provided with any 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 2023 Sale Process, and we have not been provided with any evidence that the Alternative Bidders would not have received regulatory approval from the FCA. We also note that there were [REDACTED] B2C-dedicated employees included as part of the transaction perimeter, including [REDACTED] employees working in regulation and compliance,³⁰² and it is likely that having appropriate personnel in place would have been helpful in facilitating FCA approval.
- 5.125 We also note that in relation to the Alternative Bidders' lack of an FCA licence, FDJ submitted that 'its 'willingness to sell Sporting Index to any of the alternative bidders would not have been impacted, as long as the purchaser would have made clear its intention to enter into the licensing process as well as its ability to obtain it. However, if the purchaser was not regulated and had no intention to enter the licencing process, it is very likely that FDJ would not have sold them Sporting Index, as it is not in FDJ's values to facilitate non-regulated gambling'.³⁰³ We have not been provided with any evidence that the Alternative Bidders would not have been willing and able to obtain an FCA licence, and so our view is that the Alternative Bidders' lack of an FCA licence at that time would not have prevented FDJ from looking to complete a sale to an Alternative Bidder.
- 5.126 Based on the above, we conclude that the B2C Business would have been operated as a competitor to Spreadex if it had been acquired by an Alternative Bidder.³⁰⁴
- 5.127 In the Provisional Findings, our provisional view was that the Alternative Purchaser Condition had not been met, and we provisionally concluded that in the absence of the Merger, the sale of the B2C Business to an Alternative Bidder or (as part of a

³⁰⁰ [Sections 178](#) and [185](#) of the FSMA.

³⁰¹ Third party response to the CMA's RFI.

³⁰² Spreadex, Response to s109 notice 01, 3 May 2024, attachment 4.1.2.

³⁰³ FDJ, Response to the CMA's RFI, question 4. [REDACTED].

³⁰⁴ [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.

broader transaction together with the B2B Business) another purchaser, was the most likely scenario and therefore the appropriate counterfactual.

- 5.128 Following the Provisional Findings, we received evidence from FDJ that there was no link between the decision to sell the B2B Business and the timing of the closing of the B2C Business sale, and that the decision to sell the B2B Business was not linked to the Sporting Index sales process. FDJ also told us that if it came across a party willing to take on both the B2C and the B2B businesses as a whole, then it would have considered this, but that this was 'very theoretical' because the businesses were 'clearly' very different and attracted very different bidders.³⁰⁵
- 5.129 On the basis of this evidence, we conclude that a combined sale of the B2B Business and B2C Business would have been very unlikely.

Conclusion on whether the Alternative Purchaser Condition is met

- 5.130 Based on our assessment of the Alternative Bidders' bids and the other considerations above and taking the evidence in the round, 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, noting in particular that:
- (a) the Alternative Bidders were each committed to completing a purchase of the B2C Business;
 - (b) it is not appropriate to rule out either of the Alternative Bidders' bids on the basis of their bid values;
 - (c) we have not been provided with any contemporaneous evidence that Sporting Group would not have been able to reach an agreement with one of the Alternative Bidders regarding a TSA; and
 - (d) the B2C Business would have been operated as a competitor to Spreadex if it had been acquired by an Alternative Bidder.
- 5.131 We therefore conclude that the Alternative Purchaser Condition is not met.
- 5.132 Since both the Alternative Purchaser Condition and the Exit Condition must be met in order for us to accept an 'exiting firm' scenario, and we have concluded that the Alternative Purchaser Condition has not been met, it is not necessary for us to consider in more detail and reach a conclusion on whether the Exit Condition has been met beyond the analysis set out in paragraphs 5.46 to 5.54 above.

³⁰⁵ Call note, FDJ and Sporting Group.

Conclusion on the counterfactual

5.133 Based on our assessment above, we conclude that the appropriate counterfactual is where the B2C Business, under the ownership of an Alternative Bidder, would continue to compete in the supply of licensed online sports spread betting services, broadly in line with the pre-Merger conditions of competition.

6. HORIZONTAL UNILATERAL EFFECTS

Introduction

- 6.1 This Chapter sets out our 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) Data provided by Spreadex;
 - (c) Internal documents from FDJ (the seller);
 - (d) Views from the Parties’ highest spending customers; and
 - (e) Views from sports fixed odds betting providers, financial spread betting providers and potential entrants to spread betting in the UK.³⁰⁶
- 6.3 By way of introduction, and as set out in Chapter 3, Parties, Merger and Merger Rationale, the Parties overlap in the supply of sports fixed odds betting products and sports spread betting products.³⁰⁷ 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 6.96 below) given the Parties’ relatively minor share of supply of sports fixed odds betting and the number of alternative (and in some cases larger) providers remaining, our 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 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

³⁰⁶ Spreadex submitted that a number of the third parties that the CMA gathered views from had an interest in the outcome of the CMA’s review, and that it was not clear that the CMA had taken into account the more supportive feedback provided nor the motivation of the respondents when weighing up evidence (Spreadex, [Response to the CMA’s Provisional Findings](#), 30 August 2024, paragraph 4.12). The CMA weighs the evidence it receives in the round and will not normally consider specific pieces of evidence in isolation ([MAGs](#), paragraphs 2.23 and 2.28); moreover, the CMA is experienced in assessing the incentives of parties (both third parties and merger parties) when considering the weight to attach to their evidence.

³⁰⁷ In this Final 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.

services'.³⁰⁸ The relevant market is defined by identifying the most significant competitive alternatives available to customers of the merging parties.³⁰⁹ An SLC can affect the whole or part of a market or markets.³¹⁰

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.³¹¹

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:

³⁰⁸ [Section 35\(1\)\(b\)](#) of the Act.

³⁰⁹ [MAGs](#), paragraph 9.2.

³¹⁰ [MAGs](#), paragraph 9.1.

³¹¹ [MAGs](#), paragraph 9.4.

- (a) the Parties' views;
- (b) a natural experiment submitted by Spreadex, based on [REDACTED];
- (c) evidence from internal documents;
- (d) third party views; and
- (e) our assessment of whether online sports fixed odds betting products should be included in the product market.

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.³¹²
- 6.11 In particular, Spreadex submitted the following:³¹³
- (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, [REDACTED] [under half] of the total business value (ie revenue to Spreadex after payouts) comes from fixed odds and [REDACTED] [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;³¹⁴
 - (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 6.126 and 6.127).

³¹² Spreadex Letter to the Inquiry Group, 25 April 2024, page 3.

³¹³ Spreadex Letter to the Inquiry Group, 25 April 2024, page 3

³¹⁴ 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).

- 6.13 We discuss these points below in our assessment at paragraphs 6.37 to 6.45.
- 6.14 Spreadex also submitted that sports spread betting customers face greater transaction costs³¹⁵ 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.³¹⁶

[REDACTED] as a natural experiment

- 6.15 Spreadex submitted that a natural experiment based on [REDACTED] demonstrated that its customers substitute between sports spread betting and sports fixed odds betting.³¹⁷
- 6.16 [REDACTED].³¹⁸ [REDACTED].
- 6.17 [REDACTED].³¹⁹ [REDACTED].³²⁰
- 6.18 Spreadex submitted that this was strong evidence of substitution between sports fixed odds betting and sports spread betting, and that [REDACTED].³²¹
- 6.19 We note that this experiment provides some evidence of substitution between sports fixed odds betting and sports spread betting. One strength of the natural experiment is its basis in actual rather than hypothetical customer behaviour. However, several other considerations are relevant to the proper interpretation of this evidence:
- (a) The natural experiment demonstrated substitution from sports fixed odds betting to sports spread betting. Substitution from sports spread betting to sports fixed odds betting is not necessarily symmetrical. We note that [REDACTED] fell by only [REDACTED].
 - (b) [REDACTED] prevent a customer from using their preferred service, and therefore lead to higher switching levels than would be expected from a small but significant non-transitory change in price or quality.³²² In this context, the shift in

³¹⁵ Transaction costs are referred to in this Final 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.

³¹⁶ 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).

³¹⁷ Spreadex, [Response to the CMA's Provisional Findings, Annex 1](#), 30 August 2024, Annex 1.

³¹⁸ Spreadex, [Response to the CMA's Provisional Findings, Annex 1](#) 30 August 2024, Annex 1, page 1.

³¹⁹ Spreadex, [Response to the CMA's Provisional Findings, Annex 1](#) , 30 August 2024, Annex 1, page 6.

³²⁰ In our view, this figure is a better measure of the impact on Spreadex's incentives than the increase in spread betting by [REDACTED] customers, which only measures the behaviour of customers who had carried out both spread betting and fixed odds betting in the 30 days prior to [REDACTED].

³²¹ Spreadex, [Response to the CMA's Provisional Findings, Annex 1](#) 30 August 2024, Annex 1, page 6. Specifically, Spreadex submitted that (i) not all clients who [REDACTED] had already activated spread betting, and these clients will have faced friction, (ii) natural churn will have meant some clients left during their restriction period, (iii) some clients will have [REDACTED], limiting their ability to switch to spread betting, and (iv) in roughly a quarter of cases [REDACTED] reducing their activity.

³²² [MAGs](#), paragraph 9.7.

demand from sports fixed odds betting to sports spread betting which has been demonstrated by the experiment is not particularly large.

- (c) Customers who have already signed up to Spreadex for sports fixed odds betting may face lower friction in switching to a Spreadex sports spread betting product than to alternative providers (and vice versa, the customers of alternative providers may face more friction in switching to a Spreadex product).³²³ Therefore this measure of short-term diversion is likely to be lower than long-term diversion would be to different sports fixed odds betting providers.
- (d) Customers facing [redacted] will not necessarily behave in the same way as those not facing [redacted], as they have been identified as being [redacted].

6.20 Overall, our view is that the natural experiment does not demonstrate that there is a strong constraint from sports fixed odds betting on sports spread betting.

Internal documents

6.21 We have reviewed over 300 internal documents from Spreadex and 45 internal documents from FDJ for evidence of substitutability between sports spread betting and sports fixed odds betting.

6.22 Spreadex submitted that it does not produce many internal documents in its day-to-day business.³²⁴ 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.³²⁵

- (a) One of Spreadex's sports trading managers stated '[redacted]'.
(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]'.

³²³ For example, they may not need to set up a new account, provide personal data etc.

³²⁴ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024, paragraph 4.2.

³²⁵ 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.

(c) Spreadex's CFO stated '[REDACTED]'.

- 6.23 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.³²⁶ Spreadex also submitted that the CMA had disregarded the context of this document (namely, a possible purchase of Sporting Index rather than day-to-day business) and had unreasonably discounted other Spreadex internal documents, which show Spreadex assessing and responding to the behaviours of fixed odds providers.³²⁷ 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 and the impact of the Merger.
- 6.24 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.³²⁸ Similarly, in March 2023 a presentation to Spreadex's board compared its payment options to fixed odds competitors.³²⁹ Although this is evidence that some aspects of Spreadex's sports spread betting business (ie its user interface and payment options) face some constraint from fixed odds competitors, it is also consistent with competition between Spreadex's fixed odds business and fixed odds competitors, and does not demonstrate that sports fixed odds betting and sports spread betting compete closely.
- 6.25 Spreadex's internal documents describe ways in which spread betting is distinct from fixed odds betting. For example, board meeting minutes describe a '[REDACTED]'.³³⁰ This is evidence of low demand-side substitution.
- 6.26 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].³³¹ The same document described the sports fixed odds betting 'market' as 'highly competitive' (without applying the same description to sports spread betting).³³²
- 6.27 Overall, we conclude that the Parties' internal documents show that:

³²⁶ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024, paragraph 4.3.2.

³²⁷ Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraphs 4.7-4.11.

³²⁸ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 24, Annexes 24.4, 24.5 and 24.7.

³²⁹ Spreadex, Response to the Enquiry Letter, 14 December 2023, Annex 29, slide 13.

³³⁰ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, Annex 43.5.

³³¹ Third party response to the CMA's RFI.

³³² Third party response to the CMA's RFI.

- (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

- 6.28 We sent a questionnaire to the Parties' customers who collectively accounted for around half of their sports spread betting revenue.³³³ 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 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.³³⁴
- 6.29 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

³³³ 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 [X] customers, who collectively accounted for around 50% of the Parties' sports spread betting revenue. We note that we received 33 responses (amounting to a [X] [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, it is our view that the views of the Parties' highest spending customers are particularly relevant to the Parties' incentives to compete, and it is therefore our view that the responses are 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 view is that the response rate ([X] [20-30%]) is not particularly 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). Contrary to Spreadex's submission (Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, page 13), our view is that it was not irrational for the CMA to have chosen not to conduct a customer survey, given our assessment of the likely costs and benefits of such a survey in this case. As set out in the MAGs, there is no set hierarchy between quantitative evidence, such as consumer surveys or statistical or econometric analysis, and qualitative evidence, such as internal documents or the statements or conduct of market participants (MAGs, paragraph 2.25); and the CMA 'may' review firms' internal documents and 'might' gather evidence from customer surveys (MAGs, paragraph 4.13).

³³⁴ Customer responses to our questionnaire.

of markets' and that it permits greater leverage.³³⁵ Some customers simply said that they prefer spread betting.

6.30 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.³³⁶

6.31 We also consider that customers' comments on closeness of competition and the effect of the Merger (see paragraphs 6.112(c) to 6.115 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

6.32 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 responses,³³⁷ two said that customers would not switch³³⁸ and one said that customers would switch to sports fixed odds betting.³³⁹

6.33 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.³⁴⁰ 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.

³³⁵ Customer responses to our questionnaire.

³³⁶ Customer responses to our questionnaire.

³³⁷ Third party responses to the CMA's RFI.

³³⁸ Third party responses to the CMA's RFI.

³³⁹ Third party response to the CMA's RFI.

³⁴⁰ Third party responses to the CMA's RFI.

It said that customer needs were different for the two types of products and ‘customers’ approach to risk was different’.³⁴¹

- (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.³⁴²
- (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.³⁴³
- (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.³⁴⁴
- (e) Another fixed odds betting provider described sports spread betting as ‘a different type of customer offering’ which ‘does not impact fixed odds betting’.³⁴⁵
- (f) FDJ submitted that sports spread betting attracted a niche of very high value customers.³⁴⁶ 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’.³⁴⁷
- (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

³⁴¹ Third party call note.

³⁴² Third party call note.

³⁴³ 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.

³⁴⁴ Third party responses to the CMA’s RFI.

³⁴⁵ Third party response to the CMA’s RFI.

³⁴⁶ Third party response to the CMA’s RFI.

³⁴⁷ Third party response to the CMA’s RFI.

sports spread betting customers were generally affluent, self-made, and enjoyed taking risks.³⁴⁸

- (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.³⁴⁹
- (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.³⁵⁰
- (j) Several third parties considered that sports spread betting was a 'niche' market in comparison to sports fixed odds betting.³⁵¹

Supply-side

- 6.34 Sports fixed odds betting providers (other than the Parties) told us that they have not considered (or considered materially) supplying sports spread betting products.³⁵² Sports fixed odds betting providers submitted that even if the width of spreads increased by 5% (a SSNIP), this would not be an incentive to supply sports spread betting products.³⁵³
- 6.35 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;³⁵⁴
 - (b) Technology;³⁵⁵

³⁴⁸ Third party call note.

³⁴⁹ Third party call note.

³⁵⁰ Third party call note.

³⁵¹ Third party responses to the CMA's RFI and third party call note.

³⁵² Third party responses to the CMA's RFI.

³⁵³ Third party responses to the CMA's RFI.

³⁵⁴ Third party responses to the CMA's RFI.

³⁵⁵ Third party responses to the CMA's RFI.

(c) Brand awareness;³⁵⁶ and

(d) An FCA license.³⁵⁷

6.36 See Chapter 7, Countervailing Factors, particularly the section on entry and expansion, for further detail.

Our assessment of online sports fixed odds betting

6.37 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.³⁵⁸ Customers also explained a variety of other factors which they consider to be advantages of sports spread betting over sports fixed odds betting. In our view, 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.

6.38 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,³⁵⁹ and the wider range of ‘sports markets’ available in sports spread betting). Customer responses show that some customers have demand for 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.

6.39 In addition, a [✂] 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).

³⁵⁶ Third party responses to the CMA’s RFI.

³⁵⁷ Third party responses to the CMA’s RFI.

³⁵⁸ Spreadex submitted that the extent to which fixed odds bets can replicate spread bet outcomes is not determinative as to the substitutability of the products (Spreadex, [Response to the CMA’s Provisional Findings](#), 30 August 2024, page 13). We note that it is not determinative, but consider it is relevant evidence in the context of Spreadex’s submission that fixed odds bets and spread bets can achieve the same outcomes for customers.

³⁵⁹ 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 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.

- 6.40 In our 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.
- 6.41 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.
- 6.42 As described in paragraphs 6.142 to 6.150, our 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.
- 6.43 Spreadex's natural experiment based on [REDACTED], though imperfect, provides evidence that customers substitute between sports fixed odds betting and sports spread betting under some circumstances. However, it primarily provides evidence on switching from sports fixed odds betting to sports spread betting, whereas the focus of our investigation is on constraints on sports spread betting.
- 6.44 Overall, we conclude 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.
- 6.45 On the basis of the evidence, we conclude 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

- 6.46 We have also gathered evidence from:
- (a) customers, and

(b) financial spread betting providers

(c) to assess whether financial spread betting providers should be considered in the same product market as sports spread betting providers.³⁶⁰

6.47 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.

6.48 We gathered evidence from three financial spread betting providers who all submitted that they did not compete with sports spread betting providers.³⁶¹ 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.³⁶²

6.49 We have not been provided with any evidence in the Parties' internal documents that financial spread betting providers exert any competitive constraint on sports spread betting providers.

6.50 The Parties have not submitted that they compete with financial spread betting providers.

6.51 On the basis of the evidence, we conclude 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

6.52 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.

6.53 The Parties submitted that sports spread betting providers offering services into the UK without an FCA licence operate in the same product market.³⁶³

6.54 On the demand-side:

³⁶⁰ Financial spread betting is a form of financial leveraged trading.

³⁶¹ Third party responses to the CMA's RFI.

³⁶² Third party responses to the CMA's RFI.

³⁶³ Spreadex, response to the CMA's RFI1, 10 January 2024, question 2(a).

- (a) Customers concerned about the Merger³⁶⁴ submitted that the inability of unlicensed sports spread betting providers to solicit UK customers, and the lack of customer protection offered, meant that unlicensed sports spread betting providers were not credible alternatives to licensed sports spread betting providers.³⁶⁵
- (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.

6.55 We have not been provided with any evidence in the Parties' internal documents that unlicensed sports spread betting providers exert any competitive constraint on licensed sports spread betting providers.

6.56 On the supply-side, FCA regulations prohibit unlicensed sports spread betting providers from actively soliciting customers in the UK.³⁶⁶ 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).

6.57 On the basis of the evidence, we conclude 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

6.58 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.³⁶⁷ 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).³⁶⁸ However, the majority of the Parties' customers are located in the UK³⁶⁹ and the regulation of sports spread betting differs across jurisdictions.

6.59 The CMA has previously considered that the relevant geographic market in relation to various segments within online gambling is the UK, given that providers

³⁶⁴ 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.

³⁶⁵ Concerned customer emails [redacted].

³⁶⁶ 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).

³⁶⁷ Spreadex, Briefing Paper, 13 July 2023, paragraph 3.4 and Spreadex, Response to the Enquiry Letter, 14 December 2023, question 18.

³⁶⁸ Spreadex, Response to the CMA's RF11, 10 January 2024, question 1.

³⁶⁹ Spreadex, Briefing Paper, 13 July 2023, paragraphs 2.1 and 2.4.

need to hold a GC licence to serve customers in the UK.³⁷⁰ There are similar 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).

- 6.60 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 6.21 onwards).
- 6.61 On the basis of the evidence, we conclude that a UK-wide geographic market is appropriate.

Conclusion on market definition

- 6.62 In view of the above, we conclude that the relevant market is the supply of licensed online sports spread betting services in the UK.
- 6.63 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

- 6.64 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

- 6.65 As evidenced in the market definition Demand-side section above (paragraphs 6.4 to 6.33), sports spread betting comprises more complex betting products in comparison to fixed odds betting. To acquire sports spread betting customers, Spreadex told us that it targeted [redacted] and onboards [redacted] customers, given their already established interest in [redacted], then explains the spread betting product, before attempting to [redacted].³⁷¹
- 6.66 Due to differences in regulatory requirements, sports spread betting customers are required to submit additional personal information, such as financial information

³⁷⁰ 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, 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.

³⁷¹ Spreadex, Main party hearing transcript, 4 July 2024, page 16, lines 3-8.

(see Chapter 2, Industry Background), which Spreadex submitted increased friction in the customer journey.³⁷² Spreadex's sign-up process therefore first signs customers up for [redacted] and then offers customers the option to [redacted].³⁷³ Spreadex also [redacted].³⁷⁴

- 6.67 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.
- 6.68 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 provider (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.³⁷⁵ 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.³⁷⁶
- 6.69 Due to the customer behaviours induced by the sign-up costs, it is our view that 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.³⁷⁷
 - (b) Competition at the level of individual sports spread bets to convince customers to place a specific bet. This is particularly important to multi-

³⁷² Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 2.

³⁷³ Spreadex, Main party hearing transcript, 4 July 2024, page 37, lines 12-13.

³⁷⁴ 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).

³⁷⁵ 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 betting 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).

³⁷⁶ 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.

³⁷⁷ We note that the sign-up process creates customer facing costs (see paragraph 6.88(a) and footnote 414).

homing customers who can readily choose between more than one provider's platforms when placing a bet. However, competition at the level of individual bets is also relevant to platform competition, as it can induce single-homing customers to multi-home.³⁷⁸

Parameters of competition

- 6.70 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 (paragraphs 6.4 to 6.63) above)), were price, range of 'markets', service, promotions and free bets, and user experience.³⁷⁹
 - (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.³⁸⁰
- 6.71 For the reasons set out below, we conclude 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.
- 6.72 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).³⁸¹ In relation to dynamic competition, Spreadex's internal

³⁷⁸ 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 6.68 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.

³⁷⁹ 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).

³⁸⁰ Third party response to the CMA's RFI, [REDACTED].

³⁸¹ 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).

documents show it considered the possibility that Sporting Index would become a stronger competitor.³⁸²

Price

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

Spread widths

- 6.74 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.³⁸³
- 6.75 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.
- 6.76 Therefore, it is our view that the closest concept to an economic price in the supply of online sports spread betting products is the width of the spread. As such, our view is that the width of the spread is a relevant parameter of competition.
- 6.77 Spreadex and FDJ submitted that there is limited competition on this parameter:
- (a) Spreadex submitted that price is a 'key differentiator for customers',³⁸⁴ however, it added that its spread widths pricing structure has [REDACTED] for a number of years.³⁸⁵ Spreadex told us that since 2018, only [REDACTED] ([0-5%]) [REDACTED]

³⁸² 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]'; 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).

³⁸³ Spreadex submitted that if it were [REDACTED] (Spreadex, Product and pricing submission, 30 January 2024, page 9).

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

³⁸⁴ Spreadex, Response to the CMA's RF11, 10 January 2024, question 9(b).

³⁸⁵ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 14.

horse racing index prices, which is its most popular horse racing bet, had not aligned with its [redacted] spread width pricing policy.³⁸⁶

- (b) FDJ submitted that the size of the spreads offered was generally not a significant factor driving customers to participate in sports spread betting.³⁸⁷ FDJ added that, historically, few spread sizes have been adjusted.³⁸⁸ 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 bettors. FDJ added that it considered competitor spread sizes, but decisions were primarily based on internal data.³⁸⁹

6.78 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]'.³⁹⁰
- (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'.³⁹¹
- (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'.³⁹²
- (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]'.³⁹³
- (e) In Spreadex's proposed initial bid document, it was stated that '[redacted]'.³⁹⁴
- (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

³⁸⁶ 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 RFI1, 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 RFI4, 22 April 2024, question 5).

³⁸⁷ Third party response to the CMA's RFI.

³⁸⁸ We note that although FDJ referred to spread sizes, we consider that this term is equivalent to spread widths.

³⁸⁹ Third party response to the CMA's RFI.

³⁹⁰ Customer 8, questions 2 and 4.

³⁹¹ Customer 19, question 9.

³⁹² Third party response to the CMA's RFI.

³⁹³ Spreadex, Internal document.

³⁹⁴ Spreadex, Response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103.

important to customers, and that Sporting Index offered personalised 'pricing' to some high value customers.³⁹⁵

- (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.³⁹⁶

6.79 Overall, our view is 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] spread width pricing policy,³⁹⁷ and our view is that the evidence on the importance of spread widths to competition in recent years is mixed.

Promotions and entertainment

- 6.80 Spreadex and FDJ submitted that they frequently offered promotions to customers, such as free bets.³⁹⁸ In addition, Spreadex submitted that occasionally its clients may be [redacted].³⁹⁹ Spreadex explained that this [redacted] of the total amount of bets placed.⁴⁰⁰
- 6.81 Internal documents show that these promotions were often run to [redacted].⁴⁰¹ However, for disengaged multi-homing customers, [redacted] if they are returning to sports spread betting.⁴⁰²
- 6.82 Spreadex told us that it provides entertainment (for example, invites to sporting events) [redacted].⁴⁰³
- 6.83 Third parties told us that sports spread betting companies also acquire and retain high-spending customers by offering them entertainment and personalised promotions.⁴⁰⁴ This is supported by Sporting Index's [redacted].⁴⁰⁵ Sporting Group told us that [redacted].⁴⁰⁶

³⁹⁵ Third party call note.

³⁹⁶ Third party call note.

³⁹⁷ Spreadex, CMA Issues Meeting, 11 March 2024, slide 35. For further detail see paragraph 6.1026.102 below.

³⁹⁸ Spreadex, Response to the CMA's RFI4, 22 April 2024, question 3; and third party response to the CMA's RFI.

³⁹⁹ Spreadex, Main party hearing transcript, 4 July 2024, page 23, lines 7-12.

⁴⁰⁰ Spreadex, Main party hearing transcript, 4 July 2024, page 23, lines 17-18.

⁴⁰¹ Spreadex, Response to the CMA's s109 notice, Annexes 24.1 and 44.9.

⁴⁰² 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).

⁴⁰³ Spreadex, Main party hearing transcript, 4 July 2024, page 27, line 2 to page 29, line 24.

⁴⁰⁴ Third party call note and third party hearing transcript.

⁴⁰⁵ Spreadex, response to the CMA's s109 notice 01, 10 May 2024, question 4, Annex 1.4.

⁴⁰⁶ Third party hearing transcript.

Range of 'spread markets'

- 6.84 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]'.⁴⁰⁷
 - (b) In Spreadex's client migration survey, which sought to gather the views of Sporting Index customers post-Merger, [redacted].⁴⁰⁸
 - (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'.⁴⁰⁹
- 6.85 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.
- 6.86 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.⁴¹⁰ 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.⁴¹¹ In addition, FDJ submitted that Sporting Index's business was largely driven by major events with customers typically returning organically around major sporting events.⁴¹²

User experience

- 6.87 Our 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

⁴⁰⁷ Spreadex, Response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103.

⁴⁰⁸ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 35 and Annex 35.1.

⁴⁰⁹ Customers 7, 20, 23, 26, 27, 31, and 32, question 2.

⁴¹⁰ Spreadex, Response to the CMA's s109 notice 03, 21 May 2024, Annex 1e.

⁴¹¹ Third party hearing transcript.

⁴¹² Third party response to the CMA's RFI.

interface on mobile applications and websites, the ease of the sign-up process, live streaming functionality, account management tools, and credit availability.

- 6.88 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.⁴¹³ Spreadex and FDJ submitted that they [REDACTED].⁴¹⁴ 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 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.
- 6.89 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]'.⁴¹⁵
 - (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'.⁴¹⁶
- 6.90 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.⁴¹⁷ We therefore consider that

⁴¹³ See paragraph 2.7.

⁴¹⁴ [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).

⁴¹⁵ Spreadex, Response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103.

⁴¹⁶ Customers 2, 3, 6, 7, 9, 10, 12, 13, 18, 24, and 33, question 2.

⁴¹⁷ Third party call note.

providers compete on the availability of credit to attract users to their platform. Spreadex submitted from November 2022 to October 2023, between [X] and [X] active customers placed bets using credit monthly.⁴¹⁸ In comparison, in December 2022 Spreadex had [X] monthly active customers of which [X] customers placed sports spread bets using credit.⁴¹⁹ However, Spreadex submitted that it has [X] in recent years and that, in the current regulatory environment, [X].⁴²⁰

Conclusion on the nature of competition

6.91 In summary, our 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) range of 'spread markets', and
- (c) user experience,
- (d) and that competition takes place both statically and dynamically.

1.1 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

6.92 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.⁴²¹

6.93 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;

⁴¹⁸ Spreadex, Response to the CMA's s109 notice 3, 21 May 2024, question 10.

⁴¹⁹ Spreadex, Response to the CMA's RF12, 31 January 2024, question 7.

⁴²⁰ Spreadex, Main party hearing transcript, 4 July 2024, page 41, lines 2-17.

⁴²¹ [MAGs](#), paragraph 2.11.

(b) Evidence on closeness of competition; and

(c) Evidence on competitive constraints.

6.94 In Chapter 5, Counterfactual, we 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 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 assessment of the competitive effects of the Merger would not be materially different.

6.95 Given the Parties' small share of supply of sports fixed odds betting and the number of alternative (and in some cases large) providers remaining, we conclude that the Merger does not give rise to competition concerns in relation to the supply of sports fixed odds betting products.⁴²²

Market shares

6.96 Spreadex submitted that the Parties have around a 95% share in the supply of online sports spread betting in the UK.⁴²³ 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).⁴²⁴

6.97 Table 6.1 below sets out estimated market shares of licensed online sports spread betting in the UK, based on the Parties' revenues.⁴²⁵

⁴²² 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.

⁴²³ Spreadex, Response to the CMA's s109 notice, 17 January 2024, question 1(b).

⁴²⁴ Spreadex, Response to the CMA's s109 notice, 17 January 2024, question 2.

⁴²⁵ Spreadex, Response to the CMA's RFI2, 2 February 2024, question 5.

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

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

Source: CMA estimates based on the Parties' revenues.

* In 2023, Spreadex had a market share of [REDACTED] [70-80%] and Sporting Index had a share of [REDACTED] [20-30%]. However, we note that these share estimates may have been affected by the completed Merger (Spreadex, response to the CMA's RFI2, 2 February 2024, question 5).

6.98 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,⁴²⁶ 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

6.99 In this section we summarise the evidence we have collected regarding closeness of competition between the Parties.

6.100 We set out below:

- (a) the Parties' views;
- (b) evidence from internal documents;
- (c) third parties' views, and
- (d) our assessment.

Parties' views

6.101 Spreadex acknowledged that the Parties were the only two licensed sports spread betting providers in the UK⁴²⁷ and that they 'may be considered close competitors (given their focus on spread betting)'.⁴²⁸

6.102 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 [REDACTED] [70-80%]:[20-30] in Sporting Index's favour to [REDACTED]

⁴²⁶ Spreadex, Response to the CMA's s109 notice, 17 January 2024, questions 1-2.

⁴²⁷ Spreadex, Response to the Enquiry Letter, 14 December 2023, question 11.

⁴²⁸ Spreadex, Briefing Paper, 13 July 2023, paragraph 1.5.

[20-30]:[70-80] in Spreadex's favour.⁴²⁹ 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.⁴³⁰

- 6.103 Spreadex submitted that Sporting Index offered fewer sports spread betting products than Spreadex (eg Spreadex traded [REDACTED] times the number of football events and [REDACTED] times the number of horse racing events⁴³¹), had [REDACTED] and that its promotions were [REDACTED].⁴³²

Internal documents

- 6.104 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'.⁴³³
 - (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 [REDACTED]'.⁴³⁴ This is consistent with the evidence provided to us on the Parties' shares of supply since 2017. 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 '[REDACTED]'.⁴³⁵
- 6.105 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, 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'.⁴³⁶
- 6.106 Our view is that many of the Parties' internal documents which are relevant to market definition (see paragraph 6.21 above) are also relevant to our competitive assessment. Where the internal documents anticipate diversion to Spreadex in the

⁴²⁹ Spreadex, CMA Issues Meeting slides, 11 March 2024, slide 35.

⁴³⁰ Third party response to the CMA's RFI.

⁴³¹ Spreadex, CMA Issues Meeting slides, 11 March 2024, slide 43.

⁴³² Spreadex, Response to the CMA's RF11, 10 January 2024, question 9(b); and Spreadex, CMA Issues Meeting slides, 11 March 2024, slide 35.

⁴³³ Spreadex, Response to the Enquiry Letter, 14 December 2023, Annex 29, page 3.

⁴³⁴ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, Annex 43.5.

⁴³⁵ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, Annex 43.11.

⁴³⁶ Third party response to the CMA's RFI.

event that Sporting Index's quality were to decline, they show closeness of competition.

- 6.107 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 2022.⁴³⁷ 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)'.⁴³⁸
- 6.108 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]'.⁴³⁹
 - (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]'.⁴⁴⁰
 - (c) In an email from July 2023, shortly before the signing of the SPA (and after having had many months to consider the Merger's desirability), the CFO stated that one of the benefits of the Merger was that it was '[REDACTED]'.⁴⁴¹
- 6.109 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]'.⁴⁴²

Third-party views

- 6.110 We received third party submissions on closeness of competition from FDJ, 33 responses to our customer questionnaire, five fixed odds providers, three financial

⁴³⁷ Third party response to the CMA's RFI.

⁴³⁸ Third party response to the CMA's RFI.

⁴³⁹ Spreadex, Response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103, '[REDACTED]'. See paragraph 6.23 for Spreadex's submissions on the relevance of this document.

⁴⁴⁰ Spreadex, Response to the Enquiry Letter, 14 December 2023, question 22, email 103.

⁴⁴¹ Spreadex, Response to the CMA's s109 notice, 17 May 2024 and CMA's follow-up email, 4 June 2024, Annex 4.42.

⁴⁴² Spreadex, Response to the Enquiry Letter, 14 December 2023, question 22, attachment to email 103, '[REDACTED]'.

spread betting providers, a B2B provider, a former Sporting Index employee, as well as emails from four customers concerned about the Merger.

- 6.111 Third parties submitted that the Merger would create a monopoly in the supply of sports spread betting as it removed Spreadex's only competitor.^{443, 444}
- (a) One provider told us that the removal of Sporting Index has removed competition and harmed innovation.⁴⁴⁵
 - (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.⁴⁴⁶
 - (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'.⁴⁴⁷

Customer questionnaire

- 6.112 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.⁴⁴⁸
- 6.113 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.⁴⁴⁹
- 6.114 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.⁴⁵⁰ 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

⁴⁴³ Concerned customer emails [redacted].

⁴⁴⁴ Third party call note; and third party responses to the CMA's RFI.

⁴⁴⁵ Third party call note.

⁴⁴⁶ Third party call note.

⁴⁴⁷ Customer responses to our questionnaire.

⁴⁴⁸ Customer responses to our questionnaire.

⁴⁴⁹ Customer responses to our questionnaire.

⁴⁵⁰ Customer responses to our questionnaire.

of markets',⁴⁵¹ 'the two companies offered a range of individual markets that were independent of each other',⁴⁵² and 'Spreadex has numerous more markets'.⁴⁵³

Sporting Group

- 6.115 Sporting Group described Spreadex as 'the last man standing' in the sports spread betting market.⁴⁵⁴
- 6.116 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'.⁴⁵⁵
- 6.117 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.⁴⁵⁶ 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.⁴⁵⁷ FDJ added however, that short term plans were continually explored to automate and streamline the manual compliance requirements customers faced.⁴⁵⁸

Our assessment

- 6.118 As a starting point, we note that when there are only two providers operating in a particular market, as, in our view, is the case here, they will necessarily be each other's closest competitor. As we set out above in the section on market definition (paragraphs 6.4 to 6.63), our view is that fixed odds providers, financial spread providers and unlicensed sports spread betting providers do not provide a strong constraint on the Parties.
- 6.119 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 6.78(e)). It is our view that the range of 'spread markets' offered were

⁴⁵¹ Customer responses to our questionnaire.

⁴⁵² Customer responses to our questionnaire.

⁴⁵³ Customer responses to our questionnaire.

⁴⁵⁴ Third party hearing transcript.

⁴⁵⁵ Third party hearing transcript.

⁴⁵⁶ Third party call note. and third party hearing transcript.

⁴⁵⁷ Third party hearing transcript.

⁴⁵⁸ Third party response to the CMA's RFI.

likely considered similar by customers as Sporting Index offered the same high-profile events as Spreadex. Our view is that it is likely that the additional lesser-known events offered by Spreadex only provided a limited competitive advantage over Sporting Index. Our view is also that there is further scope for competition between the Parties to compete by using promotions personalised to high value customers' interests (see paragraph 6.82). 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 6.103 above).

- 6.120 In terms of competition between the Parties' platforms, we note that the Parties compete using promotions and entertainment to engage customers (see paragraphs 6.80 to 6.83). 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 6.117, and paragraphs 5.45 to 5.46).
- 6.121 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.
- 6.122 On this basis, we conclude 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

- 6.123 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.
- 6.124 We set out below
- (a) the Parties' views;
 - (b) evidence from internal documents;
 - (c) third parties' views and
 - (d) our assessment.

Parties' views

- 6.125 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.⁴⁵⁹ Spreadex further submitted that [redacted] customer churn of [redacted]% per annum places pressure on it to compete with fixed odds.⁴⁶⁰
- 6.126 Spreadex submitted that we should place evidential weight on its actions for the period before and after the Merger, which it submitted are not consistent with those of a monopolist. In particular, Spreadex submitted that it has expanded its product range and improved its user experience to match that of fixed odds providers before and after the Merger.⁴⁶¹ Spreadex concluded that its behaviour was consistent with the behaviour of a firm operating in a competitive environment that faced alternative constraints from competitors.⁴⁶² 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.⁴⁶³
- 6.127 We assess these submissions below at paragraphs 6.142 to 6.150.

Internal documents

- 6.128 It is our view that many of the Parties' internal documents which are relevant to market definition (see paragraph 6.21 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.
- 6.129 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]'.⁴⁶⁴ Spreadex submitted that this was an isolated comment by a [redacted].⁴⁶⁵ However, it is consistent with other internal documents, including those made by Spreadex's management (see paragraph 6.104 onwards).

⁴⁵⁹ Spreadex, Main party hearing transcript, 4 July 2024, page 12, lines 20-22.

⁴⁶⁰ Spreadex, Hearing follow up response, 9 July 2024, page 8.

⁴⁶¹ Spreadex, [Response to the CMA's Provisional Findings](#), 30 August 2024, paragraphs 4.21 to 4.23.

⁴⁶² Spreadex, Hearing follow up response, 9 July 2024, page 8.

⁴⁶³ Spreadex, Main party hearing transcript, 4 July 2024, page 47, lines 20-22.

⁴⁶⁴ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 24 and Annex 24.4.

⁴⁶⁵ Spreadex, Response to the CMA's Annotated Issues Statement and accompanying Working Papers, 1 July 2024, paragraph 4.31.

- 6.130 Spreadex submitted multiple internal documents showing that it monitored fixed odds providers.⁴⁶⁶ 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 what the operating hours were.⁴⁶⁷ 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.⁴⁶⁸
- 6.131 We have not been provided with any internal documentary evidence of the Parties monitoring financial spread betting providers.

Third-party views

Customers

- 6.132 Of the 33 respondents to our customer questionnaire, 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.⁴⁶⁹
- 6.133 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'.⁴⁷⁰
- 6.134 Some customers expressed specific concerns that the Merger would prevent them from being able to compare prices, as 'pricing was very competitive between the 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',

⁴⁶⁶ 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.

⁴⁶⁷ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 24 and Annex 24.2.

⁴⁶⁸ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 24 and Annex 24.4.

⁴⁶⁹ Customer responses to our questionnaire. See also paragraphs 6.15 to 6.20 above discussing Spreadex's natural experiment based on [REDACTED].

⁴⁷⁰ Customer responses to our questionnaire.

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'.

- 6.135 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.⁴⁷¹

Betting providers

- 6.136 As described in paragraphs 6.32 and 6.33, 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).⁴⁷² Sports fixed odds betting providers considered there were significant differences between sports fixed odds betting and sports spread betting that distinguished them as separate products.
- 6.137 Evidence from third parties, including sports fixed odds betting providers, shows that there is an overlap in the pricing approach between sports fixed odds betting providers and sports spread betting providers as they use the same market information.⁴⁷³ As a result, some sports fixed odds betting providers submitted that they occasionally referenced sports spread betting prices when setting fixed odds prices on a small number of 'fixed odds markets'.⁴⁷⁴ 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.⁴⁷⁵
- 6.138 One betting provider submitted that the completed acquisition has now removed all competition from the UK sports spread betting segment and removed price differentiation.⁴⁷⁶

⁴⁷¹ 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.

⁴⁷² 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.

⁴⁷³ 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.

⁴⁷⁴ Third party responses to the CMA's RFI.

⁴⁷⁵ Third party response to the CMA's RFI.

⁴⁷⁶ Third party call note.

- 6.139 FDJ submitted that 'given the niche nature of our product, they [sic] were very few competitors'.⁴⁷⁷
- 6.140 As described in paragraph 6.48, we gathered evidence from three financial spread betting providers who all submitted that they did not compete with sports spread betting providers.⁴⁷⁸ 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.⁴⁷⁹

Our assessment

- 6.141 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 certain documents provide some evidence that spread betting providers and fixed odds betting providers compete to some extent, these documents are also consistent with the existence of competition between Spreadex's fixed odds business and fixed odds competitors, and do not demonstrate that Spreadex is strongly constrained.
- 6.142 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 sports fixed odds 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.
- 6.143 In aggregate, the evidence indicates that only a weak constraint is likely to be imposed on Spreadex by potential switching by customers to sports fixed odds 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 6.22).
- 6.144 Our 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

⁴⁷⁷ Third party response to the CMA's RFI.

⁴⁷⁸ Third party responses to the CMA's RFI.

⁴⁷⁹ Third party response to the CMA's RFI.

sometimes monitor sports fixed odds betting competitors, is not persuasive evidence that their sports spread betting business competes with sports fixed odds betting competitors.

- 6.145 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. It is our view 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, in our view, Spreadex would follow even in the absence of strong competitive constraints.
- 6.146 As regards the existence of customer churn, our 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. Furthermore, the Parties are able to target aspects of their offering to new customers (for example, through promotions) so that existing customers are not protected by the Parties' need to attract new customers to counteract churn.
- 6.147 Although the Parties submitted the results of a natural experiment showing substitution between sports fixed odds betting and sports spread betting under some circumstances, our view is that it does not demonstrate that there is a strong constraint from sports fixed odds betting on sports spread betting.
- 6.148 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.
- 6.149 In view of the above, we conclude 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 firms) are weak.

Conclusion

- 6.150 In view of the above, and in particular given the closeness of competition between the Parties, and the absence of sufficient alternative competitive constraints, we conclude that 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.

- 6.151 In Chapter 5, Counterfactual, we 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 spread 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, we also consider 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.
- 6.152 In view of the above, we conclude that, subject to our 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.⁴⁸⁰
- 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).⁴⁸¹
 - (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.⁴⁸²
- 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.⁴⁸³ 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.⁴⁸⁴

⁴⁸⁰ MAGs, paragraph 8.1.

⁴⁸¹ MAGs, paragraph 8.28.

⁴⁸² MAGs, paragraphs 8.3-8.4.

⁴⁸³ MAGs, paragraphs 4.16(b) and 8.1.

⁴⁸⁴ MAGs, paragraph 8.28.

- 7.6 The CMA considers that entry and/or expansion preventing an SLC from arising would be rare.⁴⁸⁵
- 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.⁴⁸⁶
- 7.8 These conditions are cumulative and must be satisfied simultaneously.⁴⁸⁷ 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.⁴⁸⁸

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'.⁴⁸⁹

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.⁴⁹⁰

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.⁴⁹¹ 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

⁴⁸⁵ MAGs, paragraph 8.29.

⁴⁸⁶ MAGs, paragraph 8.31.

⁴⁸⁷ MAGs, paragraph 8.32.

⁴⁸⁸ MAGs, paragraph 8.30.

⁴⁸⁹ MAGs, paragraph 8.33.

⁴⁹⁰ MAGs, paragraph 8.35.

⁴⁹¹ 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.⁴⁹²

Our assessment

7.12 In Chapter 6, Horizontal Unilateral Effects, we explained the basis on which we have 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 In considering whether any potential rivals will enter, or existing rivals will expand in response to a merger, the CMA must be satisfied that the rivals will have both the ability and incentive to do so. The CMA will consider the scale of any barriers to enter and/or expansion when assessing rivals' ability and incentive to do so.⁴⁹³

7.14 Barriers to entry are specific features of the market that give incumbent firms advantages over potential competitors. Barriers to entry and expansion hinder the ability of potential entrants or firms looking to expand to constrain the exercise of market power by incumbents. The CMA will therefore identify barriers to entry and/or expansion in its analysis. Where barriers are low, and the costs of entry or expansion are not substantial relative to the profits that are available, entry and/or expansion might be expected to occur in order to capture sales from the merged entity if it were to increase prices and/or worsen non-price factors of competition. Conversely, this is less likely where barriers are substantial relative to available profits.⁴⁹⁴

7.15 As set out in Chapter 6, Horizontal Unilateral Effects, our 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.

⁴⁹² MAGs, paragraph 8.39.

⁴⁹³ MAGs, paragraph 8.35.

⁴⁹⁴ MAGs, paragraph 8.40.

- 7.16 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 enter and compete effectively with the Merged Entity on these parameters.
- 7.17 Having considered the evidence provided to us by the Parties, third parties and other industry participants,⁴⁹⁵ our 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.
- 7.18 Our assessment therefore considers whether the following could amount to barriers to entry and expansion in the supply of licensed online sports spread betting services in the UK:⁴⁹⁶
- (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.
- 7.19 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.⁴⁹⁷
 - (c) We are therefore considering potential barriers to entry against hypothetical entry primarily from these two types of providers.

⁴⁹⁵ 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.

⁴⁹⁶ See [MAGs](#), paragraph 8.41 for examples of common barriers to entry and/or expansion.

⁴⁹⁷ 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.

7.20 In our view, 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 from these two types of providers to be timely, likely and sufficient to prevent an SLC arising from the Merger, then, in our view, 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

7.21 Sports spread betting providers wishing to solicit UK consumers must obtain a licence from the FCA and adhere to its regulations.⁴⁹⁸ We consider the costs and timescales to obtaining this licence as a potential barrier to entry below.

Spreadex's and third parties' views

7.22 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.⁴⁹⁹

7.23 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 minimal, primarily consisting of management time and an application fee of £10,000.⁵⁰⁰

7.24 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 £10,000.⁵⁰¹

7.25 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 7.30 to 7.46)

⁴⁹⁸ [Sections 19](#) and [21](#) of the FSMA.

⁴⁹⁹ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 26.

⁵⁰⁰ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 26.

⁵⁰¹ Third party response to the CMA's RFI.

was 'the bigger stumbling block'. This provider also told us that it believed it would take six to nine months to obtain a licence.⁵⁰² 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.⁵⁰³

- 7.26 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.⁵⁰⁴ 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.⁵⁰⁵

Our assessment

- 7.27 On the basis of the above submissions, we conclude 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.
- 7.28 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 barrier could be overcome, and that it considered obtaining a licence to be a less onerous process than it had initially thought.⁵⁰⁶
- 7.29 We therefore consider that the costs and timescales involved in obtaining the required regulatory licence from the FCA do not represent a significant barrier to entry 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.

⁵⁰² [REDACTED]. Third party call note, and third party response to the CMA's RFI.

⁵⁰³ Third party call note.

⁵⁰⁴ Third party response to the CMA's RFI.

⁵⁰⁵ Third party hearing transcript.

⁵⁰⁶ Third party call note.

and third party response to the CMA's RFI.

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

- 7.30 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.
- 7.31 Initial set-up costs and costs associated with investment in specific assets may amount to a barrier to entry and/or expansion, and are more likely to deter entry or expansion where a significant proportion of them are sunk.⁵⁰⁷ We therefore consider the costs and timescales involved to develop and/or acquire these assets below.

Spreadex's and third parties' views

- 7.32 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.⁵⁰⁸
- 7.33 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.⁵⁰⁹
- 7.34 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 required to adjust the existing underlying systems of sports fixed odds betting

⁵⁰⁷ MAGs, paragraph 8.41(a).

⁵⁰⁸ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 26.

⁵⁰⁹ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 26.

providers so as to offer sports spread betting in a manner that was compliant with the FCA's regulations.⁵¹⁰

- 7.35 Spreadex told us that this investment would involve extensive changes to customer User Experience/User Interface (**UX/UI**), 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.⁵¹¹ 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.⁵¹²
- 7.36 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.⁵¹³
 - (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.⁵¹⁴
 - (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.⁵¹⁵
 - (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

⁵¹⁰ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 26.

⁵¹¹ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 26.

⁵¹² Spreadex, Response to the CMA's RFI4, 22 April 2024, question 4.

⁵¹³ Third party call note.

and third party response to the CMA's RFI.

⁵¹⁴ Third party call note.

⁵¹⁵ 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.⁵¹⁶

- (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.⁵¹⁷
- (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.⁵¹⁸

Our assessment

7.37 As set out in paragraph 7.19, 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.

7.38 Our 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.

7.39 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:

⁵¹⁶ Third party response to the CMA's RFI.

⁵¹⁷ Third party response to the CMA's RFI.

⁵¹⁸ Third party response to the CMA's RFI.

- (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.

7.40 While financial leveraged trading providers may be better placed than other providers to develop this technology due to the general spread betting overlaps 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.⁵¹⁹

7.41 In our view, 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.⁵²⁰

7.42 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.

7.43 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.

7.44 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

⁵¹⁹ See paragraphs 7.32, 7.33 and 7.36(e).

⁵²⁰ See paragraphs 7.34, 7.35, 7.36(a), 7.36(c) and 7.36(d).

pre-Merger, and one third party told us that acquiring this technology would incur a significant cost.⁵²¹

7.45 The evidence provided to us therefore implies that any new entrant or rival looking to expand into sports spread betting will face substantial upfront costs to developing the required technology, as well as multiple years of investment before any return on investment is realised. For example, we 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. Our view is that this required investment is large when compared to the available profits, noting in particular that licensed online sports spread betting had a market size of £[redacted] million in 2022 and £[redacted] million in 2023 (see paragraph 2.12).⁵²²

7.46 We therefore conclude 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 sports spread betting service in the UK 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, making entry unlikely. If new entry were to occur as a result of the Merger, we conclude that the technological barriers mean that it would not be timely or of sufficient scale to prevent the SLC identified in Chapter 6, Horizontal Unilateral Effects. Although we consider that barriers to expansion are lower than barriers to entry as regards technology, they are not relevant in this case since, following the Merger, there are no other providers of licensed online sports spread betting services in the UK.

Costs and timescales to develop and/or acquire the required industry expertise

7.47 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

⁵²¹ See paragraph 7.36(a).

⁵²² We note that this trade-off between the cost and risk of entry and the potential reward will likely be very different for a purchaser of an existing provider of licensed online sports spread betting, as much of the necessary investment will already have occurred. See Chapter 5, Counterfactual for our assessment of whether there would not have been an alternative, less anti-competitive purchaser to Spreadex for the Sporting Index business.

(d) key high-value customer (**HVC**) account managers to enable a competitor to build and manage personal relationships with HVC customers.

7.48 We consider the costs and timescales involved to develop and/or acquire these below.

Spreadex's and third parties' views

7.49 As set out in paragraph 7.33, 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.⁵²³ 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.⁵²⁴

7.50 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.⁵²⁵

7.51 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.⁵²⁶

7.52 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 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.⁵²⁷

7.53 Sporting Group (a subsidiary of FDJ) told us that that entertaining HVC 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

⁵²³ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 26.

⁵²⁴ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 27.

⁵²⁵ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 27.

⁵²⁶ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 27.

⁵²⁷ Third party response to the CMA's RFI.

and regulations regarding how it managed its HVC customers, which involved requiring Sporting Group to not over-incentivise any of its customers.⁵²⁸

7.54 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.⁵²⁹

7.55 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.⁵³⁰

Our assessment

7.56 As set out above, in our 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) HVC customer account managers to enable a competitor to build and manage personal relationships with HVC customers.

7.57 In our Provisional Findings, we provisionally concluded 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 industry expertise to provide a licensed online sports spread betting service that is compliant with the FCA's regulatory requirements and is sufficiently comprehensive to exert an effective competitive constraint on the Merged Entity represents a significant barrier to entry.

7.58 Following our Provisional Findings, and in the course of our evidence gathering in relation to possible remedies for the SLC provisionally identified, we received the

⁵²⁸ Third party hearing transcript.

⁵²⁹ Third party response to the CMA's competitor questionnaire.

⁵³⁰ Third party call note.

and third party response to the CMA's RFI.

following further evidence relating to a firm's ability to acquire or develop industry expertise, including trading staff, compliance staff and IT staff:⁵³¹

- (a) 10star told us that it would take two to three years to hire staff and 'be out of' a TSA, but that this was an iterative process and that it would not take two to three years to get the 'first team running'.⁵³²
- (b) Star Sports told us that it did 'not see [acquisition of trading staff] as an issue' given that it considered sports fixed odds traders could pick up sports spread betting skills in two weeks, and it had 'enough contacts to fill in the gaps'.^{533, 534}
- (c) Betfair told us that hypothetically, if it were to acquire a sports spread betting business, then it might be able to use its own trading team by giving them additional training to use different models, given that traders in fixed odds and spread betting would use similar 'trading computational methods' and had similar 'backgrounds and skills'. However, it considered that if it was necessary to recruit new traders, then it would also be possible to do so, as there were 'plenty of people' either with the relevant market experience or with transferable skills from similar markets (eg for 'contracts for differences' and other financial exchange markets). Betfair also told us that some fixed odds providers did not want to have their own trading team and chose to outsource this capability, in order to focus their business on 'marketing' to customers.⁵³⁵
- (d) bet365 told us that sports fixed odds traders would also have the capability to offer sports spread trading, and that if a purchaser had an in-house team of sports fixed odds traders, then it could also have the capability to offer sports spread trading. bet365 told us that it could retrain its traders to offer spread betting.⁵³⁶
- (e) In relation to compliance staff, bet365 told us that a divestment business would need senior compliance staff, and that recruiting specialised compliance staff would be 'a major challenge' given the niche nature of licensed online sports spread betting market. However, bet365 told us that it may be possible to recruit the required compliance staff from FCA regulated financial services firms, who have experience with financial spread betting.⁵³⁷

⁵³¹ See Appendix E: Remedies: Third party evidence, paragraphs E.23-E.25 for further detail.

⁵³² Call note, 10star.

⁵³³ Star Racing, [Star Racing - Comments on the Remedies Notice, 7 August 2024](#)

⁵³⁴ Call note, Star Sports.

⁵³⁵ Call Note, Betfair.

⁵³⁶ Call note, bet365.

⁵³⁷ Call note, bet365.

- (f) Sporting Group told us that it would be possible to recruit staff with the relevant compliance experience for the divestment business, from the 'FCA-regulated financial sector' (noting that Sporting Group had in the past employed a consultant from the 'financial industry' to assist it with regulatory compliance), but added that it would require 'significant investment to attract them'.⁵³⁸
- (g) 10star told us that recruiting IT staff who were 'familiar' with the spread betting platform, who could carry out R&D on the technology, would be 'the most difficult' category of staff to recruit (eg compared to traders), and added that there was 'always pressure on hiring tech staff'.⁵³⁹
- (h) OddsMatrix told us that if Spreadex were to provide IT expertise via a TSA, then this would not be 'unduly burdensome' and a purchaser should be able to pick up the required IT knowledge during the TSA period.⁵⁴⁰

7.59 Having considered the evidence in the round, we conclude that, while staff and expertise are important to the operation of a successful sports spread betting business, and some investment may be required in order to ensure that a business has the required staff, the costs and timescales to develop and/or acquire the relevant industry expertise do not represent a significant barrier to entry. We also note that firms already active in the wider betting industry are likely to have existing staff with relevant transferable skills.

Conclusion on potential barriers to entry and/or expansion

7.60 Based on our assessment set out above, we conclude that while there are no absolute impediments to entry into the market for licensed online sports spread betting in the UK, the cost and timescales involved in developing and/or acquiring the required technology, relative to the modest market opportunity available, constitute a barrier to entry.

7.61 However, we conclude that the costs and timescales involved in obtaining the required regulatory licence from the FCA do not represent a significant barrier to entry on their own, and firms that already hold this licence (such as financial spread betting providers) would not face this barrier at all.

7.62 We also conclude that the costs and timescales involved in obtaining the required industry expertise do not represent a significant barrier to entry on their own, and that firms already active in the wider betting industry are likely to have existing staff with relevant transferable skills.

⁵³⁸ Call note, Sporting Group.

⁵³⁹ Call note, 10star.

⁵⁴⁰ Call note, OddsMatrix.

7.63 We conclude that the barrier to entry set out in paragraph 7.60 above (namely, developing and/or acquiring the required technology) means that any entry would not be timely, likely or of sufficient scale to prevent an SLC arising from the Merger.

Previous examples of entry and/or expansion and possible sources of entry and/or expansion

7.64 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.

7.65 As set out in paragraph 7.19, 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.⁵⁴¹ Spreadex also told us that there have been no new entrants in the last ten years.⁵⁴²

7.66 Due to the factors identified above, and in particular the significant technological investment that would be required (as discussed in paragraphs 7.30 to 7.46), our 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.

7.67 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.⁵⁴³ We have not been provided with any other evidence that any other third parties may be looking to enter the market for licensed online sports spread betting in the UK.

7.68 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.

⁵⁴¹ Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 25.

⁵⁴² Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 29.

⁵⁴³ Third party call note.

However, we have not been provided with any evidence that an unlicensed provider plans to enter in a timely, likely and sufficient manner.

7.69 We therefore 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.

Conclusion on entry and/or expansion as a countervailing factor

7.70 Based on our assessment above and in the light of the evidence provided to us, we conclude that entry and/or expansion would not be timely, likely and sufficient to prevent an SLC arising from the Merger.

Efficiencies

7.71 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.

Framework for assessment

7.72 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.⁵⁴⁴

7.73 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.⁵⁴⁵ 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.⁵⁴⁶

⁵⁴⁴ [MAGs](#), paragraph 8.8.

⁵⁴⁵ [MAGs](#), paragraph 8.7.

⁵⁴⁶ [MAGs](#), paragraph 8.15.

Spreadex's views

7.74 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.⁵⁴⁷

Our assessment

7.75 We consider whether each of the efficiencies submitted by the Parties would meet the cumulative criteria set out in paragraph 7.72.

7.76 Our 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 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.

Conclusion on efficiencies as a countervailing factor

7.77 Based on our assessment above and in light of the evidence provided to us, we 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.

Conclusion on countervailing factors

7.78 Based on our assessment set out in this Chapter, it is our conclusion that there are no countervailing factors to prevent or mitigate an SLC arising from the Merger.

⁵⁴⁷ Spreadex, Letter to the Inquiry Group, 25 April 2024, page 1

8. CONCLUSION

8.1 For the reasons set out in the preceding Chapters, we conclude 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.

9. REMEDIES

Introduction

- 9.1 This Chapter sets out our assessment of, and decision on, the appropriate remedy to address the SLC and resulting adverse effects found in Chapter 6.
- 9.2 For the reasons set out in this Chapter, we have concluded that Spreadex's divestiture remedy proposal (**Spreadex's Remedy Proposal**) (which is described in paragraphs 9.28 to 9.54 below), subject to modification and enhancement in accordance with our views set out in paragraphs 9.81 to 9.349, would represent an effective and proportionate remedy. A summary of our decision on the appropriate remedy is set out in paragraphs 9.387 to 9.396.
- 9.3 For reference, this Chapter is structured under the following main headings:
- (a) CMA remedies assessment framework
 - (b) Evidence gathered
 - (c) Overview of remedy options
 - (d) Overview of Spreadex's proposed divestiture remedy
 - (e) Assessment of effectiveness of a divestiture remedy
 - (f) Relevant customer benefits (**RCBs**)
 - (g) Proportionality assessment of effective remedy options
 - (h) Implementation issues
 - (i) Enforcement
 - (j) Decision on remedies.

CMA remedies assessment framework

- 9.4 Pursuant to [section 35\(3\)](#) of the Act, where the CMA decides that a completed merger has resulted, or may be expected to result, in an SLC, it must decide the following:
- (a) whether the CMA should itself take action under [section 41\(2\)](#) of the Act for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has resulted, or may be expected to result, from the SLC;

- (b) whether the CMA should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has resulted, or may be expected to result, from the SLC; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

9.5 The Act requires that the CMA, when deciding on remedial action, ‘shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it’.⁵⁴⁸ The Act also provides that the CMA ‘may, in particular, have regard to the effect of any action on any RCBs in relation to the creation of the relevant merger situation concerned’.⁵⁴⁹ RCBs are addressed in further detail at paragraphs 9.351 to 9.360 below.

9.6 To fulfil the requirement to achieve a comprehensive solution that is reasonable and practicable, the CMA will seek remedies that are effective and proportionate in addressing the SLC and any resulting adverse effects.⁵⁵⁰

Effectiveness of remedies

9.7 As explained in the Merger Remedies Guidance, the effectiveness of a remedy is assessed by reference to its:⁵⁵¹

- (a) impact on the SLC and its resulting adverse effects – the aim being to restore the dynamic process of rivalry between firms seeking to win customers’ business over time;
- (b) duration and timing – remedies need to be capable of timely implementation and to address the SLC effectively throughout its expected duration;
- (c) practicality, in terms of its implementation, subsequent monitoring and potential enforcement; and
- (d) risk profile, in particular to seek a remedy that has a high degree of certainty of achieving its intended effect;⁵⁵² customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects.

⁵⁴⁸ [Section 35\(4\)](#) of the Act.

⁵⁴⁹ [Section 35\(5\)](#) of the Act.

⁵⁵⁰ CMA Merger Remedies ([CMA87](#)), December 2018 (**Merger Remedies Guidance** or **CMA87**), paragraphs 3.4 and 3.6.

⁵⁵¹ [CMA87](#), paragraph 3.5.

⁵⁵² The Competition Appeal Tribunal (**CAT**) has held that it is reasonable for the CMA to not favour a remedy ‘for which it cannot feel a high degree of confidence of success’ ([Ecolab Inc. v CMA](#) [2020] CAT 12, at [83]).

Proportionality of effective remedies

9.8 Having decided which remedy options would be effective, the CMA will then consider the costs of those remedies. In order to be reasonable and proportionate, it will seek to select the least costly remedy, or package of remedies, that it considers to be effective; and if the CMA is choosing between two remedies which it considers will be equally effective, it will select the least costly and intrusive/restrictive remedy.⁵⁵³ The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁵⁵⁴

Evidence gathered

9.9 The Provisional Findings were published at the same time as the Notice of possible remedies (the **Remedies Notice**).⁵⁵⁵ The Remedies Notice is the formal starting point for consideration of possible remedies to address the SLC provisionally identified in the Provisional Findings. In the Remedies Notice, we invited views on possible remedies, in particular, a possible divestiture remedy,⁵⁵⁶ as well as proposals for behavioural remedies and any other practicable remedies.⁵⁵⁷

9.10 Spreadex proposed a divestiture remedy to address the SLC we had identified. A description of Spreadex's Remedy Proposal and Spreadex's submissions on its effectiveness in addressing the SLC are set out in paragraphs 9.29 to 9.54 below. Our assessment of Spreadex's Remedy Proposal is set out under the relevant sections of this Chapter.

9.11 We also held a Response Hearing with Spreadex on 11 September 2024 to discuss Spreadex's Remedy Proposal, and, to assist our consideration of Spreadex's Remedy Proposal, gathered further information from Spreadex through requests for information.⁵⁵⁸

9.12 In addition, following the publication of the Remedies Notice, we held calls with a wide range of third parties to obtain their views on possible remedies (together, the **Third-Party Remedy Calls**), including calls with sports fixed odds betting providers; sports betting B2B providers; a software platform developer; the former owners of Sporting Index (namely, FDJ and Sporting Group); and 10star and Star

⁵⁵³ [CMA87](#), paragraphs 3.4 and 3.6.

⁵⁵⁴ [CMA87](#), paragraphs 3.4 and 3.6.

⁵⁵⁵ Further detail on the remedies process and our initial views were set out in the [Remedies Notice](#).

⁵⁵⁶ In the [Remedies Notice](#), we invited views on aspects of remedy design which might be needed to make a divestiture remedy effective and ensure that no new competition concerns would arise. These may include requirements relating to the scope of any divestiture package (CMA, [Remedies Notice](#), 25 July 2024, paragraph 31); the identification of suitable potential purchaser(s) (CMA, [Remedies Notice](#), 25 July 2024, paragraph 35); and the divestiture process including the timing of divestiture (CMA, [Remedies Notice](#), 25 July 2024, paragraphs 36 to 38).

⁵⁵⁷ CMA, [Remedies Notice](#), 25 July 2024, paragraphs 21 and 22.

⁵⁵⁸ We also held a remedy call with Sporting Index's [X] ([X]).

Sports ([REDACTED]).⁵⁵⁹ We also received two written responses to the Remedies Notice from third parties,⁵⁶⁰ and received responses to our questionnaires from a number of third parties, including potential third-party providers of sports spread pricing feeds.

- 9.13 While most of the Third-Party Remedy Calls took place before Spreadex had submitted its proposed remedy and therefore were not informed by Spreadex's Remedy Proposal, after we received Spreadex's written response to the Remedies Notice, we held supplementary calls with two third parties [REDACTED] under the CMA's remedies process and invited their initial views on Spreadex's Remedy Proposal based on redacted versions of Spreadex's written Remedies Notice response and Spreadex's written response to our initial request for information on Spreadex's Remedy Proposal.⁵⁶¹
- 9.14 On 9 October 2024, we sent the Parties the Remedies Working Paper (**RWP**), which set out our provisional decision on remedies, in which we provisionally concluded (among other things) that a modified form of Spreadex's Remedy Proposal would be an effective and proportionate remedy. We received Spreadex's response to the RWP on 23 October 2024 (**RWP response**).
- 9.15 In the RWP response, Spreadex submitted that there were 'a number of elements of the CMA's provisional decision on an appropriate remedy that remain disproportionate and/or impracticable'.⁵⁶² In reaching our final decision on remedies, we have considered the RWP response and refer to Spreadex's submissions in the RWP response in the relevant sections of this Chapter.
- 9.16 Following the RWP response, we also held further calls with 10star and Star Sports to test potential remedy scenarios, including certain aspects of Spreadex's proposals in the RWP response, which Spreadex agreed we could disclose to 10star and Star Sports, noting 10star's and Star Sports' interest as potential remedy takers under the proposed remedy.⁵⁶³
- 9.17 A brief summary of the third-party evidence we received is set out in the relevant sections of this Chapter; a more detailed summary is set out in Appendix E.
- 9.18 In reaching our decision on the appropriate remedy, we have considered the written and oral evidence from the Parties and third parties. In considering this evidence, we have carefully evaluated the weight that it is appropriate to place on the different evidence we have received, not only from the Parties, but also from

⁵⁵⁹ We held Third-Party Remedy Calls with the following third parties: (a) Betfair; (b) 10star; (c) Star Sports [REDACTED]; (d) Sporting Group; (e) Bet365; (f) a sports fixed odds betting provider [REDACTED]; (g) AlixPartners; (h) OddsMatrix; (i) FCA; (j) Code Factory (Software Mind); (k) FDJ and Sporting Group; (l) [REDACTED] (Former [REDACTED] (MD); and (m) Betsson Group.

⁵⁶⁰ We received written responses to the Remedies Notice from Spreadex, Star Sports and 10star. A non-confidential version of each written response was published on the [CMA case page](#).

⁵⁶¹ We held supplementary remedy calls with Star Sports and 10star.

⁵⁶² Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraph 2.2.

⁵⁶³ Call Notes, 10star and Star Sports.

third parties. As in any investigation, we have had due regard to a range of factors including the incentives of the party giving that evidence; the extent to which the party had knowledge that was relevant to the statutory questions we are required to answer; and the extent to which the evidence was consistent with other evidence available to us.

Overview of remedy options

9.19 The choice of remedies will reflect the particular circumstances of each case. The CMA will seek to select remedies that will effectively address the SLC and its resulting adverse effects in the least costly way.⁵⁶⁴

Types of remedies

9.20 As set out in the Merger Remedies Guidance, remedies are conventionally classified as either structural or behavioural:⁵⁶⁵

- (a) structural remedies, such as divestiture, are generally one-off measures that seek to restore or maintain the competitive structure of the market by addressing the market participants and/or their shares of the market; and
- (b) behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of merger parties with the aim of restoring or maintaining the process of rivalry absent the merger.

9.21 The choice of remedy will reflect the particular circumstances of each case, though the CMA prefers structural remedies over behavioural remedies, because:⁵⁶⁶

- (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
- (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
- (c) structural remedies rarely require monitoring and enforcement once implemented.

Remedy options in the Remedies Notice

9.22 In the Remedies Notice, we set out our initial view that the divestiture of solely the Sporting Index assets acquired by Spreadex as part of the Merger was unlikely to

⁵⁶⁴ [CMA87](#), paragraph 3.45.

⁵⁶⁵ [CMA87](#), paragraph 3.34.

⁵⁶⁶ [CMA87](#), paragraphs 3.46 and 3.34.

be sufficient to constitute the divestment of a standalone business and be an effective remedy, given the limited Sporting Index assets acquired by Spreadex as part of the Merger, and the fact that any potential purchaser was likely to have fewer (and potentially different) synergies than those between Spreadex and the acquired Sporting Index assets (noting that prior to the Merger, Spreadex and Sporting Index were the only two providers of licensed online sports spread betting services in the UK).⁵⁶⁷

9.23 As such, our initial view (as set out in the Remedies Notice) was that an effective divestiture remedy would require the sale of a combination of Sporting Index assets and Spreadex assets in order to establish a standalone business.⁵⁶⁸

9.24 We also indicated in the Remedies Notice that a behavioural remedy was very unlikely to be an effective remedy, given our initial view that there were 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 consequent challenges of monitoring compliance.⁵⁶⁹ However, we indicated that we would consider behavioural remedies (or any other practicable remedy option) put forward as part of our consultation on the Remedies Notice.⁵⁷⁰

Responses to the Remedies Notice

9.25 As mentioned in paragraph 9.10 above, Spreadex proposed a divestiture remedy. A description of Spreadex's Remedy Proposal is provided at paragraphs 9.29 to 9.51 below.

9.26 Spreadex also submitted that on 'the basis of the SLC provisionally found and as discussed previously with the CMA, Spreadex accepts that there is no suitable behavioural remedy available and it will not be putting forward such a remedy'.⁵⁷¹ No third party told us that we should consider a behavioural remedy as the primary remedy (see also Appendix E, paragraph E.34).

Remedy options considered

9.27 On the basis that we have received no representations inviting us to consider a behavioural remedy, this Chapter focuses on an assessment of a structural remedy option, namely, a divestiture remedy, as part of which we consider Spreadex's Remedy Proposal.

⁵⁶⁷ CMA, [Remedies Notice](#), 25 July 2024, paragraph 19.

⁵⁶⁸ CMA, [Remedies Notice](#), 25 July 2024, paragraph 19.

⁵⁶⁹ CMA, [Remedies Notice](#), 25 July 2024, paragraph 21.

⁵⁷⁰ CMA, [Remedies Notice](#), 25 July 2024, paragraphs 21 and 22.

⁵⁷¹ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.26.

Overview of Spreadex's proposed divestiture remedy

9.28 In this section, we provide a description of Spreadex's Remedy Proposal and set out Spreadex's submissions on its effectiveness in addressing the SLC we had identified. Further details of Spreadex's Remedy Proposal and Spreadex's submissions are also provided in the relevant sections of this Chapter.

Key elements of Spreadex's Remedy Proposal

9.29 Spreadex's Remedy Proposal essentially comprises three key elements:

- (a) a proposal to divest its shares in the Sporting Index legal entity,⁵⁷² including all of the Sporting Index assets which Spreadex had acquired under the Merger (the **Acquired Assets Element**);^{573, 574}
- (b) a proposal for Spreadex to develop a bespoke sports spread betting platform, which would form part of the divestiture package (the **Platform Development Element**);⁵⁷⁵ and
- (c) a proposal for Spreadex to provide a purchaser with a TSA 'to operate the Sporting Index business for a transitional period, while the purchaser makes the investments required to build up the personnel and functions that it does not currently have to operate the business in the manner that Sporting Index operated it pre-Merger' (the **Business Support TSA Element**).⁵⁷⁶

9.30 We provide further details on each element of Spreadex's Remedy Proposal below.

Details of the Acquired Assets Element

9.31 Spreadex proposed to divest all of the assets it has acquired as part of the Merger (**Acquired Assets**),^{577,578,579} by divesting its shares in the Sporting Index legal entity (ie Sporting Index Limited). Spreadex stated that Sporting Index Limited contained all of the Acquired Assets,⁵⁸⁰ including:⁵⁸¹

- (a) the Sporting Index brand, IP and web domains;

⁵⁷² Sporting Index Limited has no subsidiaries. Source: Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q4.

⁵⁷³ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.6.

⁵⁷⁴ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q6.

⁵⁷⁵ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.5 and 2.8.

⁵⁷⁶ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraphs 2.3 and 2.7.

⁵⁷⁷ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.6.

⁵⁷⁸ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q3.

⁵⁷⁹ With the exception of one staff member ([§<]) who left Sporting Index following completion of the Merger.

⁵⁸⁰ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q6.

⁵⁸¹ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.6.

- (b) the source code for the applications for the spread betting platform used by Sporting Index prior to the Merger, which Spreadex acquired (the **Acquired Source Code**);
- (c) the sports spread betting and sports fixed odds betting customer list (including all trading history) (the **SPIN Customer List**);^{582,583}
- (d) the five current employees who transferred to Spreadex from Sporting Index ([REDACTED] Client Services [REDACTED] Customer Services [REDACTED] Marketing [REDACTED])⁵⁸⁴ (the **SPIN Employees**);
- (e) regulatory licences with the FCA and the GC, which are held by the Sporting Index legal entity; and
- (f) unrecognised deferred tax losses and trade debtors and trade creditors/accruals.

9.32 Spreadex stated that it ‘would not be required to retain any tangible assets for regulatory compliance reasons’, and that it was ‘not aware of any regulatory compliance reasons (FCA, GC, GDPR or otherwise) that would require it to retain any customer information for Sporting Index-only customers’ (ie customers who held an account with Sporting Index, but not with Spreadex). For ‘joint customers’ (ie those customers holding an account with both Spreadex and Sporting Index), Spreadex stated that it ‘would be required to retain the records of their Sporting Index activity only for the period during which Spreadex owned Sporting Index’.⁵⁸⁵

9.33 Spreadex stated that ‘[a]ll assets are included within the Sporting Index entity and the assets Spreadex would propose creating [under Spreadex’s Remedy Proposal] are also included in the Sporting Index entity’.⁵⁸⁶ It added that it did not expect ‘any carve-out would be required as the entity is relatively “clean” following the carve-out that took place in advance of the sale to Spreadex’.⁵⁸⁷

Details of the Platform Development Element

9.34 In relation to the proposed Platform Development Element, Spreadex provided a simplified diagram of its proposed IT architecture for the spread betting platform

⁵⁸² Spreadex told us that the SPIN Customer List was a database of users, which automatically updated each time a new user opened an account. It added that if a user closed its account, that ‘closed account’ would still remain on the client list given that Spreadex was required for ‘regulatory reasons’ to keep records of customers for seven years following an account closure. Source: Spreadex, Response hearing transcript, 11 September 2024, page 20, line 7.

⁵⁸³ Spreadex stated that as at September 2024, following Merger completion on 6 November 2023: (a) [REDACTED] new customers had been added to the SPIN Customer List; and (b) [REDACTED] customers who had closed their Sporting Index accounts before September 2017, had been removed from the SPIN Client List, in order to comply with the General Data Protection Regulation (GDPR). Source: Spreadex RFI 5 response (dated 24 September 2024), Q1.

⁵⁸⁴ Six employees originally transferred from Sporting Index, but one left following completion of the Merger. Source: Spreadex, [Response to the CMA’s Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q7.

⁵⁸⁵ Spreadex, RFI 5 response, dated 24 September 2024, Q2.

⁵⁸⁶ Spreadex, [Response to the CMA’s Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q6.

⁵⁸⁷ Spreadex, [Response to the CMA’s Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q6.

which would form part of the divestiture package. This is provided in Figure 9.1 below.

Figure 9.1: Proposed IT Architecture



Source: Spreadex, Remedies RFI, 6 September 2024, Q1.

Notes: [REDACTED]. This is represented by the box labelled '[REDACTED]'.

9.35 With reference to Figure 9.1 above, the Platform Development Element involves:

- (a) Spreadex developing a 'bespoke' 'back-end' platform for Sporting Index (the **Bespoke Platform Solution**) by 'repurposing key elements of Sporting Index's existing systems' (ie the Acquired Source Code), 'whilst integrating new technology, and developing new components as necessary',⁵⁸⁸ essentially 'filling in the gaps',⁵⁸⁹ to make the Bespoke Platform Solution 'capable of operating on a standalone basis',⁵⁹⁰ and 'function as a spread betting platform'.^{591, 592}
 - (i) Spreadex stated that the 'back-end' platform would allow traders to: (a) 'create new events and selections'; (b) 'view liabilities, based on trades that have been placed by clients'; and (c) 'manually settle selections on completion'.⁵⁹³
 - (ii) Spreadex also stated that the Bespoke Platform Solution would retain the 'core client-facing elements of the original Sporting Index system', namely the 'ability' to: (a) create an account; (b) log in to the site; (c) place bets; (d) deposit and withdraw funds; (e) view open bets; and (f) view account history data.⁵⁹⁴
 - (iii) Spreadex told us that 'all the databases' (ie the repository where all of the data would sit) would be 'embedded' into, and included within, the Bespoke Platform Solution.⁵⁹⁵
 - (iv) Spreadex stated that the 'proposed Bespoke Platform Solution would be entirely cloud-based', and that the 'infrastructure would be fully-hosted by Amazon Web Services' (**AWS**), a 'leading cloud-based provider', [REDACTED] and was 'widely used by other modern technology companies'. It added that if the 'purchaser wanted to integrate this infrastructure' into its 'own existing infrastructure in a different way,

⁵⁸⁸ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.6.

⁵⁸⁹ Spreadex, Response hearing transcript, 11 September 2024, page 25, line 10.

⁵⁹⁰ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q7.

⁵⁹¹ Spreadex, Response hearing transcript, 11 September 2024, page 25, line 13.

⁵⁹² Spreadex, Response to the CMA's RFI, 6 September 2024, Q5.

⁵⁹³ Spreadex, Response to the CMA's RFI, 6 September 2024, Q1

⁵⁹⁴ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q3.

⁵⁹⁵ Spreadex, Response hearing transcript, 11 September 2024, page 22, lines 20-22.

these requirements would need to be defined before development begins so that Spreadex can factor in any necessary changes’, and therefore Spreadex stated that it ‘would be aiming to liaise with the potential purchaser at the start of the divestment period to determine the approach’.⁵⁹⁶

- (b) Spreadex developing a reconstituted Sporting Index ‘desktop website’ and reconstituted ‘mobile sites’ (or mobile apps),⁵⁹⁷ ie the customer-facing elements of the platform, more commonly referred to as the ‘front-end’ platform (the **Proposed Front-End Platform**), which would then be integrated with the ‘back-end’ platform, ie the Bespoke Platform Solution⁵⁹⁸ – Spreadex told us [redacted].⁵⁹⁹ Spreadex also told us that the integration of the Bespoke Platform Solution with the Proposed Front-End Platform would ‘allow customers to manage their account and place trades on their mobile or desktop devices’.⁶⁰⁰
- (c) Spreadex developing the ‘Application Programming Interface (**API**) integration’, which would enable ‘third-party trading models’ to connect to the Bespoke Platform Solution, and supply spread betting prices (the **API Integration**). Spreadex explained that this API Integration would ‘allow third parties to plug in their own software for automation of’: (i) ‘event and selection creation’;⁶⁰¹ (ii) ‘price updating’; (iii) ‘status changing (ie moving a selection from Live to Suspended)’;⁶⁰² (iv) ‘settlement of selections at their completion’;⁶⁰³ and (v) ‘voiding of selections (ie when built in error)’.⁶⁰⁴ Spreadex told us that [redacted].⁶⁰⁵

9.36 With reference to Figure 9.1 above, under Spreadex’s Remedy Proposal, the spread pricing models needed to calculate spread prices (the **Trading Models**),⁶⁰⁶

⁵⁹⁶ Spreadex, Response to the CMA’s RFI 5, 24 September 2024), Q4, Q8 and Q9.

⁵⁹⁷ Spreadex, Response hearing transcript, 11 September 2024, page 22, line 6.

⁵⁹⁸ Spreadex, Response to the CMA’s Remedies Notice Annex 2, 20 August 2024, and Spreadex, Response to the CMA’s Remedies Notice Annex 2, 20 August 2024, paragraph 2.5.

⁵⁹⁹ Spreadex, Response hearing transcript, 11 September 2024, page 27, lines 1-4.

⁶⁰⁰ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q1.

⁶⁰¹ Spreadex explained that ‘event and selection creation’ would ‘allow markets to be added to the platform, to be available for customers to bet on. For example, the “Tottenham v Arsenal” event could be added to the platform, and the various selections (betting opportunities) created within this, such as a “Total Goals” selection (where a customer speculates on the number of goals in the match), or a “Corners” selection (where a customer speculates on the number of corners in the match)’. Source: Spreadex, Response to the CMA’s RFI, 6 September 2024, Q1.

⁶⁰² Spreadex explained that ‘status changing’ would ‘allow the trader to make a particular market not available to bet on temporarily. For example, if a goal has been scored in a football match, the trader may want to suspend betting on the match until they have had the opportunity to recalibrate the prices’. Source: Spreadex, Response to the CMA’s RFI, 6 September 2024, Q1.

⁶⁰³ Spreadex explained that ‘settlement of selections at their completion’ would, for example, ‘on completion of a match’, enable a trader ‘to supply the final outcome of a market, and the system will apply the relevant profit or loss on each bet’. Source: Spreadex, Response to the CMA’s RFI, 6 September 2024, Q1.

⁶⁰⁴ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q1.

⁶⁰⁵ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q1.

⁶⁰⁶ Spreadex stated that an algorithm was ‘normally defined as a rule, procedure or sequence of rules/procedures designed to process inputs, following a logical, predictable sequence to arrive at a conclusion or output’. It added that a ‘model on the other hand is more complex and normally defined as a structured representation or mathematical system

will not form part of the divestiture package. In this regard, Spreadex submitted that Trading Models ‘would not be provided as part of the solution, and were never part of the original Sporting Index sale package’.⁶⁰⁷ Instead:

- (a) Spreadex will supply the purchaser with [redacted] and for ‘a period of up to [redacted],⁶⁰⁸ [redacted],⁶⁰⁹ and
- (b) Spreadex will develop the API Integration needed to enable the purchaser to connect the purchaser’s own Trading Models to the Bespoke Platform Solution,⁶¹⁰ such that during this [redacted], it would [redacted]. It added that this [redacted] that were not otherwise being supplied by Spreadex.⁶¹¹

9.37 Spreadex stated that the Bespoke Platform Solution, combined with the API Integration, and Proposed Front-End Platform would, ‘subject to the purchaser of the business plugging in its trading modules [ie the Trading Models]’, ‘constitute a complete online spread betting operating system’.⁶¹²

9.38 In relation to the development of the Bespoke Platform Solution and Proposed Front-End Platform:

- (a) *Bespoke Platform Solution*: Spreadex told us that the divestiture package would be configured to supply sports spread betting in the UK, and not sports fixed odds betting, and added that ‘no new products or services are envisioned, as part of the divestiture’.⁶¹³ Spreadex told us that the ‘Bespoke Platform Solution would look to replicate the functionality available as part of the Sporting Index package that was available as part of the original sale process, and enable Sporting Index to offer spread betting services in the UK at the pre-Merger levels’.⁶¹⁴ In the RWP response, Spreadex submitted however, that it ‘would be willing to design the [Bespoke Platform Solution] to allow a third-party fixed odds platform to be plugged into the [Bespoke Platform Solution]’, ‘provided that this did not delay the overall delivery of the [Bespoke Platform Solution] and did not imply a requirement for Spreadex to create a fixed odds betting platform’.⁶¹⁵

which captures multiple relationships between a number of variables (eg time left in the event, weather, balls remaining to be bowled, players yet to bat, recent performance of batsman etc.) and uses these learned relationships to make predictions or set odds’. It also stated that a model was ‘also normally built based upon large amounts of past data’ and was ‘often refined using experience and algorithms (and personal experience) to improve its accuracy and predictive capacity over time’. Source: Spreadex email to the CMA (23 September 2024).

⁶⁰⁷ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q1.

⁶⁰⁸ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q3.

⁶⁰⁹ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q1.

⁶¹⁰ Spreadex, Response hearing transcript, 11 September 2024, page 36, lines 9-17.

⁶¹¹ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q2.

⁶¹² Spreadex, Response to the CMA’s RFI, 6 September 2024, Q1.

⁶¹³ Spreadex, [Response to the CMA’s Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q5.

⁶¹⁴ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q1.

⁶¹⁵ Spreadex, Response to the CMA’s Remedies Working Paper, 23 October 2024, paragraphs 2.38 and 2.42.

- (b) *Proposed Front-End Platform*: Spreadex told us that Sporting Index’s pre-Merger ‘mobile and desktop platforms’ were acquired by Spreadex under the Merger, and would be ‘reconstituted to be as close as possible to levels they were prior to the Merger’.⁶¹⁶ As such, Spreadex told us that the Proposed Front-End Platform would have ‘functionality matching that of the pre-Merger position’.⁶¹⁷

9.39 Spreadex stated that it would develop a Bespoke Platform Solution based on ‘reconstituting the Sporting Index platform using Spreadex’s latest technology’,⁶¹⁸ and ‘its own knowhow’.⁶¹⁹ It added that by doing so, the Bespoke Platform Solution would be ‘enhancing the pre-Merger Sporting Index platform that was available for sale from’ FDJ, [REDACTED]. For example, Spreadex stated that ‘the platform offered for sale’ by FDJ ‘did not have any physical infrastructure’, while Spreadex was proposing to create a ‘cloud-based infrastructure’ as part of the Bespoke Platform Solution (see also paragraph 9.35(a)(iv) above).⁶²⁰

9.40 Table 9.1 below highlights the ‘core technologies’, which Spreadex proposes to use for the Bespoke Platform Solution. Spreadex stated that ‘all of these technologies’ were ‘either equivalent to those used previously by Sporting Index, or more advanced’.⁶²¹

Table 9.1: ‘primary technologies’ for the Bespoke Platform Solution

[REDACTED]

Source: Spreadex, Response to the CMA’s RFI 5, 24 September 2024, Q10.

9.41 Spreadex stated that the Bespoke Platform Solution would comprise [REDACTED] modules or services:

- (a) Spreadex stated that the Bespoke Platform Solution would be built and developed from a ‘combination of’ ‘re-enabling’ or developing ‘from scratch’ the [REDACTED] ‘Sporting Index modules’ acquired by Spreadex under the Merger (the **Acquired Modules**), and four ‘modules newly built by Spreadex’ (the **New Build Modules**) (see footnote for details)⁶²² to ‘plug the gaps’ in what FDJ had ‘offered for sale’, and therefore ‘ensure the viability of the divestiture business’. Spreadex stated that it considered that the ‘risk to the deliverability and timing of the [development] project would be reduced by developing the necessary modules [...] from scratch’, and that ‘the lowest-risk option is to

⁶¹⁶ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q1.

⁶¹⁷ Spreadex, [Response to the CMA’s Remedies Notice](#), 20 August 2024, paragraph 2.3.

⁶¹⁸ Spreadex, [Response to the CMA’s Remedies Notice](#), 20 August 2024, paragraph 3.15; as explained in Spreadex, Response to the CMA’s Remedies Notice Annex 2, 20 August 2024.

⁶¹⁹ Spreadex, [Response to the CMA’s Remedies Notice](#), 20 August 2024, paragraph 2.6.

⁶²⁰ Spreadex, Response to CMA’s RFI 5, 24 September 2024, Q8.

⁶²¹ Spreadex, Response to CMA’s RFI 5, 24 September 2024, Q10.

⁶²² The four New Build Modules consist of: [REDACTED] Bespoke Platform [REDACTED] Bespoke Platform Solution [REDACTED]. Source: Spreadex, Response to CMA’s RFI 5, 24 September 2024, Q4, Table 2.

develop a substantial portion anew (and, consequently, not use some of the [REDACTED] Sporting Index modules)'. However, it stated that it was prepared to be 'flexible in its approach' on the 'make-up of the [REDACTED] modules' of the Bespoke Platform Solution to address any concerns the CMA might have, eg in relation to Spreadex's incentives to 'build something "less good" for use by its competitor', and that it could 'equally start from a position of trying to use as many of the [REDACTED] Sporting Index modules as possible, and only to develop the [REDACTED] anew, together with any of the Sporting Index module[s] which cannot be made to work as part of the Bespoke Platform Solution'.^{623, 624}

- (b) Spreadex also stated that there would be [REDACTED] Sporting Index modules or services, which would not form part of the Bespoke Platform Solution (the **Excluded Modules**) (see footnote for details).⁶²⁵ [REDACTED]. Spreadex submitted that it did not 'propose trying to re-enable' the '[a]ged applications for [REDACTED] on the basis that: (i) they 'provided immaterial revenues'; (ii) they did 'not appear to be in the scope of this Phase 2 review (ie these are not related to sports spread betting)'; and (iii) Spreadex did not offer these services to Sporting Index customers after the Merger;⁶²⁶ and
- (c) Spreadex stated that 'no elements of the Bespoke Platform Solution' would be 'clones' of Spreadex's own platform.⁶²⁷

9.42 Spreadex also stated that its 'intent would be to design' the Bespoke Platform Solution 'such that it includes the information required to offer temporary compliance support' required by the purchaser under a TSA from Spreadex.⁶²⁸

9.43 In relation to the timescales for developing and delivering the Bespoke Platform Solution and the Proposed Front-End Platform:

- (a) Prior to receiving the RWP, Spreadex provided us with an initial plan for the technical workstreams involved and the estimated timescales for each milestone. Spreadex told us that its 'best estimate at this stage' was that it would take between [REDACTED] to deliver the reconstituted platform (including a period of 'technical testing' (lasting between [REDACTED]) to 'make sure the components all work together'). However, Spreadex acknowledged that there was 'risk associated with this timeline' as it assumed 'no material issues arise during the project'.^{629, 630}

⁶²³ Spreadex submitted [REDACTED] Bespoke Platform Solution [REDACTED] Bespoke Platform [REDACTED] Bespoke Platform Solution. Source: Spreadex, Response to CMA's RFI 5, 24 September 2024, Q4.

⁶²⁴ Spreadex, Response to CMA's RFI 5, 24 September 2024, Q4.

⁶²⁵ [REDACTED]. Source: Spreadex, Response to CMA's RFI 5, 24 September 2024, Q4.

⁶²⁶ Spreadex, Response to CMA's RFI 5, 24 September 2024, Q4.

⁶²⁷ Spreadex, Response to the CMA's RFI, 6 September 2024, Q5.

⁶²⁸ Spreadex stated that [REDACTED]. Source: Spreadex, Response to CMA's RFI 5, 24 September 2024, Q19.

⁶²⁹ Spreadex, Response to the CMA's RFI, 6 September 2024, Q3.

⁶³⁰ Spreadex, Response to the CMA's Remedies Notice Annex 2, 20 August 2024, p.7.

(b) After receiving the RWP, Spreadex submitted in the RWP response that it had not factored into its ‘initial estimates for the project timeline’, ie between [REDACTED], the purchaser’s ‘early involvement’ in the development of the Bespoke Platform Solution. It added that even if the purchaser did ‘collaborate reasonably’, its ‘involvement at an early stage’ was ‘likely to extend the development time’. It submitted that Spreadex could not be ‘exposed to sanctions for delays in the development’, which resulted from the purchaser’s ‘conduct’.⁶³¹ We provide further details of Spreadex’s submissions on its revised timings in the RWP response in paragraphs 9.319 to 9.337 when we consider the appropriate timescales for completing a divestiture.

- 9.44 Spreadex submitted that migrating Sporting Index customers to the reconstituted platform (once its development was completed) would be undertaken [REDACTED], at the point that the Bespoke Platform Solution goes live’. It explained that it would be [REDACTED].⁶³² Spreadex told us that it would ‘handle the client migration’, and added that a ‘significant amount of planning’ was needed for the ‘client migration process’ – it told us that prior to completion of the Merger, the ‘Spreadex team’ had been ‘highly involved in coordinating’ the migration of Sporting Index customers to Spreadex over a ‘substantial period’.⁶³³ Spreadex did not provide an estimated timescale for the process of migrating customers to the new platform, but noted that at the time of the Merger, the ‘process of migrating clients onto the Spreadex platform took [REDACTED], as the Spreadex technical team ran multiple tests to mitigate the risks of issues at the point of migration’, resulting in the migration completing ‘without incident’. Spreadex submitted that the ‘same process would be undertaken for the migration onto the [Bespoke Platform Solution] with scenario planning to identify potential issues’, and plans put in place ‘to mitigate the effects of these’.⁶³⁴
- 9.45 Spreadex told us that the ‘platform would be run and maintained by the purchaser when ready’,⁶³⁵ and would provide the purchaser with the ‘documentation and related know how’ for the Bespoke Platform Solution (see also paragraph 9.223 below).⁶³⁶
- 9.46 Spreadex added that following completion of the divestiture transaction, while ‘the purchaser would be responsible for the entire technology’, Spreadex proposes to provide the purchaser with a TSA for ‘temporary ongoing technical support’ ‘at market rate’ and ‘for a period of up to [REDACTED]’ to: (a) ‘assist the purchaser in understanding how the technology functions’; (b) ‘assist with technical queries and training on the technology’; (c) ‘from the perspective of the Sporting Index

⁶³¹ Spreadex, Response to the CMA’s Remedies Working Paper, 23 October 2024, paragraph 2.4.

⁶³² Spreadex, Response to the CMA’s RFI, 6 September 2024, Q3.

⁶³³ Spreadex, Response hearing transcript, 11 September 2024, page 35, lines 3-10.

⁶³⁴ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q3.

⁶³⁵ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q3.

⁶³⁶ Spreadex, [Response to the CMA’s Remedies Notice](#), 20 August 2024, paragraph 2.7.

technology, support the technical integration of the purchaser's integration of their components into the Sporting Index business', and 'facilitate the transition and a Bespoke Platform Solution to ensure that any dependence on Spreadex is limited in time and scope' (see also paragraph 9.225) (**Technical Support TSA**).^{637, 638}

Details of the Business Support TSA Element

- 9.47 In relation to the Business Support TSA Element of Spreadex's Remedy Proposal, Spreadex told us that 'a TSA would likely be required for any purchaser of the Acquired Assets',⁶³⁹ and that it would 'negotiate a TSA in good faith on fair and reasonable terms whereby Spreadex will offer at market rate, services of no greater scope and duration than that implied is necessary by the CMA's finding on the counterfactual'.⁶⁴⁰ It added that it envisaged that the TSA would be limited to what would be 'required to operate Sporting Index at the pre-Merger level'.⁶⁴¹
- 9.48 Spreadex submitted that while the 'precise scope' of any TSA 'would depend on the current capabilities of the bidder in question',⁶⁴² it would expect the following temporary and transitional services would need to be provided:⁶⁴³
- (a) 'back office and customer service support';⁶⁴⁴
 - (b) 'compliance support';⁶⁴⁵
 - (c) 'payment processing support' [REDACTED];
 - (d) 'IT support', [REDACTED]; and
 - (e) '[REDACTED] support' (including [REDACTED]).⁶⁴⁶
- 9.49 The possible TSAs outlined above under Spreadex's Remedy Proposal, together with the [REDACTED] TSA and Technical Support TSA, are referred to as the **Business Support TSAs**.
- 9.50 In relation to the risk that under the Business Support TSAs, Spreadex staff would have access to confidential information relating to the Sporting Index business, Spreadex stated that it was 'not obvious that Spreadex would have a significant

⁶³⁷ Spreadex, Response to the CMA's RFI, 6 September 2024, Q2 and Q3.

⁶³⁸ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q2.

⁶³⁹ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.17.

⁶⁴⁰ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.3.

⁶⁴¹ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q13.

⁶⁴² Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.4.

⁶⁴³ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraphs 2.3, 2.4 and 2.7.

⁶⁴⁴ Spreadex told us that a [REDACTED]. Source: Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.4.

⁶⁴⁵ At the Response Hearing, Spreadex told us that in relation to 'compliance support', [REDACTED]. Source: Spreadex, Response hearing transcript, 11 September 2024, page 86, lines 16-19.

⁶⁴⁶ Spreadex told us that [REDACTED]. Source: Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.4.

amount' of Sporting Index's 'competitively sensitive information', [REDACTED] (see also footnote 582 above). However, it submitted that.⁶⁴⁷

(a) in order to comply with the [Initial Enforcement Order](#) (the **Initial Order**), Spreadex had 'already implemented systems and controls' to limit the Sporting Index information which Spreadex staff could access (ie limited to information required to 'fulfil their role') – it would propose that 'this structure remains in place throughout the TSA period';

(b) [REDACTED]; and

(c) [REDACTED].

9.51 Spreadex told us that there would be no continuing links between the business to be divested and Spreadex beyond the 'TSA period',⁶⁴⁸ and added that 'following the completion of the TSA, Spreadex would ensure that all data was transferred or deleted, as appropriate',⁶⁴⁹ including committing to 'hand over or delete (as appropriate) all data in relation to the Sporting Index platform'.⁶⁵⁰

Spreadex's submission on effectiveness of Spreadex's Remedy Proposal

9.52 Spreadex told us that 'to ensure the market is returned to the pre-Merger conditions', it proposed to divest all of the Acquired Assets.⁶⁵¹ Spreadex submitted that the divestiture of the Acquired Assets and the provision of its TSA would be sufficient to address the provisional SLC and would be a 'suitable and proportionate remedy', but that, notwithstanding this, it would also 'be prepared to provide a Bespoke Platform Solution': (a) 'in order to create a business that would be attractive to as many bidders as possible'; and (b) 'to ensure that the Acquired Assets included as part of the divestiture package would be technically operational and able to operate as a standalone business within as short a period as possible'.^{652, 653}

9.53 Spreadex submitted that 'the provision of the Bespoke Platform Solution (alongside the accompanying technology support [...] and the TSA [...]) would allow the purchaser to operate the proprietary IT software and systems included in the original transaction perimeter and would further reduce any composition risk arising from the Acquired Assets'.⁶⁵⁴

⁶⁴⁷ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q18.

⁶⁴⁸ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1 Q14.

⁶⁴⁹ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q18.

⁶⁵⁰ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q10.

⁶⁵¹ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q3.

⁶⁵² Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.14.

⁶⁵³ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.5.

⁶⁵⁴ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.8.

- 9.54 Spreadex referred to the dimensions of a remedy’s effectiveness set out in the Merger Remedies Guidance (and also set out in paragraph 9.7 above), and submitted that:⁶⁵⁵
- (a) Spreadex’s Remedy Proposal would ‘restore the pre-Merger market conditions’, and therefore address the SLC the CMA provisionally identified;
 - (b) in relation to its duration and timing, Spreadex’s Remedy Proposal would ‘be permanent’ and therefore, ‘address the SLC identified comprehensively’. Spreadex added that it ‘should be possible to implement this quickly subject to agreeing terms with the buyer’;
 - (c) in relation to its practicality in terms of its effective implementation, monitoring and enforcement, Spreadex did ‘not believe that any ongoing monitoring and enforcement would be required following the completion of the divestment as the divestiture package would be operable from completion’; and
 - (d) in relation to whether Spreadex’s Remedy Proposal had an acceptable risk profile, Spreadex submitted that ‘([a]ssuming that the CMA’s findings in the [Provisional Findings] are correct) the remedy should enable a broad category of potential buyers to acquire the business to be divested’. Spreadex added that the ‘TSA should ensure continuity for Sporting Index’s customers and regulatory compliance, whilst the business transitions to new ownership’. Therefore, Spreadex stated that ‘the remedy should have a very high chance of being successful and addressing the SLC’.

Assessment of effectiveness of a divestiture remedy

Section overview

- 9.55 In this section, we consider the effectiveness of a divestiture remedy. We focus our assessment on Spreadex’s Remedy Proposal, noting that it includes all of the Acquired Assets.
- 9.56 As set out in the Merger Remedies Guidance, the aim of a divestiture remedy is to address an SLC through the disposal of a business or assets from the merger parties to create a new source of competition (if sold to a new market entrant) or to strengthen an existing source of competition (if sold to an existing participant independent of the merger parties).⁶⁵⁶ A successful divestiture will effectively address at source the loss of rivalry resulting from the merger by changing or restoring the structure of the market.⁶⁵⁷

⁶⁵⁵ Spreadex, [Response to the CMA’s Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q2.

⁶⁵⁶ [CMA87](#), paragraph 3.37.

⁶⁵⁷ [CMA87](#), paragraph 3.38.

- 9.57 To be effective in restoring or maintaining rivalry in a market where the CMA has decided that there is an SLC, a divestiture remedy will involve the sale of an appropriate divestiture package to a suitable purchaser through an effective divestiture process.⁶⁵⁸ There are three categories of risk that may impair the effectiveness of any divestiture remedy:⁶⁵⁹
- (a) composition risk arises if the scope of the divestiture package is too constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor in the market;
 - (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser, or if a suitable purchaser is not available; and
 - (c) asset risk arises if the competitive capability of the divestiture package will deteriorate before completion of the divestiture.
- 9.58 In evaluating the effectiveness of remedies, the CMA will seek remedies that have a high degree of certainty of achieving their intended effect.⁶⁶⁰ An effective remedy must therefore enable the CMA to have sufficient confidence that the risks associated with it can be properly addressed.
- 9.59 The remainder of this section covers our assessment of:
- (a) the scope and composition of the divestiture package;
 - (b) the identification and availability of a suitable purchaser; and
 - (c) the effectiveness of the divestiture process.

Scope and composition of the divestiture package

- 9.60 In considering the appropriate scope for a divestiture package, the CMA should ensure that it:
- (a) is sufficiently broad in scope to address the aspects of the SLC and resulting adverse effects;⁶⁶¹
 - (b) would enable the eventual purchaser to operate the divested business as an effective competitor;⁶⁶² and

⁶⁵⁸ [CMA87](#), paragraph 5.2.

⁶⁵⁹ [CMA87](#), paragraph 5.3.

⁶⁶⁰ [CMA87](#), paragraph 3.5(d).

⁶⁶¹ [CMA87](#), paragraphs 3.4 and 5.7.

⁶⁶² [CMA87](#), paragraph 5.3(d).

(c) is sufficiently attractive to potential purchasers.⁶⁶³

- 9.61 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.⁶⁶⁴
- 9.62 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.⁶⁶⁵
- 9.63 In the Remedies Notice, we indicated that a divestiture package broader than the Acquired Assets may be required to ensure an effective divestiture, given that the Sporting Index assets acquired by Spreadex as part of the Merger was ‘unlikely to be sufficient to constitute the divestment of a standalone business and be an effective remedy’ (see also paragraph 9.22 above).⁶⁶⁶
- 9.64 We note that in its response to the Remedies Notice and at its Response Hearing, Spreadex disagreed with our initial position. Spreadex submitted that there was an ‘interplay between the counterfactual and remedies’,⁶⁶⁷ and that the CMA’s provisional conclusions on the counterfactual should frame the scope of any divestiture remedy and Spreadex’s remedy obligations.
- 9.65 Given that Spreadex’s arguments have a direct bearing on the scope of any remedies, we first set out Spreadex’s arguments on the application of the counterfactual to our remedies design and our response to them, before setting out the evidence from third parties on the scope of the divestiture package, and our assessment of the appropriate scope of the divestiture package and its various key constituents.

Spreadex’s views on the scope of the divestiture package

- 9.66 Spreadex told us that it was a ‘contradiction’ for the CMA to consider that the Acquired Assets were not ‘standalone’ – it submitted that whereas in the Provisional Findings, the CMA considered that ‘anyone could buy’ the assets which FDJ had put up for sale, and then run them ‘as a viable business’, in the Remedies Notice, the CMA considered that the ‘same assets’ would not ‘be sufficient’ for the ‘same potential bidders’. Spreadex told us that both positions

⁶⁶³ [CMA87](#), paragraph 3.5(a).

⁶⁶⁴ [CMA87](#), paragraph 5.7.

⁶⁶⁵ [CMA87](#), paragraph 5.12.

⁶⁶⁶ CMA, [Remedies Notice](#), 25 July 2024, paragraph 19.

⁶⁶⁷ Spreadex, Response hearing transcript, 11 September 2024, page 4, lines 15 -18. [Response Hearing Transcript](#)

'cannot be true at the same time', and submitted that the 'Remedies Notice completely undermines the counterfactual'.⁶⁶⁸

9.67 Spreadex submitted that the Acquired Assets were materially equivalent to the assets offered to potential purchasers during the 2023 Sale Process:

- (a) Spreadex submitted that the proposition that the Acquired Assets were unlikely to be sufficient to constitute the divestment of a standalone business 'fundamentally contradicts and undermines the basis of the CMA's SLC finding. The CMA's SLC finding was predicated on its view that, absent Spreadex's bid, FDJ would have proceeded with one of the Alternative Bidders, each of which had the experience and means to operate the business as a going concern, or another bidder if those negotiations had not proceeded'.⁶⁶⁹
- (b) Spreadex submitted that it did not accept that the divestiture of solely the Acquired Assets was 'unlikely to be sufficient to constitute the divestment of a standalone business and be an effective remedy', and submitted that 'the Acquired Assets were the same as those that would have been available to the Alternative Bidders (and other bidders Sporting Group approached) minus some of the staff that Sporting Group was looking to offload', citing that each of the Alternative Bidders had indicated that they would have required less staff than was offered.⁶⁷⁰ It added that the 'fact that Spreadex did not take on all of the Sporting Index staff on offer, does not diminish the standalone viable nature of this business'.⁶⁷¹
- (c) Spreadex submitted that there 'were at least two other bidders (the Alternative Bidders) whom the CMA found were both prepared and able to purchase and operate the Acquired Assets on substantially similar terms to Spreadex. Divesting those assets on similar terms should therefore (if the CMA's assessment in the [Provisional Findings] is correct) allow the sale of a viable business'.⁶⁷²
- (d) Spreadex submitted that since it was the 'CMA's view' in the Provisional Findings that 'the Acquired Assets could equally have been acquired and operated by one of the Alternative Bidders (and other interested parties) with the benefit of a TSA to allow the purchaser to operate the business whilst it builds up its own capabilities and functions', it proposed 'to create a

⁶⁶⁸ Spreadex, Response hearing transcript, 11 September 2024, page 6, lines 12-14.

⁶⁶⁹ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.10.

⁶⁷⁰ Spreadex submitted that [redacted] 'would only have taken 17 of the staff included in the B2C perimeter', and [redacted] would similarly have reduced the headcount since they commented that Sporting Index had a 'staff count in excess of what was required to manage a business with such a small active customer base'. Source: Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.9.

⁶⁷¹ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.9.

⁶⁷² Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.19.

divestiture package' that would 'enable a suitable purchaser to purchase and operate the same assets that FDJ made available for sale' and to 'enhance the package by offering an appropriate and proportionate TSA to facilitate the transition and a Bespoke Platform Solution to ensure that any dependence on Spreadex is limited in time and scope'.⁶⁷³

- (e) Spreadex submitted that the 'package of assets that Spreadex acquired had been put together by FDJ with professional assistance from Alix Partners to operate as a standalone package to appeal to the widest possible group of potential purchasers', and that there was 'no reason to consider that this package is less viable now than it was then (assuming that the CMA's assessment on the counterfactual in the [Provisional Findings] is correct)'. It added that the 'inclusion of the Bespoke Platform Solution' under Spreadex's Remedy Proposal 'would offer further assurance to potential bidders regarding the ability of the business to operate on a standalone basis'.⁶⁷⁴
- (f) It added that if Spreadex was 'required to divest Sporting Index', it 'would be prepared to offer a purchaser of the Acquired Assets a TSA to operate the Sporting Index business for a transitional period, while the purchaser makes the investments required to build up the personnel and functions that it does not currently have to operate the business in the manner that Sporting Index operated it pre-Merger'.⁶⁷⁵
- (g) Spreadex submitted that since 'restoring Sporting Index to its pre-Merger position would address the SLC that the CMA has identified, it would not be proportionate for Spreadex to be required to offer a TSA that supports Sporting Index in the manner that it has been operated under Spreadex's ownership'.⁶⁷⁶

9.68 Spreadex also submitted that any divestiture package should not include any Spreadex assets:

- (a) Spreadex submitted that it was 'fundamentally inconsistent to suggest that "divestiture of a combination of Sporting Index assets and Spreadex assets [...] for the purpose of establishing a standalone business" would be necessary to constitute an appropriate remedy: [✂]. Requiring the inclusion of Spreadex assets will call into question the very counterfactual and SLC finding which underpins the need for a remedy in the first place. It would also be incompatible with the CMA's approach to identify the "smallest viable, standalone business that can compete successfully on an ongoing basis"'.⁶⁷⁷

⁶⁷³ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q2.

⁶⁷⁴ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.21.

⁶⁷⁵ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraphs 2.2 and 2.3.

⁶⁷⁶ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraphs 2.2 and 2.3.

⁶⁷⁷ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.12.

- (b) Spreadex submitted that '[a]ny remedies the CMA issues must restore competition to the position that it was pre-Merger. Providing Spreadex staff and assets (including intellectual property and knowhow) that were not part of the Sporting Index business, would weaken Spreadex's own pre-Merger business and reduce its competitiveness'.⁶⁷⁸ Spreadex told us that this would go 'materially beyond what was pre-Merger by reducing Spreadex's pre-Merger capability', and therefore, 'not achieve the aim of restoring the pre-Merger' situation.⁶⁷⁹ Spreadex added that as well as 'artificially distorting the market, it would cause significant harm to Spreadex's legitimate business interests. Such measures would therefore be disproportionate and entirely inappropriate to the potential harm that the CMA is seeking to remedy'.⁶⁸⁰
- (c) Spreadex told us that any remedy, which included Spreadex staff or assets would be 'unprecedented'; represent an 'expropriation of Spreadex assets and employees'; and cause 'adverse effects on staff and the UK spreads market' as it would 'undermine the most innovative player and cause worse market outcomes'.⁶⁸¹
- (d) Spreadex submitted that '[r]equiring the inclusion of any Spreadex assets in the divestiture package would also make the remedy much more complex and it would take much longer to implement'.⁶⁸²

Addressing Spreadex's submissions on the scope of the remedy

9.69 Spreadex made the following key submissions which go to the scope of the remedy:

- (a) First, that the Acquired Assets and the assets offered to potential purchasers during the 2023 Sale Process are materially equivalent, and therefore, the divestiture of the Acquired Assets alone or the Acquired Assets together with the provision of the Business Support TSAs would be sufficient to address the provisional SLC. As such, Spreadex submitted that if this is not the case, then this would undermine the CMA's provisional conclusions on the counterfactual and therefore, the SLC.
- (b) Second, that Spreadex should not be required to divest any Spreadex assets on the basis that [redacted], and on the basis that it would be both disproportionate and make a divestiture remedy more protracted and complex.

⁶⁷⁸ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.24.

⁶⁷⁹ Spreadex, Response hearing transcript, 11 September 2024, page 13, lines 4-13.

⁶⁸⁰ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.24.

⁶⁸¹ Spreadex, Response hearing transcript, 11 September 2024, page 14, lines 4-12.

⁶⁸² Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.16.

Differences between the assessment of an effective remedy and the counterfactual

- 9.70 In relation to Spreadex’s first submission, we disagree that offering potential purchasers the Acquired Assets alone or the Acquired Assets together with the Business Support TSAs would be materially equivalent to the transaction perimeter offered to potential purchasers during the 2023 Sale Process.
- 9.71 As a matter of principle, our view is that the premise of Spreadex’s submissions is misconceived, as Spreadex appears to conflate the purpose and assessment of the counterfactual with those that are applicable to the selection of an effective remedy:
- (a) First, as regards the purpose and level of detail of the assessment: the counterfactual is not a statutory test, but an analytical tool used in answering the question of whether a merger gives rise to an SLC.⁶⁸³ It is not intended to be a detailed description of the conditions of competition that would prevail absent the merger,⁶⁸⁴ and the CMA will generally conclude on the counterfactual conditions of competition broadly,⁶⁸⁵ selecting ‘the most likely’ conditions of competition as the counterfactual.⁶⁸⁶ By contrast, a decision on potential remedial action is a statutory duty (if there is an anti-competitive outcome from a merger) and, in particular, the CMA must have regard to the need to achieve as comprehensive a solution as is reasonable and practicable.⁶⁸⁷ This is a ‘high duty’⁶⁸⁸ and therefore the assessment of potential remedial action is necessarily detailed;⁶⁸⁹ the CMA needs to have a ‘high degree of confidence’ of success of the remedy chosen.⁶⁹⁰
 - (b) Second, as regards the substance: as part of the assessment under limb 2 of the exiting firm test, consideration is given to alternative purchasers ‘that would have operated the business as a competitor’;⁶⁹¹ the assessment of the strength of the constraint of the target firm under the ownership of an alternative purchaser is a matter for the competitive assessment, not the

⁶⁸³ [MAGs](#), paragraph 3.1.

⁶⁸⁴ [MAGs](#), paragraph 3.7.

⁶⁸⁵ [MAGs](#), paragraph 3.9. If two or more possible counterfactual scenarios lead to broadly the same conditions the CMA may not find it necessary to select the particular scenario that leads to its counterfactual (*ibid.*).

⁶⁸⁶ [MAGs](#), paragraph 3.13. Where there are multiple possible counterfactual scenarios, the determination of the appropriate counterfactual involves the assessment of the relative probabilities of those scenarios arising in the absence of the merger. This may mean that ‘the most likely’ scenario has a likelihood of less than 50% (for example, where the relative probabilities of three scenarios are 30%, 30% and 40%, the last scenario would be selected as the counterfactual).

⁶⁸⁷ [Section 35\(4\)](#) of the Act.

⁶⁸⁸ [Ecolab Inc. v CMA](#) [2020] CAT 12, at [74]. At the remedies stage, the CMA ‘is not ... concerned with weighing up probabilities against possibilities but rather with deciding what will ensure that no SLC either continues or occurs’ (*ibid.*, citing *Ryanair Holdings PLC v CMA* [2015] EWCA Civ 83, at [57]).

⁶⁸⁹ For example, the assessment of the effectiveness of a remedy involves several dimensions ([CMA87](#), paragraph 3.5(d)), as summarised at paragraph 9.7).

⁶⁹⁰ [Ecolab Inc. v CMA](#) [2020] CAT 12, at [83]. See also [CMA87](#), paragraph 3.5(d) which provides that the CMA will seek remedies that have a ‘high degree of certainty’ of achieving their intended effect.

⁶⁹¹ [MAGs](#), paragraph 3.30.

counterfactual.⁶⁹² By contrast, the assessment of an effective remedy requires consideration of its competitive position, as the CMA will normally seek to identify the smallest ‘viable’, stand-alone business that can ‘compete successfully on an ongoing basis’ to restore the rivalry lost as a result of the merger.⁶⁹³

9.72 Turning to the specific points made by Spreadex, we note first that although the Merger Remedies Guidance states that in ‘identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business’, that position is derived from the following principle as confirmed by the CAT: namely, that it is reasonable, as a starting point, to consider that restoring the status quo ante would normally involve reversing the completed acquisition unless the contrary were shown.⁶⁹⁴ The Merger Remedies Guidance further provides that ‘restoration of the pre-merger situation in the markets subject to an SLC will generally represent a straightforward remedy’.⁶⁹⁵

9.73 In the present case, however, our view is that the divestiture of the Acquired Assets alone would not be sufficient to restore the pre-Merger situation. This is because Spreadex acquired less than that which was offered for sale in the circumstances of the 2023 Sale Process upon which our counterfactual assessment was based, where potential purchasers were offered a transaction perimeter to acquire Sporting Index, together with a live and operational platform (with a TSA for its ongoing operation) and up to [REDACTED] staff⁶⁹⁶ (see also Table 9.5) (although each of the Alternative Bidders had indicated during the 2023 Sale process that they might not require all of the staff on offer, subject to further due diligence).⁶⁹⁷ In our view, this situation has materially changed since Merger completion. For example:

- (a) First, under the 2023 Sale Process, potential purchasers were offered the transfer of a fully operational and proven spread betting platform, which would rely on a TSA from the seller for the applications which the seller would have retained, until the purchaser could have developed its own replacement applications. This is not the case currently given the following:
 - (i) Although Spreadex decided to acquire the source code for Sporting Index’s platform, it chose not to keep Sporting Index’s platform operational. Instead, Sporting Index’s platform has not been operational since November 2023 when the Merger completed, and Sporting Index has been operating using a ‘white-label’ version of Spreadex’s website,

⁶⁹² Chapter 5, paragraph 5.57, citing [MAGs](#), paragraph 3.31.

⁶⁹³ [CMA87](#), paragraph 5.7.

⁶⁹⁴ [CMA87](#), paragraph 5.6, footnote 103, citing *Somerfield plc v Competition Commission* [2006] CAT 4.

⁶⁹⁵ [CMA87](#), paragraph 5.6.

⁶⁹⁶ Spreadex Internal Documents: [REDACTED].

⁶⁹⁷ For example, see Chapter 5, paragraphs 5.10 and 5.94.

which is running on the same database, underlying technology stack and operational applications as Spreadex's own website.⁶⁹⁸

- (ii) Since Sporting Index's platform has not been operational since Merger completion, Spreadex did not update, improve or develop that platform.
 - (iii) The CMA cannot require a third party, such as FDJ, Sporting Group (or its potential new owner, Betsson Group,⁶⁹⁹ subject to pre-completion conditions being satisfied), to provide a purchaser with a TSA or enter into a commercial agreement with a purchaser to access the Trading Models or the applications retained by Sporting Group; or receive technical support (even if these options were still available), which may be required to reconstitute Sporting Index's platform using the Acquired Source Code.
 - (iv) We therefore do not consider that a sale of the Acquired Source Code in its current form to be equivalent to the operational spread betting platform and TSA which were available to the potential purchasers during the 2023 Sale Process.
- (b) Second, during the 2023 Sale Process, potential purchasers were offered up to [REDACTED] B2C-dedicated staff working across various different functions (see Table 9.5), who were already trained and experienced, and had the 'institutional knowledge' of Sporting Index's business functions and activities, including staff in Trading, Regulatory and Compliance, Spread betting platform development support, Data Analytics and Product Management.⁷⁰⁰ Among the Acquired Assets, there are currently only five SPIN Employees: [REDACTED] in Customer Services, [REDACTED] in Marketing and [REDACTED] in Customer Relations. It is our view that potentially a great deal of knowledge of Sporting Index's operations and IT platform resided with the former employees. In our view the current SPIN Employees being offered are not materially equivalent to what was offered to potential purchasers during the 2023 Sale Process.⁷⁰¹ Nor do we consider that the requirement on the purchaser to staff the business under Spreadex's Remedy Proposal to be materially equivalent to the requirements on purchasers during the 2023 Sale Process.

⁶⁹⁸ CMA, [Derogation Letter](#), 15 January 2024.

⁶⁹⁹ Betsson Group, [Betsson Group Announces Strategic Acquisition of Sporting Solutions - Betsson Group](#), 1 August 2024 (last accessed 14 November 2024).

⁷⁰⁰ Spreadex Internal Documents: [REDACTED].

⁷⁰¹ For example, we note from the evidence we received from 10star, that [REDACTED], of the [REDACTED] current SPIN Employees being offered under Spreadex's Remedy Proposal, 10star had only wanted to retain the [REDACTED]. Source: 10star, s.109 response, [REDACTED], 10 July 2024.

(c) During the 2023 Sale Process, [REDACTED]⁷⁰² [REDACTED]⁷⁰³. We understand that neither forms part of the Acquired Assets, nor are any Trading Models included within the divestiture package under Spreadex's Remedy Proposal.

9.74 Based on the above, our view is that the above changes are sufficiently material such that a divestiture of the Acquired Assets on their own would give rise to high composition risks (and in any event materially higher composition risks compared to the Sporting Index business on offer during the 2023 Sale Process).

Inclusion of Spreadex assets within the divestiture package

9.75 In relation to Spreadex's second submission (ie that Spreadex should not be required to divest any Spreadex assets under any divestiture remedy), as related above, the Merger Remedies Guidance notes that in 'defining the scope of a divestiture package that will satisfactorily address the 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'.⁷⁰⁴

9.76 In designing an appropriate divestiture remedy, the CMA will seek to restore the competitive structure of the market. The divestiture package should be attractive to a suitable purchaser and allow the purchaser to operate as an effective competitor in the market on an ongoing basis.⁷⁰⁵ Given that Spreadex acquired less than that which was offered to potential purchasers during the 2023 Sale Process, a broader divestiture package than merely the Acquired Assets would now be required. Moreover, given relevant differences between the position of Spreadex now compared with its position under the ownership of FDJ during the 2023 Sale Process, a potentially differently configured package would be required to that which FDJ offered potential purchasers during the 2023 Sale Process, including potentially the divestiture of certain Spreadex assets or the creation or acquisition of alternative assets for disposal.⁷⁰⁶

9.77 Therefore, in determining the appropriate scope of the divestiture remedy, we must consider, in the particular circumstances of the present case, whether it would be necessary to include Spreadex assets (or alternative assets) to ensure the remedy is effective, in particular to enable a purchaser of the divestiture package to compete successfully in the relevant market on an ongoing basis. It is

⁷⁰² FDJ, Response to CMA RFI, 10 February 2024.

⁷⁰³ Spreadex Internal Documents: [REDACTED].

⁷⁰⁴ [CMA87](#), paragraph 5.7.

⁷⁰⁵ [CMA87](#), paragraphs 5.3(a) and 5.7.

⁷⁰⁶ The CMA considers the scope of the divestiture package on a case-by-case basis by reference to its particular circumstances and in relation to the SLC concerned ([CMA87](#), paragraphs 5.7 and 5.8). The principle that additional elements from the acquirer may be included in the divestiture package, in addition to the divestiture of the target, where required to ensure that the remedy is effective and sufficiently attractive to a potential purchaser, has been recognised (Completed acquisition by [Facebook, Inc \(now Meta Platforms, Inc\) of Giphy, Inc., 18 October 2022](#), upheld in [Meta Platforms, Inc. v CMA](#) [2022] CAT 26, albeit the circumstances were different in that case).

not a question of limiting the scope of the divestiture package solely to what was offered during the 2023 Sale Process, nor is it relevant whether there have been similar remedy precedents under different circumstances.

9.78 As we set out later in this section when we consider the key elements which should be included as part of any divestiture package, we have carefully explored different options in order to ensure that the remedy is both effective and the least onerous and intrusive option, including avoiding a possible remedy, which could have the unintended consequence of weakening the competitive position of Spreadex which would have prevailed absent the Merger.

Third parties' views on the scope of the divestiture package

9.79 In the Remedies Notice, we invited 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.⁷⁰⁷ We invited views on the composition of the divestiture package, whether there were additional assets or functions that would be necessary to ensure an effective remedy, and whether additional Spreadex assets should be included.

9.80 Third parties generally told us that a divestiture only involving the Acquired Assets is unlikely to constitute an effective remedy:

- (a) 10star told us that the scope of the divestiture package should not be 'too narrow' and added that acquiring only the limited Sporting Index assets previously acquired by Spreadex would be 'someway short of powering the business in the short term'. It told us that the [REDACTED].^{708, 709}
- (b) Star Sports told us that Spreadex's Remedy Proposal was 'very different' compared to [REDACTED] the FDJ sales process, particularly in terms of staff and headcount. [REDACTED]. It also told us that it generally agreed with the CMA's initial view (as set out in the Remedies Notice) on what should be included within the scope of a divestiture package.⁷¹⁰
- (c) One third party sports fixed odds betting provider told us that a divestiture package would need 'spread betting technology', which could not be sourced 'off the shelf', as well as an FCA licence in order to operate,⁷¹¹ while another third party (bet365) told us that a divestiture remedy seemed to be a solution, but from a practical perspective, there would be a number of challenges, given that: (i) the assets acquired by Spreadex as part of the Merger were

⁷⁰⁷ CMA, [Remedies Notice](#), 25 July 2024, paragraphs 30-31.

⁷⁰⁸ 10star, Call transcript.

⁷⁰⁹ 10star, Call transcript.

⁷¹⁰ Star Sports, Call transcript.

⁷¹¹ Third party call note.

not standalone in nature; (ii) some of the employees that formed part of the pre-Merger Sporting Index might no longer be with FDJ; and (iii) the source code for the pre-Merger Sporting Index spread betting platform acquired by Spreadex would have degraded, as it had not been operational since the Merger, and added that, generally it was very difficult to reinvigorate a degraded platform.⁷¹²

Our assessment of composition risks

- 9.81 In Chapter 7, Countervailing Factors, we set out our view that in order for a competitor to exert an effective constraint on the Merged Entity in the supply of licensed online sports spread betting services in the UK, it would require the technology to: (i) comply with the FCA's regulatory requirements; and (ii) offer spread betting prices in a manner that was sufficiently comprehensive to compete with the Merged Entity, for example, it would need to offer services comparable to those of Sporting Index pre-Merger to prevent an SLC arising from the Merger.⁷¹³
- 9.82 We consider below the composition risks associated with each of the three key elements of Spreadex's Remedy Proposal, and the question of whether the divestiture package should be configured to include the capability to supply sports fixed odds betting services:
- (a) Acquired Assets Element
 - (b) Sports fixed odds betting capability
 - (c) Platform Development Element
 - (d) Business Support TSA Element (including staff and business functions)
- 9.83 We end this subsection with a summary of our views on the appropriate scope of the divestiture package.

Acquired Assets Element

Spreadex's views

- 9.84 Spreadex's submissions on the Acquired Assets Element were set out in paragraphs 9.31 to 9.33 above.

⁷¹² Third party call note, bet365.

⁷¹³ Chapter 7, paragraph 7.38.

Our assessment

- 9.85 Under Spreadex's Remedy Proposal, Spreadex is proposing to divest all of the Sporting Index assets (including the Sporting Index legal entity) it had acquired under the Merger transaction, ie the Acquired Assets.
- 9.86 We agree that if a divestiture remedy is to start with the Acquired Assets, then it should include all of the Acquired Assets to mitigate the risk of omitting a key asset from the scope of the divestiture package.
- 9.87 Given Spreadex has confirmed that all of the Acquired Assets sit within the Sporting Index legal entity, a share sale of this entity will transfer the Acquired Assets across to a purchaser, and mitigate any risk of omitting key assets or requiring customer consent for their transfer to the purchaser. For the avoidance of doubt, to the extent that there are any unrecognised deferred tax assets within the Sporting Index legal entity, these deferred tax assets should not be excluded from the scope of the Acquired Assets. In our view, the transfer of the Acquired Assets as part of a divestiture of Sporting Index is relatively straightforward.
- 9.88 Spreadex has proposed that all of the Acquired Assets will be divested and given its reasoning, as set out in paragraphs 9.31 to 9.33 above. We agree with Spreadex's reasoning that all of the Acquired Assets should be divested, and therefore, we do not repeat those reasons here.
- 9.89 However, in relation to the SPIN Customer List, which forms part of the Acquired Assets, [REDACTED] and the extent of integration to date of Sporting Index's business with Spreadex, in our view, further measures are required as part of a divestiture remedy to ensure its effectiveness. We consider this in paragraphs 9.90 to 9.97 below.
- 9.90 A [REDACTED] proportion of Sporting Index's revenues are generated by its HVCs (**SPIN HVCs**), [REDACTED] (see Table 9.2 below).^{714, 715}

Table 9.2: Relative significance of SPIN HVCs (2022 figures)

[REDACTED]

Source: [REDACTED]

- 9.91 Recognising the importance of [REDACTED] during our investigation, under the Initial Order: (a) we required Spreadex to put in place a retention package for the [REDACTED] (one of the SPIN Employees) responsible for [REDACTED] independently from Spreadex during our investigation; and (b) we limited Spreadex's access to the SPIN Customer List to what was strictly necessary for regulatory compliance purposes, in addition to the

⁷¹⁴ FDJ, response to RFI, Q26.

⁷¹⁵ Oakvale Capital communicated similar figures to Spreadex during the FDJ Sale Process: 'Spreads [REDACTED]'.

general obligations on Spreadex under the Initial Order to preserve, hold separate and not integrate the SPIN Customer List. Spreadex's compliance with such obligations has been independently monitored by a monitoring trustee (**Monitoring Trustee**).⁷¹⁶

- 9.92 In the event that we require a divestiture remedy, it is our view that an attempt by Spreadex to solicit even a small number of SPIN HVCs (who are not also Spreadex customers) could [REDACTED] and materially undermine the viability of any divestment package. For example, [REDACTED]. In our view, the risk of degradation of the SPIN Customer List following completion of a divestiture remedy to be potentially material, noting also that for Spreadex's regulatory compliance purposes, [REDACTED].
- 9.93 The Merger Remedies Guidance states that the CMA may 'permit or require non-solicitation clauses or other measures to protect the purchaser from the merger parties for a limited period (eg up to one year) to enable the purchaser to become established as an effective competitor in the relevant market(s)'.⁷¹⁷
- 9.94 Third parties had mixed views on customer non-solicitation clauses: while they were generally supportive of the principle of a customer non-solicitation clause, several were sceptical in relation to whether it would be effective in practice, given the challenges of monitoring compliance and the risk that Spreadex had already migrated and integrated Sporting Index's customers (see also paragraph E.6 of Appendix E):
- (a) One third party sports fixed odds betting provider told us that if the Sporting Index customer list was transferred to a purchaser, there should be a one-year 'non-solicit period' preventing Spreadex from approaching customers on that list.⁷¹⁸
 - (b) 10star told us that it would question the worth of a Sporting index customer non-solicitation clause, as it would be difficult to prove that a customer had been approached by Spreadex, and that Spreadex would just state that the customer approached them.⁷¹⁹
 - (c) Star Sports told us that a non-solicitation clause was [REDACTED]. It added that the length of any non-solicitation clause would depend on the details, but it considered that two years would be respectable.⁷²⁰
- 9.95 Given the importance of [REDACTED] and noting that immediately following completion, the purchaser's leadership team will likely have multiple priorities to balance, including

⁷¹⁶ A monitoring trustee formally appointed on 7 May 2024 pursuant to the CMA's written directions issued on 29 April 2024 under the Initial Order.

⁷¹⁷ [CMA87](#), paragraph 5.25.

⁷¹⁸ Third party call note.

⁷¹⁹ 10star, Call transcript.

⁷²⁰ Star Sports, Call transcript.

(but not limited to) recruiting the additional staff required and establishing and integrating new business functions with its own operations, it is our view that Spreadex should be prohibited from contacting, soliciting (whether through direct or indirect contact) and entertaining SPIN HVCs for a limited time following completion of any divestiture remedy on the basis set out in paragraph 9.97 below, to allow sufficient time for the purchaser to establish and strengthen relationships with SPIN HVCs.

- 9.96 In relation to potential concerns from third parties that Spreadex had already migrated and integrated Sporting Index's customers, we described in paragraph 9.91 above the various procedural safeguards we have put in place under the Initial Order to preserve the SPIN Client List. We consider below how this customer non-solicitation obligation should be designed, noting the potential compliance monitoring challenges cited by some third parties:
- 9.97 Based on Table 9.2 above, we note that there were over [REDACTED] customers who were classified as a [REDACTED] during 2023, and understand that around [REDACTED]% of all Sporting Index customers were already customers of Spreadex at the time of the Merger.⁷²¹ We also understand from the Monitoring Trustee that [REDACTED].⁷²² In order to ensure a targeted customer non-solicitation obligation:
- (a) It is our view that Spreadex should be prohibited from contacting, soliciting (whether through direct or indirect contact) and entertaining Sporting Index customers, who:
 - (i) [REDACTED]; and
 - (ii) [REDACTED](Sporting Index customers who meet both criteria (ie (i) and (ii)), are referred to as the **Restricted SPIN HVCs**).
 - (b) It is our view that this customer non-solicitation obligation should be in place for a maximum period of [REDACTED] from the date of completion of any divestiture (**Customer Non-Solicitation Period**). In our view, this should allow sufficient time for the purchaser to establish and strengthen relationships with SPIN HVCs.
 - (c) The Monitoring Trustee shall monitor Spreadex's compliance with its customer non-solicitation obligation during the Customer Non-Solicitation Period.

⁷²¹ For reference, we note that Sporting Index had [REDACTED] UK online sports spread customers in 2022 (Source: Spreadex, Response to RF12, 2 February 2024, question 6) and [REDACTED] (around [REDACTED] %) of these customers were already customers of Spreadex. (Source: Spreadex, Response to the CMA's s109 notice 01, 24 April 2024, question 31)

⁷²² Monitoring Trustee, E-mail to the CMA, 26 September 2024.

(d) For the avoidance of doubt, this customer non-solicitation obligation would not prevent a new customer approaching Spreadex or opening a Spreadex account of their own accord.

9.98 Separately, while it is our view that it is necessary to require all of the Acquired Assets to be transferred to the purchaser, we would make an exception for the five SPIN Employees, where a purchaser may already have its own marketing, customer support and customer relationship teams. As such, the purchaser should be given the option to acquire fewer than the five SPIN Employees.

9.99 Following completion of any divestiture period and within a period to be agreed with the CMA, Spreadex will be required to destroy all confidential information relating to Sporting Index, including in relation to the Acquired Assets and the technology platform (except confidential information which Spreadex is strictly required under law or regulation to retain (see also footnote 582 and paragraph 9.32 above) provided that such information is appropriately ring-fenced,⁷²³ or which is strictly required for Spreadex to comply with its obligations under the divestiture remedy, eg in relation to the provision of any TSA services – in these circumstances, Sporting Index information should be destroyed as soon as reasonably practicable after these requirements no longer apply).

Conclusion on the Acquired Assets Element

9.100 Based on our assessment above, in relation to the Acquired Assets Element, we conclude that:

- (a) The transaction should be structured as a sale of 100% of Spreadex's shares in the Sporting Index legal entity to the purchaser.
- (b) The Acquired Assets should be transferred to the purchaser in full, with no elements retained by Spreadex, except in relation to the SPIN Employees, in respect of which the purchaser may opt to transfer fewer than the five SPIN Employees.
- (c) During the Customer Non-Solicitation Period, Spreadex shall be prohibited from contacting, soliciting (whether through direct or indirect contact) and entertaining the Restricted SPIN HVCs. The Monitoring Trustee will monitor Spreadex's compliance with this obligation.

⁷²³ For example, Spreadex stated that its 'regulators require' Spreadex to 'assess safer gambling and anti-money laundering concerns on a group-wide basis and not based on a customer's activity with an individual sub-brand', and therefore, for 'joint customers' (ie customers holding both a Spreadex and Sporting Index account), Spreadex would 'need to retain' the notes of its relevant interactions with these customers in relation to their Sporting Index activity for the period during which Spreadex owned Sporting Index. (Source: Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q2.).

- (d) Following completion of the divestiture, within a period to be agreed with the CMA, unless strictly necessary for compliance with the law and regulations or its obligations under a divestiture remedy, Spreadex shall destroy all confidential information relating to Sporting Index.

Sports fixed odds betting capability

- 9.101 Prior to the Merger, Sporting Index supplied both sports spread betting and sports fixed odds betting services. In the Remedies Notice, we invited views on whether it was 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.⁷²⁴

Spreadex's views

- 9.102 Spreadex submitted that it would 'not be 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, given that:⁷²⁵
- (a) a 'spread betting business' could 'operate viably on its own' – Spreadex stated that it operated as a 'viable spread betting only business for over a decade before commencing fixed odd services', and that Sporting Index operated as a spread betting only business until 2019;
 - (b) Sporting Index's revenues for its fixed odd business had been 'immaterial' (prior to the Merger, fixed odds revenues accounted for [X] % of Sporting Index's revenues);
 - (c) the Sporting Index fixed odds platform did not form part of the initial offering in the context of the Merger, and as such, potential purchasers of the business had the option to acquire the fixed odds platform separately;
 - (d) many of the potential purchasers for the divestiture package under Spreadex's Remedy Proposal would already have their own fixed odds offering (eg Star Sports); and
 - (e) '[X]' fixed odds betting platforms were also widely available on the open market (via companies such as FSB, SBTech, Kambi, OpenBet and BetConstruct).

⁷²⁴ CMA, [Remedies Notice](#), 25 July 2024, paragraph 31(e).

⁷²⁵ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.15.

9.103 At its Response Hearing, Spreadex told [REDACTED]. It also told us that prior to the Merger, Sporting Index had offered sports spread betting and sports fixed odds betting using ‘two separate platforms’, and that it offered a ‘tab’ on the sports spread betting website to take the customer to the sports fixed odds betting website (which Spreadex told us was [REDACTED]) and vice versa. It therefore considered that there was no need to ‘integrate’ the fixed odds and spreads betting platforms.⁷²⁶

Third parties’ views

9.104 Third-party evidence on whether it is necessary for the divestiture package to be configured to allow a prospective purchaser to provide sports fixed odds betting services was mixed (see also paragraphs E.4 to E.5 of Appendix E):

9.105 Some third parties (10star, Star Sports, and bet365) told us that this might be necessary given that Spreadex offered both services and Sporting Index also offered both services pre-Merger, and therefore, a purchaser should also be able to offer both services on the Sporting Index website.⁷²⁷

9.106 Some other third parties ([REDACTED], Sporting Group and Betfair) told us that this might not be necessary and that a sports spread betting business could be run separately from a sports fixed odds business.⁷²⁸ One of those third parties (Betfair) also told us that including the fixed odds business could introduce ‘additional complexity’ from a regulatory compliance perspective, as it would introduce an additional regulator (ie the GC).⁷²⁹

Our assessment

9.107 Prior to the Merger, Sporting Index offered sports fixed odds betting services alongside its sports spread betting services. In 2023, Sporting Index generated around £[REDACTED] million of revenues from spread betting and almost £[REDACTED] million from fixed odds betting.⁷³⁰ We also note that during the 2023 Sale Process, potential purchasers were given the [REDACTED].^{731, 732} Since Merger completion, Sporting Index has been offering both services.

9.108 In paragraphs 6.37 to 6.45 of Chapter 6, we did not find any SLC in the supply of sports fixed odds betting in the UK,⁷³³ and therefore, sports fixed odds would not be a relevant ‘area of competitive overlap’,⁷³⁴ which would be strictly required to

⁷²⁶ Spreadex, Response hearing transcript, 11 September 2024, page 81, lines 24-25.

⁷²⁷ Star Sports, Call note. 10star, Call transcript. Third party call note, bet365.

⁷²⁸ Third party call note, Sporting Group, Call note, Betfair, Call note.

⁷²⁹ Betfair, Call note.

⁷³⁰ Spreadex, Response to the CMA’s RFI2, 2 February 2024, question 5.

⁷³¹ Spreadex, [Response to the CMA’s Remedies Notice](#), 20 August 2024, paragraph 3.15.

⁷³² FDJ, Response to the CMA’s RFI, 10 February 2023,

⁷³³ See also Chapter 6, paragraph 6.95.

⁷³⁴ [CMA87](#), paragraph 5.7.

form part of any divestiture package to address the SLC we have found. Similarly, in paragraph 6.147, we stated our view that fixed odds providers do not provide a strong constraint on the Parties.⁷³⁵

9.109 However, as we discuss below, the evidence shows that:

- (a) sports fixed odds betting accounted for a [REDACTED] proportion of Sporting Index's revenues prior to the Merger (and this trend has continued since Merger completion), and therefore could be important for the overall financial viability of the Sporting Index business (see paragraphs 9.110 to 9.111 below);
- (b) there is a risk that Sporting Index could lose a significant channel for acquiring sports spread betting customers (see paragraph 9.112 below); and
- (c) there is a risk that without the inclusion of the sports fixed odds functionality within the divestiture package, the divestiture package would be insufficient to attract a suitable purchaser (see paragraph 9.113 below).

9.110 In Table 9.3 below, we set out Sporting Index's latest revenue figures, covering the nine months since Merger completion (6 November 2023), [REDACTED].

Table 9.3: Sporting Index's post-Merger revenue performance

[REDACTED]

Source: [REDACTED].

9.111 In our view, sports fixed odds betting accounted for a [REDACTED] proportion of Sporting Index's revenues, which, depending on the purchaser's decision on what the standalone cost structure for the business should be, a purchaser may consider necessary for the overall viability of the Sporting Index business. In this regard, we note that a purchaser could identify, and benefit from, similar cost synergies associated with supplying both sports spread betting and sports fixed odds betting, to those which Sporting Group had informed an Alternative Bidder about during the 2023 Sale Process (see footnote for details).⁷³⁶

9.112 In relation to the risk that a purchaser could lose a significant channel for acquiring sports spread betting customers if the divestment business did not also offer sports fixed odds betting, we note that in paragraph 6.67, we stated that 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

⁷³⁵ Chapter 6, paragraph 6.118.

⁷³⁶ During the 2023 Sale Process, in response to a question from an Alternative Bidder on Sporting Index's cost base, and in relation to the cost base associated with the sports fixed odds betting side of Sporting Index's business, Sporting Group stated that sports fixed odds betting had no dedicated staff and its costs were 'mainly marketing costs'. For reference, the total annual 'marketing' costs quoted by Sporting Group for both sports spread betting and sports fixed odds betting was £[REDACTED]. Source: FDJ, Response to the CMA's RFI, 10 February 2023.

products'.⁷³⁷ In this regard, we note that 90% of Spreadex's spread betting customers use both spread betting and fixed odds betting products.⁷³⁸ While we understand that this is not currently the case for Sporting Index, our view is that this could change over time, in particular under new ownership.

- 9.113 Finally, we noted the evidence from third parties that some purchasers may require the capability to offer sports fixed odds betting alongside sports spread betting (see Appendix E, paragraph E.4), and therefore, the exclusion of this capability could increase the risk that the divestiture package will be insufficient to attract a suitable purchaser. We also noted that the Sporting Index [redacted] told us [redacted].⁷³⁹
- 9.114 The above factors show that the functionality and capability to supply sports fixed odds betting may need to form part of the divestiture package to ensure that: (a) the divestment business is viable (by ensuring that Sporting Index's revenues associated with sports fixed odds betting are transferred to the purchaser and not diverted to Spreadex); (b) it can allow a purchaser to benefit from potential cross-selling opportunities; and (c) the divestiture package is sufficiently attractive to a purchaser. However, we also note that there may be reasons why a purchaser may not wish to acquire a divestiture package with sports fixed odds capability, for example, it would introduce a further layer of regulatory considerations, which may also have both staffing and technological implications⁷⁴⁰ to enable it to comply with both FCA (for sports spread betting) and GC (for sports fixed odds betting) regulations; or the purchaser may already have the capability to supply sports fixed odds betting services and may not require a platform with this additional functionality.
- 9.115 In the RWP, we provisionally concluded that unless the purchaser wished to opt out, 'a divestiture package should be configured to enable the purchaser to supply sports fixed odds betting services to Sporting Index's sports fixed odds customers' and that 'we would expect this to be reflected in the scope of the development of any reconstituted platforms' and in the TSAs proposed under Spreadex's Remedy Proposal. We also provisionally concluded that given that we had not provisionally identified an SLC in relation to sports fixed odds betting, we would not have concerns if a purchaser decided not to require this capability.⁷⁴¹

⁷³⁷ Chapter 6, paragraph 6.67.

⁷³⁸ Chapter 6, paragraph 6.11(b).

⁷³⁹ Third party call note.

⁷⁴⁰ For example, Spreadex submitted that 'given we are regulated by both [the FCA and GC], there is a significant degree of additional complexity in our business where we have customers who use both our GC regulated fixed odds offering and our FCA regulated Sports Spread betting offering. To ensure these customers are provided with the appropriate protections, that we comply with our AML obligations, and that we meet the requirements of our respective regulators, we have had to not only design systems that are capable of ensuring we meet the above expectations individually, but also in aggregate. This has meant the operational and technical infrastructure required is more complex than would be the case for any firm offering these products individually, in either the GC regulated or FCA regulated sub sections of the online sports betting market'. Source: Spreadex, Response to CMA's RFI 4, 10 May 2024, Q5.

⁷⁴¹ CMA, Remedies Working Paper, 10 October 2024, paragraphs 1.116 and 1.117.

9.116 In the RWP response, Spreadex submitted that it ‘would not object to ensuring that’ the purchaser’s fixed odds offering or ‘a third-party fixed odds platform’⁷⁴² could be ‘plugged into’ the Bespoke Platform Solution to offer sports fixed odds betting to Sporting Index customers, ‘provided that this did not delay the overall delivery of the [Bespoke Platform Solution] and did not imply a requirement for Spreadex to create a fixed odds betting platform’. It explained that this would be a ‘reasonable approach’, which would ‘still allow for both the integration of fixed odd betting services into the [Bespoke Platform Solution] and the ability for the [purchaser] to ‘opt-out’, noting in particular, that the purchaser might already have its ‘own existing capabilities to provide fixed odd betting services’. It added that the ‘configuration of the Bespoke Platform Solution to enable sports fixed odds betting to be provided would be disproportionate if it required Spreadex to include a fixed odds betting business’. In this regard, Spreadex sought clarification and confirmation that:⁷⁴³

- (a) [REDACTED]; and
- (b) ‘Spreadex would not be expected to develop a fixed odds betting platform as part of the [Bespoke Platform Solution]’, but instead ‘Spreadex would only be expected to design the [Bespoke Platform Solution] to allow a [third-party] fixed odds platform to be plugged into the [Bespoke Platform Solution].

9.117 Spreadex further submitted in the RWP response that:⁷⁴⁴

- (a) if Spreadex was required to develop a Bespoke Platform Solution, which included ‘both spread betting services and fixed odds betting services’, then this ‘would significantly lengthen Spreadex’s envisaged timeline for the development of the [Bespoke Platform Solution]’ and ‘would further exacerbate the practical difficulties’ in meeting the CMA’s proposed timescales for completing the divestiture (see paragraphs 9.319 to 9.337 below);
- (b) in relation to the factors set out in paragraph 9.115 above for why the functionality and capability to supply sports fixed odds betting may need to form part of the divestiture package, it disagreed with the analysis and added that the ‘evidence relied on by the CMA’ was ‘at best equivocal’. In this regard, it submitted that:
 - (i) potential purchasers would ‘all have an existing financially viable business, to which the spread betting services, included within the

⁷⁴² Spreadex submitted that there were a number of companies which provided ‘[REDACTED] fixed odds platforms’, eg FSB, SBTech, Kambi, OpenBet and BetConstruct. Source: Spreadex, Response to the CMA’s Remedies Working Paper, 23 October 2024, paragraph 2.42.

⁷⁴³ Spreadex, Response to the CMA’s Remedies Working Paper, 23 October 2024, paragraphs 1.3.8, 2.38, 2.39 and 2.42.

⁷⁴⁴ Spreadex, Response to the CMA’s Remedies Working Paper, 23 October 2024, paragraphs 2.40, 2.41 and 2.43.

divestiture package, could be added'. Spreadex therefore considered that 'the inclusion of fixed odds betting in the divestiture package is not required to support the financial viability of the Sporting Index business';

- (ii) potential purchasers would 'all have an existing sports betting business, with the ability to cross-sell to their existing customers, which would limit any risks associated with the loss of customer channels where fixed odds betting is not included in the divestiture package'. Spreadex further submitted that it was 'inconsistent for the CMA to disregard the evidence Spreadex provided that its customers use spread betting and fixed odds interchangeably when assessing what the relevant market is and then using the same evidence to substantiate an argument that fixed odds represents an important component of a sports spread betting product'; and
- (iii) the 'acquisition of a standalone sports spread betting business would be more attractive to [a purchaser] from a costs perspective in any event', and added that the 'transfer of a divestiture package which includes both sports spread betting and fixed odds betting services would result in higher regulatory costs, given the need for dual regulation by both' the GC and FCA.

9.118 We first considered Spreadex's submission in paragraph 9.116 that it should not be required to divest a 'fixed odds business' or be expected to develop a fixed odds betting platform as part of the Bespoke Platform Solution, but instead design the Bespoke Platform Solution to allow a third-party fixed odds platform to be plugged into the Bespoke Platform Solution. For the reasons set out below, we conclude that this is acceptable, provided that if the purchaser wishes to offer sports fixed odds betting services to Sporting Index customers immediately upon completion of the divestiture, Spreadex will collaborate with the purchaser (eg by providing relevant information about the technical design) to enable the purchaser to 'plug in' its fixed odds betting platform and to enable the purchaser to supply both sports spread betting and sports fixed odds betting as Sporting Index had done prior to the Merger. For the avoidance of doubt, in such a situation Spreadex would not be required to undertake the technical development of the fixed odds platform or divest such a platform. Our understanding is that prior to the Merger, Sporting Index's website included a tab, which enabled the customer to switch between the sports fixed odds betting and sports spread betting web pages, and therefore, this feature could be made available for the Proposed Front-End Platform, incorporating a tab to take the customer to a fixed odds betting website, whether developed by the purchaser or a third-party provider (see also paragraph 9.103 above)). We conclude that this is acceptable on the basis that:

- (a) Spreadex's proposed approach is broadly consistent with the pre-Merger situation, in which Sporting Index had operated separate sports fixed odds betting and sports spread betting platforms;
- (b) there are 'off-the-shelf' sports fixed odds betting platforms available from third party suppliers (if a purchaser wished to offer sports fixed odds betting, but did not have its own sports fixed odds betting platform), which in our view would represent a viable and effective alternative to requiring Spreadex to develop the sports fixed odds betting platform; and
- (c) the purchaser will retain the flexibility to decide whether to supply sports fixed odds betting services to Sporting Index customers, in addition to sports spread betting services, on the same Proposed Front-End Platform.

9.119 As regards Spreadex's submissions in paragraph 9.117(b) above, we respond as follows:

- (a) Spreadex submitted that the inclusion of sports fixed odds betting in the divestiture would not be required given that a potential purchaser would already have an 'existing financially viable business', to which the spread betting services could be added. However, our view is that a purchaser, in deciding whether to acquire Sporting Index, will likely have regard to the financial viability of the Sporting Index business itself. As we noted in paragraph 9.111 above, our view is that the purchaser's decision on what Sporting Index's cost structure should be (noting at this stage, that we cannot be certain what that structure would be, see paragraphs 9.257 and 9.264), could impact the decision on whether an additional revenue stream from sports fixed odds betting is required.
- (b) Spreadex also submitted that potential purchasers would 'all have an existing sports betting business, with the ability to cross-sell to their existing customers'. As we set out in paragraph 9.112 above, we have only identified sports fixed odds betting customers as a potential customer acquisition channel for sports spread betting. However, at this stage, we cannot rule out the possibility that a potential purchaser will not have its own sports fixed odds betting customer base, for example, B2B providers such as [redacted].
- (c) Spreadex submitted that it was 'inconsistent for the CMA to disregard the evidence Spreadex provided that its customers use spread betting and fixed odds interchangeably when assessing what the relevant market is and then using the same evidence to substantiate an argument that fixed odds represents an important component of a sports spread betting product'. We disagree – as we explain in Chapter 6, Horizontal Unilateral Effects, the use by customers of both sports spread betting and sports fixed odds betting does not imply that these are substitutes (see Chapter 6, Horizontal

Unilateral Effects, paragraph 6.37). In addition, we noted in paragraph 9.112 above that while 90% of Spreadex's sports spread betting customers use both sports spread betting and sports fixed odds betting products, and while we understand that this is not the case for Sporting Index currently, our view is that this could change over time for Sporting Index, under new ownership.

- (d) Spreadex submitted that the 'acquisition of a standalone sports spread betting business would be more attractive' to a purchaser from a 'costs perspective', eg obviating the costs associated with 'dual regulation' by both the GC and the FCA. While we recognise that the inclusion of sports fixed odds betting capability could introduce a further layer of regulatory considerations, which could also have both staffing and technological implications (see also paragraph 9.114 above), our view is that it would be for the purchaser to make the commercial decision and weigh these considerations against the benefits of supplying sports fixed odds betting to Sporting Index customers.

9.120 Given that we have not found an SLC in relation to sports fixed odds betting, we would not have concerns if a purchaser decided not to supply sports fixed odds betting.

Conclusion on sports fixed odds betting capability

9.121 Based on the above, we conclude that Spreadex should design the Bespoke Platform Solution to allow a third-party sports fixed odds betting platform to be plugged into the Bespoke Platform Solution. If the purchaser wishes to offer sports fixed odds betting services to Sporting Index customers immediately upon completion of the divestiture, Spreadex must collaborate with the purchaser (eg by providing relevant information about the technical design) to enable the purchaser to 'plug in' its fixed odds betting platform and to enable the purchaser to supply both sports spread betting and sports fixed odds betting as Sporting Index had done prior to the Merger. For the avoidance of doubt, Spreadex would not be required to undertake the technical development of the fixed odds platform or be required to divest such a platform.

Platform Development Element

9.122 In paragraph 6.91, we concluded on the nature of competition and 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) range of "spread markets", and (c) user experience, and that competition takes place both statically and dynamically'.⁷⁴⁵

⁷⁴⁵ Chapter 6, paragraph 6.91.

- 9.123 Spread betting technology underpins a competitor’s ability to compete on the parameters of competition – in particular, the ‘front-end’ platform and ‘back-end’ platform underpin the user experience, eg latency can be influenced by the design of the ‘back-end’ platform,⁷⁴⁶ while the Trading Models primarily underpin a competitor’s ability to compete on spread pricing and the range of spread betting markets offered.
- 9.124 In brief, as set out in paragraphs 9.34 to 9.46 above, under the Platform Development Element of Spreadex’s Remedy Proposal:
- (a) Spreadex will develop the Bespoke Platform Solution, the Proposed Front-End Platform and the API Integration – these three components will be integrated and form part of the divestiture package.
 - (b) The purchaser will be required to develop its own Trading Models, which can be integrated into the reconstituted integrated platform via the API Integration. Spreadex has offered to provide the purchaser with a [X] TSA to [X] for a period of [X].
- 9.125 In relation to the Platform Development Element, we set out our assessment under the following subsection headings:
- (a) Overview of Sporting Index’s pre-Merger IT architecture;
 - (b) Third parties’ views on the importance of the spread betting platform; and
 - (c) Risks in relation to the Platform Development Element.

Overview of Sporting Index’s pre-Merger IT architecture

- 9.126 By way of background, in Figure 9.2 below, we provide a simplified overview of Sporting Index’s pre-Merger IT architecture (the diagram shows that the ‘Back-End Platform’ formed part of the transaction perimeter offered to potential purchasers during the 2023 Sale Process). We have annotated this diagram with our current understanding of what constitutes ‘Trading Models’, the ‘Back-End Platform’ and the ‘Proposed Front-End Platform’.

⁷⁴⁶ For example, Spreadex told us that [X]. Source: Spreadex, Response hearing transcript, 11 September 2024, page 32, line 9-13.

Figure 9.2: SPIN pre-Merger IT architecture



Source: RFI dated 7 June 2024, Q1.

Notes:

(1) [Redacted].

(2) [Redacted].

(3) [Redacted].

(4) [Redacted].

9.127 With reference to Figure 9.2 above:

- (a) FDJ told us that the ‘essential’ applications of Sporting Index’s pre-Merger platform were Atlas (the core engine), SMM (which configured settings); and AMS (client details, wallet and betting history).⁷⁴⁷
- (b) Under the Merger, we understand that Spreadex acquired the source code (ie the Acquired Source Code) and the relevant documentation for:
 - (i) the five applications which formed part of Sporting Index’s pre-Merger ‘back-end’ platform, namely: [Redacted]; and
 - (ii) the ‘Web UI & Mobile Apps’, ie Sporting Index’s pre-Merger ‘front-end’ platform, namely: the desktop website and mobile apps.

9.128 Since Merger completion, none of the Acquired Source Code is currently being used, and Sporting Index has 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.⁷⁴⁸

9.129 Based on our current understanding, the Trading Models, which were connected to Sporting Index’s pre-Merger ‘back-end’ platform, were retained by Sporting Group, and did not form part of the transaction perimeter offered to potential purchasers during the 2023 Sale Process (with the exception of the Trading Model fo [Redacted], which was offered to 10star⁷⁴⁹).

9.130 Spreadex submitted that under Spreadex’s Remedy Proposal, it would ‘create the Bespoke Platform Solution to ensure’ that the source code it had acquired under the Merger [Redacted], was ‘capable of operating on a standalone basis, given the assets Spreadex acquired were not’.⁷⁵⁰ In this regard, Spreadex submitted that it ‘recognises that the technological assets acquired from Sporting Group in November 2023 were not capable of being operated in their own right, given their dependency on technology that was retained by Sporting Group. As such,

⁷⁴⁷ RFI dated 7 June 2024, Q1(e).

⁷⁴⁸ CMA, [Derogation Letter](#), 15 January 2024.

⁷⁴⁹ FDJ, Response to the CMA’s RFI, 10 February 2023.

⁷⁵⁰ Spreadex, [Response to the CMA’s Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q7.

Spreadex proposes standing up the Bespoke Technology Platform [...] that will be available at the acquisition date to enable any purchaser to operate independently from acquisition date'.⁷⁵¹

Third parties' views on the importance of the spread betting platform

- 9.131 All third parties told us that a spread betting platform would be key and necessary in order for a purchaser to compete in the relevant market. For example:
- (a) 10star told us that us that a fully standalone business would need to have (whether this was provided by the purchaser or formed part of the divestiture package): a 'controlling board structure'; a 'sales and marketing component'; 'spreads technology' and spread 'pricing models'; traders; 'operational support'; legal and compliance (in particular, covering FCA compliance); and back-office functions (such as finance and HR).⁷⁵²
 - (b) Star Sports told us that a divestiture package would need to include a sports spread betting platform, a reconstituted Sporting Index workforce, and the key Sporting Index assets acquired by Spreadex as part of the Merger, although after seeing a redacted version of Spreadex's Remedy Proposal it told us that it should be left to a purchaser to recruit staff.^{753, 754}
 - (c) Sporting Group told us that in terms of the 'technology' needed to compete in sports spread betting, a purchaser would need all of the following three elements: (i) the 'Start', for example, 'pricing' and the 'ability to trade that pricing'; (ii) the 'Middle', for example, in the case of Sporting Index, [X]; and (iii) the 'End', for example, what was 'displayed to the end-customer', such as the website and mobile apps.⁷⁵⁵

Risks in relation to the Platform Development Element

- 9.132 In relation to the Platform Development Element of Spreadex's Remedy Proposal, we identified potential risks in the following areas:
- (a) *Spreadex's role in the development of the new platforms:* the risks associated with Spreadex setting the specifications for the reconstituted 'back-end' and 'front-end' platforms for the purchaser, also a future competitor, in particular, given Spreadex's potential incentives to degrade the specifications (for example, the architecture) of the reconstituted platforms of its future competitor to secure a competitive advantage.

⁷⁵¹ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q1.

⁷⁵² 10star, Call transcript.

⁷⁵³ Star Sports, Call note.

⁷⁵⁴ Star Sports, Call transcript.

⁷⁵⁵ Sporting Group, Call note.

- (b) *Trading Models*: Spreadex’s Trading Models will not be included within the scope of the divestiture package, and therefore, the effectiveness of Spreadex’s Remedy Proposal relies on a purchaser’s capabilities and incentives to develop its own Trading Models during the [✂] TSA period – this may also raise the risk of reducing the availability of potential purchasers as they will require the necessary capabilities, or wherewithal to obtain the necessary capabilities, to develop their own Trading Models.
- (c) *Timescales for the development of the reconstituted platforms*: the risks of material delays arising during the development process, which have a material impact on the timing of completing any divestiture remedy.
- (d) *Technical knowhow and capabilities*: the knowhow and capabilities required to successfully operate the reconstituted platforms and to innovate the reconstituted platforms, in particular the experience and expertise of the engineers who developed the Bespoke Platform Solution will not transfer to the purchaser.

9.133 We consider each of these risks in turn.

9.134 At the end of this subsection, we also set out our consideration of the alternative options available to provide the purchaser with the platform it will need (see paragraphs 9.236 to 9.249). To the extent that the risks we have outlined above in relation to Spreadex’s proposal to develop the reconstituted platforms cannot be mitigated, we will need to consider an alternative approach.

Spreadex’s role in the development of the platforms to be reconstituted

Spreadex’s views

9.135 Under the Platform Development Element of Spreadex’s Remedy Proposal, Spreadex proposes to use its [✂] to develop:⁷⁵⁶

- (a) a reconstituted Sporting Index ‘back-end’ platform, ie the Bespoke Platform Solution, through a combination of the Acquired Source Code for Sporting Index’s pre-Merger ‘back-end’ platform and developing ‘new code’ for any missing applications;⁷⁵⁷ and
- (b) a reconstituted Sporting Index desktop website and mobile apps, ie the Proposed Front-End Platform, largely based on the Acquired Source Code for Sporting Index’s ‘front-end’ platforms.

⁷⁵⁶ Spreadex, Response hearing transcript, 11 September 2024, page 28, lines 12-14.

⁷⁵⁷ Spreadex, Response hearing transcript, 11 September 2024, page 28, line 1.

- 9.136 Spreadex told us that the Proposed Front-End was [REDACTED] and that it was ‘confident’ that it could create the ‘back-end’ platform, ie the Bespoke Platform Solution, given that ‘something written now’ was ‘likely to be better than something written 10 years ago’. It also told us that all of the documentation which came with the Sporting Index pre-Merger platform it acquired was in its possession, although it could not confirm [REDACTED] was, as it had not yet gone through all of the documentation.⁷⁵⁸
- 9.137 As mentioned in paragraph 9.41 above, Spreadex submitted that in relation to the Bespoke Platform Solution, [REDACTED] modules would be needed in total to constitute a ‘fully functioning spread betting platform’, and that it was prepared to re-enable as many of the [REDACTED] Acquired Modules as possible and reduce the number of new modules needed, to address any concerns the CMA might have in relation to Spreadex’s incentives to develop an inferior platform.⁷⁵⁹
- 9.138 In relation to how Spreadex would determine an appropriate target benchmark (eg for performance) based on Sporting Index’s pre-Merger ‘back-end’ and ‘front-end’ platforms (given that these have not been operational since Merger completion), Spreadex told us that it would look at ‘outcomes’.⁷⁶⁰
- (a) In relation to Sporting Index’s pre-Merger ‘front-end’ platform, Spreadex told us that [REDACTED].⁷⁶¹ Spreadex provided a number of metrics, which could be used to measure the performance or functionality of the Proposed Front-End Platform, [REDACTED] (see footnote for details).⁷⁶²
- (b) In relation to the Bespoke Platform Solution (the ‘back-end’ platform):
- (i) Spreadex told us that [REDACTED], and that it knew from its ‘own systems’ and from its experience of using Sporting Index’s ‘back-end’ platform in the ‘lead-up’ to the Merger, what the Bespoke Platform Solution would need to do, for example [REDACTED]. It told us that [REDACTED], but added that the ‘back-end’ platform was not where a provider’s ‘competitive advantage’ lay.⁷⁶³ Spreadex also told us that during the divestiture process, it would provide potential purchasers with a ‘technical schedule’ for each of the reconstituted platforms.⁷⁶⁴
- (ii) Spreadex acknowledged that it would be ‘challenging’ to ‘know with precision how well’ Sporting Index’s pre-Merger ‘back-end’ platform

⁷⁵⁸ Spreadex, Response hearing transcript, 11 September 2024, page 58, lines 7-9.

⁷⁵⁹ Spreadex, Response to the CMA’s RFI 5, 24 September 2024, Q4.

⁷⁶⁰ Spreadex, Response hearing transcript, 11 September 2024, page 29, line 6.

⁷⁶¹ Spreadex, Response hearing transcript, 11 September 2024, page 48, lines 4-5.

⁷⁶² Spreadex listed the following [REDACTED]. Source: Spreadex, Response to the CMA’s RFI 5, 24 September 2024, Q12.

⁷⁶³ Spreadex, Response hearing transcript, 11 September 2024, page 33, line 8.

⁷⁶⁴ Spreadex, Response hearing transcript, 11 September 2024, page 42, lines 10-14.

performed, given that the pre-Merger platform had not been operational since the Merger.⁷⁶⁵

- (iii) Spreadex also identified some ‘qualitative and quantitative KPIs that could be monitored to assess the performance levels’ of the ‘back-end’ platform, including [REDACTED] (see the footnote for details of other KPIs for the Bespoke Platform Solution).⁷⁶⁶

9.139 Spreadex submitted that Spreadex and the purchaser ‘would need to work together collaboratively [REDACTED] Bespoke Platform Solutions [REDACTED]’. It added that it did not believe that the purchaser needed to be involved in the ‘development process before testing’, and that a purchaser’s ‘earlier involvement would increase the risk of delay to the overall project’. In relation to whether Spreadex and the purchaser should first agree on the specifications of the ‘back-end’ platform before Spreadex commences its development, Spreadex submitted that this [REDACTED]. However, Spreadex submitted that ‘if Spreadex and the purchaser were required to work together to agree on the specifications of the back-end platform before Spreadex commences its development, then this could add significant risks from a timing and delivery perspective, given the sequencing complexity involved in this project’. It added that ‘[m]odifications could be made in the testing phase of the development process prior to handover’.⁷⁶⁷

9.140 Spreadex stated that using an independent third-party to develop the Bespoke Platform Solution would increase the ‘risk that the platform delivered’ might not: (a) ‘meet the needs of a sports spread betting system’; (b) ‘be able to handle all scenarios required in the provision of these services’; (c) ‘align with the level of service provided by [Sporting Index] prior to the Merger’; and (d) ‘enable potential new operators of the business to provide a platform which allows them to meet their FCA regulatory requirements’. It stated that given that ‘Spreadex knows and understands both the market and the technology’, it was ‘better placed than any third party to deliver this development project’. However, it added that ‘independent parties’ could be involved ‘in the testing period’ to ‘allow for independent checking and verification that the system is meeting its requirements’, rather than through the involvement of a third party to develop the Bespoke Platform Solution.⁷⁶⁸

9.141 Finally, Spreadex submitted that there was no need for a ‘technical monitor of any kind’ during the divestiture process, and noted that the Monitoring Trustee would ‘oversee any divestiture process’. It added that Spreadex would ‘engage in a good faith commercial negotiation with a purchaser [REDACTED], including securing appropriate

⁷⁶⁵ Spreadex, Response to the CMA’s RFI 5, 24 September 2024, Q6.

⁷⁶⁶ Spreadex identified the following KPIs: [REDACTED]. Source: Spreadex, Response to the CMA’s RFI 5, 24 September 2024, Q7.

⁷⁶⁷ Spreadex, Response to the CMA’s RFI 5, 24 September 2024, Q10.

⁷⁶⁸ Spreadex, Response to the CMA’s RFI 5, 24 September 2024, Q10.

assurance as to the functioning of the platform they will be buying'. It stated that such a purchaser, [X], will no doubt be well-advised and able to secure all the contractual protections it would need to address this risk'. It stated that insofar as the CMA was minded to go down this route, it was 'not aware of any firm who would have the technical expertise or experience to perform the role and any attempt to do so is likely to increase the risks of delay because Spreadex would have one more monitor to report to'.⁷⁶⁹

Third parties' views

9.142 As set out in paragraph 9.12 above, we sought views from some third parties on Spreadex's Remedy Proposal, including Spreadex's role in the Platform Development Element of the Proposal. We have summarised these views below (see also paragraph E.11 of Appendix E):

- (a) 10star told us that 'it would be difficult to build a business case for a platform developed by your main competitor' and that there was no incentive for Spreadex to build a platform that created meaningful competition, even if Spreadex had to meet certain specifications as part of developing such a platform. 10star added that it was 'easy to have' consistent technical performance during tests, but a 'real life scenario is different to testing', for example when the platform was required to 'scale up' during spikes of activity.⁷⁷⁰
- (b) 10star told us that any warranties for the developed spread betting platform would need to cover the need to draw on Spreadex's platform knowledge if there were any issues when the platform was operating in a live environment, given that it would be Spreadex who understood the platform. 10star added that the warranty should have assurances and penalties in place to ensure that Spreadex fixed a purchaser's issues with the platform as quickly as Spreadex would fix issues with its own platform, and that this warranty should also cover 'busy and key times', depending on when the platform went live and when those busy events were. 10star also told us that the warranty should not just be time based, but also based on 'metrics and quality of code'.⁷⁷¹
- (c) Star Sports told us that the idea of a competitor building a platform from scratch 'raises questions'. It told us that it would have a much stronger preference for the reconstitution of the pre-Merger Sporting Index platform, and that it would want to know why this was 'off the table'. However, it added that the Bespoke Platform Solution could be 'workable' if it had a 'good

⁷⁶⁹ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q17.

⁷⁷⁰ 10star, Call transcript.

⁷⁷¹ 10star, Call transcript.

amount of influence on this'. Star Sports also told us that it [REDACTED]. Star Sports added that it would be difficult to ringfence the Bespoke Platform Solution from a cybersecurity standpoint, and that it was difficult to tell whether the platform would pass tests in the long term even if it passed tests in the short term.⁷⁷²

- (d) Star Sports told us that [REDACTED]. It added that there would need to be considerations such as financial penalties as part of any warranty. Star Sports also told us that if a purchaser were to change a platform built by Spreadex, there was a question of whether this would invalidate any warranties, or whether all changes would need to go through Spreadex. It added that this would make it very difficult, which was why it was 'leaning towards' preferring a third party building the platform instead of Spreadex.⁷⁷³

Our assessment

- 9.143 In the absence of operational Sporting Index 'back-end' and 'front-end' platforms, it is our view that the inclusion of the relevant platforms within the divestiture package is an essential component of the divestiture remedy.
- 9.144 In principle, our view is that 'back-end' and 'front-end' platforms that replicate the pre-Merger platforms could be acceptable.
- 9.145 In our view, Spreadex's in-house development capability and its understanding of the relevant market and the regulatory framework in which the reconstituted platforms must operate, would make Spreadex well-placed to be involved in the development of the reconstituted platforms. In this regard, we understand that Spreadex's 'wider IT environment' is managed and maintained by its 'IT Support, Platform and Development Teams', comprising [REDACTED] people in total. This is in addition to the [REDACTED] staff in Spreadex's 'Business Intelligence Team', which is responsible for the development of its Trading Models.⁷⁷⁴ Spreadex's involvement in the development process will also provide the CMA with a direct enforcement mechanism in the event of any breaches of its platform development obligations, which can be enforced through the CMA's usual processes.
- 9.146 However, in our view, there are material risks associated with Spreadex's proposal to lead on its own the development of the 'back-end' and 'front-end' platforms, given:
- (a) Spreadex's incentives to protect its future competitive position and impair the ongoing competitive capability of its future competitor by developing inferior platforms, combined with its ability to do so if the target specifications for the

⁷⁷² Star Sports, Call transcript.

⁷⁷³ Star Sports, Call transcript.

⁷⁷⁴ Spreadex, Teach-in slide pack, 1 May 2024.

reconstituted platforms are determined by Spreadex – some of the third parties have also acknowledged this risk (see paragraph 9.142 above and Appendix E, paragraph E.11), with one third party suggesting that the purchaser should lead on the development or that the development should be carried out by a third party which a purchaser would be comfortable using, or that the development of the ‘back-end’ platform should be delayed until a sale agreement has been signed;⁷⁷⁵

- (b) the technical nature of the development process and the asymmetry of information between Spreadex and the CMA, which would impair the CMA’s ability to assess the materiality of the implications of the various decisions taken by Spreadex during the development and testing process, for example, on the attractiveness of the platforms to potential purchasers, or on the timescales to complete the delivery of the reconstituted platforms;
- (c) the risk that without purchaser input into the design and specification of the reconstituted platforms, Spreadex develops platforms which are not sufficiently attractive to potential purchasers;
- (d) the absence of a clear benchmark against which to monitor the performance of the reconstituted platforms, given that no operational working version of Sporting Index’s pre-Merger ‘back-end’ and ‘front-end’ platforms exist, which would give Spreadex greater scope to develop inferior platforms; and
- (e) the fact that the CMA is not well-placed to specify what the specifications of the reconstituted platforms should be in order to mitigate the different risks associated with the specification of the ‘back-end’ and ‘front-end’ platforms – for example, in this regard, we cannot be confident on the extent to which the [X] modules, which Spreadex has identified would constitute a ‘fully functioning spread betting platform’; would be sufficiently comprehensive; or that a purchaser would consider this to be sufficiently attractive. Relatedly, we would also expect the risks in relation to Spreadex deciding on behalf of the purchaser the appropriate specification of the ‘back-end’ platform to be different to the risks associated with deciding the appropriate specification of the ‘front-end’ platform. For example, on the one hand, it would appear that while the ‘back-end’ platform may not be a key source of competitive advantage or differentiation, it would need to be reliable, and on the other hand, while the ‘front-end’ platform appears to be an important source of differentiation between competitors, for example, on the user experience, the purchaser may find it easier to fix problems and issues, or face fewer barriers to replacing a reconstituted ‘front-end’ platform with its own.

⁷⁷⁵ Star Sports. Call transcript.

- 9.147 The evidence is also that potential purchasers have material concerns about Spreadex solely determining the specifications for the reconstituted platforms and Spreadex's potential incentives to provide inferior platforms to secure a competitive advantage.
- 9.148 At its Response Hearing, Spreadex outlined the four main stages of a 'development project' of this nature: (a) defining the 'outcomes' (but not 'technically'), which Spreadex considered was the 'most important' stage; (b) determining how 'technically' those outcomes will be achieved; (c) carrying out the actual development; and (d) testing the developed platform against the 'specified outcomes'.⁷⁷⁶
- 9.149 While we note Spreadex's submission that it would be prepared to re-use as many of the [X] Sporting Index modules as possible, use independent third parties during the testing period, and offer the purchaser contractual protections, this would not give us sufficient confidence that this will result in the development of reconstituted platforms which is sufficiently attractive to a purchaser. In this regard, we would expect that the purchaser may wish to be involved in the platform development process, including (but not limited to), in relation to: (a) defining outcomes and tests; (b) decisions about how to achieve those outcomes (for example, if there was a decision between several possible options for the database layer, the purchaser may prefer a choice that matches its existing database to make integration easier); and (c) seeing the results of any testing (including running tests on the reconstituted platforms in its own IT environment).
- 9.150 We considered whether we could put in place additional safeguards or measures to mitigate those risks sufficiently to enable the risks to be acceptable.
- 9.151 In this regard, in the RWP, we provisionally concluded (among other things) on the following:
- (a) the development process for the reconstituted platforms should be a collaborative exercise between Spreadex and the purchaser, where Spreadex would carry out the technical development work in accordance with the specifications agreed between Spreadex and the purchaser and set out in the sales and purchase agreement (**SPA**). We also provisionally concluded that the specifications of the platforms should have regard to Sporting Index's pre-Merger platforms, but have the capability to be modified to ensure that the platforms will enable the divestment business to compete successfully on an ongoing basis and be sufficiently attractive to a potential purchaser, and that where a reliable performance benchmark is not available (or cannot be

⁷⁷⁶ Spreadex, Response hearing transcript, 11 September 2024, page 41, lines 5-11.

determined) for Sporting Index's pre-Merger platforms, Spreadex's own platforms should provide these benchmarks;

- (b) Spreadex and the purchaser should agree (and finalise in the SPA) on the modules which should form part of the Bespoke Platform Solution, including [REDACTED];
- (c) a suitably resourced and qualified independent technical monitor (whose identity will need to be approved by the CMA) should be appointed around the time of signing any SPA (and prior to the commencement of any development process) to monitor Spreadex's compliance with its platform development obligations (**Independent Technical Monitor**); and
- (d) Spreadex should form a 'clean team' within its development team to work with the purchaser on the platform development on terms acceptable to the purchaser (**Spreadex Development Clean Team**).

9.152 We set out below, and consider, Spreadex's submissions on each of the points set out in paragraph 9.151 above, before setting out our overall conclusion on Spreadex's role in the development of the platforms to be reconstituted.

(a) Purchaser involvement in the development of the reconstituted platforms

9.153 Spreadex submitted that the involvement of the purchaser in the early stages of development of the Bespoke Platform Solution would be 'disproportionate and entail significant risk to any timetable unless clear parameters are set' for the purchaser's 'involvement, rather than giving it *carte blanche*'.⁷⁷⁷ Spreadex submitted that while it was 'prepared to collaborate' with the purchaser on the development of the Bespoke Platform Solution, and did not object 'in principle' to the need to sign an SPA with a CMA-approved purchaser 'before key elements' of the divestment business 'have been brought into existence or otherwise specified', it considered that the purchaser's 'involvement at this stage cannot be allowed to give it *carte blanche* to dictate [REDACTED] of the Bespoke Platform Solution. In this regard, Spreadex submitted that the '[REDACTED]' and the Bespoke Platform Solution itself must be 'be clear and specified at the outset', and that the 'aim must remain to restore the platform to its pre-Merger condition and competitiveness'. It added only 'by imposing this parameter', could the CMA ensure that the purchaser would 'behave reasonably, and thereby avoid the risk of Spreadex being penalised for delays to the development that result' from the purchaser's involvement.⁷⁷⁸

9.154 Spreadex further submitted that in relation to the '[REDACTED]' and the Bespoke Platform Solution, it should be made clear at the outset that: (a) the Bespoke Platform Solution 'must be equipped to provide the sports spread-betting services offered

⁷⁷⁷ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraph 2.3.

⁷⁷⁸ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraphs 2.3 and 2.4.

by Sporting Index pre-Merger’; and (b) there ‘cannot be an obligation on Spreadex to develop a [Bespoke Platform Solution] with functionality that is superior to the functionality offered on Spreadex's own system ([redacted])’.⁷⁷⁹

9.155 We have considered Spreadex’s submissions, as summarised above and detail our assessment below. In the RWP, we provisionally concluded that the specifications of the platforms should have regard to Sporting Index’s pre-Merger platforms, but have the capability to be modified to ensure that the platforms will enable the divestment business to compete successfully on an ongoing basis and be sufficiently attractive to a potential purchaser. However, in order to mitigate the risk of a purchaser making unreasonable demands which represent a material enhancement on Sporting Index’s pre-Merger platforms, and delaying the timely conclusion of the remedies process, our view is that:

- (a) It would be necessary to have a clear set of parameters and objectives at the outset for the development of the reconstituted platforms. In this regard, our view is that Spreadex’s suggestion for the ‘[redacted]’ in paragraph 9.154 represents a reasonable starting point, which we have modified below:
 - (i) in order to restore the pre-Merger conditions of competition, the reconstituted platforms should enable the purchaser to provide the sports spread betting services offered by Sporting Index prior to the Merger. To achieve this, the base line for the specification and performance of the reconstituted platforms should be based on Sporting Index’s pre-Merger platforms, and where a reliable benchmark is not available (or cannot be determined) for Sporting Index’s pre-Merger platforms, Spreadex’s own platforms should provide this benchmark;
 - (ii) Spreadex should not be required to develop the reconstituted platforms with functionality that is superior to Sporting Index’s pre-Merger platforms, except to reflect technological updates and enhancements, which Sporting Index would reasonably have been expected to have carried out in the ordinary course of business in the context of changing market and regulatory conditions, or where they already form part of Spreadex’s Remedy Proposal (eg in relation to infrastructure hosting on AWS); and
 - (iii) Spreadex should not be required to develop the reconstituted platforms with functionality that is superior to Spreadex’s platforms ([redacted]), except where that functionality was already provided by Sporting Index’s pre-Merger platforms; and

⁷⁷⁹ Spreadex, Response to the CMA’s Remedies Working Paper, 23 October 2024, paragraph 2.4.

- (b) Spreadex will not be required to implement the purchaser's request if the CMA considers that the purchaser's request is unreasonable. The CMA will also consider whether it will be necessary and appropriate in the circumstances to grant Spreadex an extension to the timescales to complete the divestiture remedy, if the CMA considers that the purchaser, having acted unreasonably, has delayed the process.

(b) On the need for '[X]' and '[Y]' functionality

9.156 In relation to the provisional conclusion in the RWP that Spreadex and the purchaser should agree on whether the Bespoke Platform Solution should include '[X]' and '[Y]' functionality, noting that this had formed part of Sporting Index's pre-Merger offering, Spreadex submitted in the RWP response that:⁷⁸⁰

- (a) these games 'did not represent a material part of the Sporting Index business', eg the 'revenues associated with these games pre-Merger' accounted for less than [X]% of Sporting Index's total FY22 revenues; and could not be considered 'in any way a core part of (or even a related component to) a sports spread betting business', and added that it was 'Spreadex's understanding that Sporting Index itself had not actively maintained or updated the technology for a number of years. It therefore submitted that it would 'not be proportionate for Spreadex to be required to reconstitute these games as part of the [Bespoke Platform Solution]';
- (b) it 'would also not be practicable for Spreadex to reconstitute these games' given that: (i) Spreadex had 'never operated these games', and therefore it did 'not have the knowledge to reconstitute them nor would it be able to readily acquire that knowledge from a third party'; (ii) the 'coding is old and work would be required to update that (work that Sporting Index itself did not undertake pre-Merger)'; (iii) incorporating these games into the Bespoke Platform Solution would 'significantly delay' the development timetable ('likely by [X]'); and (iv) any 'amendments to the games (eg to update them) would need to be approved by the FCA (delaying the timetable further)'; and
- (c) a 'scenario' in which a purchaser could 'demand the inclusion of such essentially defunct elements with no connection to the market in which an SLC has been found, would perfectly demonstrate the risks of giving' a purchaser '*carte blanche* in specifying and developing' the Bespoke Platform Solution.

9.157 We have considered Spreadex's submissions, including by reference to the following: first, in our view, '[X]' and '[Y]' accounted for a non-material proportion of Sporting Index's pre-Merger revenues, and therefore, are unlikely to make a

⁷⁸⁰ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraph 2.5.

material contribution to Sporting Index's overall financial viability; second, in our view, the absence of this functionality would not have a material impact on Sporting Index's ability to compete effectively in the relevant market. Therefore, our view is that it would not be necessary for Spreadex to develop the Bespoke Platform Solution to include this functionality.

(c) Involvement of an Independent Technical Monitor

9.158 In the RWP response, Spreadex submitted that while it did not object to the appointment of an Independent Technical Monitor 'to monitor and assist the CMA with its assessment of the development project in principle', the involvement of an Independent Technical Monitor was 'unlikely to be practicable and the costs involved will be disproportionate'.⁷⁸¹

9.159 In this regard, Spreadex submitted that:⁷⁸²

- (a) an Independent Technical Monitor was 'very unlikely' to 'have specific experience of the technology and the nuances of the sector', and that it 'would expect that, in line with its experience of hiring its own employees, there would be a significant time investment required to bring the monitor 'up to speed' that would adversely impact the delivery timeframes';
- (b) if Spreadex or the purchaser had 'concerns with aspects of the process', they would 'be able to raise these with the Monitoring Trustee and if needs be the CMA (with each party able to explain the technical points they may be concerned about)'; and
- (c) the costs of engaging an Independent Technical Monitor, 'both the financial costs (which Spreadex anticipates will be substantial) and the costs in terms of management time related to a further set of regular reporting are also not likely be reasonable or proportionate to any benefit they may bring', eg Spreadex submitted that the 'actual costs involved in developing the [Bespoke Platform Solution] will themselves be extensive, whilst devoting Spreadex's IT resources to this project, will also limit the innovations and improvements it can make to its own services whilst the [Bespoke Platform Solution] is being developed'. It submitted that in 'these circumstances, it would not be reasonable to require Spreadex to incur the additional costs of paying for a further monitor to oversee the process', and that it was a 'matter for the CMA' that 'the CMA does not consider itself technically equipped to oversee the remedies process'.

⁷⁸¹ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraph 2.28.

⁷⁸² Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraphs 2.28 and 2.29.

- 9.160 We have considered Spreadex's submissions, as summarised above and detail our assessment below.
- 9.161 In relation to Spreadex's submission that it was a 'matter for the CMA' if it did 'not consider itself technically equipped to oversee the remedies process', we disagree. As set out in the Merger Remedies Guidance, monitoring trustees 'help ensure the CMA better understands the progress being made in a divestiture by reporting on the merger parties' compliance with the agreed timetable', and the 'need for a monitoring trustee will depend, among other things, upon the nature of the divestiture package and the risk profile of the remedy'.⁷⁸³ Our view is that, in principle, in order to ensure the effective monitoring of the remedies process, the capabilities of the monitoring trustee should be tailored to the particular circumstances of the case.
- 9.162 In the RWP, and in the particular circumstances of this case, we provisionally concluded that given the highly technical nature of the remedy package, an Independent Technical Monitor should be appointed around the time of signing any SPA and prior to the commencement of any development process, to monitor Spreadex's compliance with its platform development obligations, including (among other things) having the powers to act as an adjudicator to resolve any disputes arising between Spreadex and the purchaser in relation to the development and delivery of the new platforms as agreed in the SPA, subject to seeking the CMA's views and approval prior to taking any action or decision.
- 9.163 While we continue to hold the view that the technical nature of the development process and the asymmetry of information between Spreadex and the CMA, would impair the CMA's ability to assess the materiality of the implications of the various decisions taken by Spreadex during the development and testing process (see paragraph 9.146(b) above), our view is that this risk would largely be limited to issues of a highly-specialist technical nature where neither the CMA nor the Monitoring Trustee has the expertise to make an informed determination. In this regard, we are also mindful of the possibility that no material disputes will arise during the development process, which would otherwise necessitate the technical expertise of an Independent Technical Monitor, and the additional cost implications for Spreadex of appointing an Independent Technical Monitor for the entire duration of the development process.
- 9.164 On balance, our view is that it would be sufficient for the CMA to reserve the right to appoint an Independent Technical Monitor at any time during the divestiture process (and that this will be reflected in any final undertakings or final order), provided that:

⁷⁸³ [CMA87](#), paragraphs 4.43 and 4.44.

- (a) the Monitoring Trustee confirms that it does not have the requisite expertise to enable the CMA to make an informed decision; and
- (b) the appointment of an Independent Technical Monitor would be solely for the purpose of resolving disputes of a technical nature (between Spreadex and the purchaser or the CMA), subject to the Independent Technical Monitor seeking the CMA's views and approval prior to taking any action or decision.⁷⁸⁴

9.165 Our view is also that, under the SPA, the Monitoring Trustee should have the powers to act as an adjudicator to resolve any disputes arising between Spreadex and the purchaser in relation to the development and delivery of the new platforms as agreed in the SPA, subject to seeking the CMA's views and approval prior to taking any action or decision, but that the Monitoring Trustee may request the appointment of an Independent Technical Monitor to the extent reasonably required to assist it in carrying out its adjudication duties.

(d) Spreadex Development Clean Team

9.166 In the RWP response, Spreadex submitted that while it did not object to forming a Spreadex Development Clean Team to work with the purchaser on the development of the Bespoke Platform Solution, 'any clean team arrangements would be disproportionate if they [REDACTED]'. It added that a 'proportionate clean team in the circumstances would comprise:⁷⁸⁵

- (a) a 'defined group of people in the clean team, [REDACTED]';
- (b) '[c]lear restrictions on the use that the clean team members can make of information relating to Sporting Index and the [Bespoke Platform Solution] that the clean team is developing';
- (c) '[r]estrictions on who can access the [REDACTED] [Bespoke Platform Solution] [REDACTED], with access being granted to the clean team on a need to know basis'; and
- (d) a 'requirement to destroy or handover to the [purchaser] [REDACTED] (other than any information that needs to be retained for regulatory compliance purposes)';
but
- (e) [REDACTED].

9.167 Spreadex submitted that its 'internal IT development team is not large enough to allocate certain staff to work solely on the development of the [Bespoke Platform

⁷⁸⁴ For the avoidance of doubt, the Independent Technical Monitor would not be engaged on an ongoing basis; rather, the engagement letter should reflect that the appointment would be for the purpose and duration of resolving disputes of a technical nature as and when required. Spreadex will be responsible for the remuneration of the Independent Technical Monitor.

⁷⁸⁵ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraphs 2.34 and 2.36.

Solution]', and that while it had [X] staff in IT, only [X] of these had 'the skill set and experience required for this project'. It added that of these [X] staff, there were 'certain key roles', for example, [X], where Spreadex only had [X] employees, and therefore allocating [X]% of 'these staff to a single project would put business as usual work (such as [X]), and operational work (such as [X]) at significant risk and would impact both the Spreadex and Sporting Index businesses (given they are run off the same proprietary technology)'. It added that the 'absence of such staff would therefore cause an unacceptable regulatory risk to Spreadex'.⁷⁸⁶

9.168 In considering Spreadex's submissions we have noted that the RWP did not mention that any members of the Spreadex Development Clean Team should be [X]. Provided that Spreadex forms a Spreadex Development Clean Team within its development team to work with the purchaser on the platform development on reasonable terms (including safeguards) acceptable to the purchaser, we would have no material concerns if this arrangement involved members of the Spreadex Development Team [X].

(e) Overall views on Spreadex's role in the development process

9.169 Based on our assessment above, we considered that in order to mitigate all of the risks outlined in paragraph 9.146 above:

- (a) With reference to the different stages of the development process for the reconstituted platforms outlined in paragraphs 9.139, 9.148 and 9.149 above, namely, *stage 1*: defining outcomes and tests; *stage 2*: decisions about how to achieve those outcomes; *stage 3*: the technical development of the reconstituted platforms; *stage 4*: testing; and *stage 5*: handover:
 - (i) We would require the process for specifying the relevant outcomes (including KPIs) for the platforms; decisions about how to achieve those outcomes; testing; and handover and customer migration to be a collaborative exercise between Spreadex and the purchaser.
 - (ii) It is our view that Spreadex should be fully responsible for carrying out the technical development work (ie stage 3 above) needed to develop the Bespoke Platform Solution, the Proposed Front-End Platform and API Integration in accordance with the specifications agreed between Spreadex and the purchaser.
- (b) We recognise that purchaser involvement may necessarily delay the commencement of the development process until a purchaser has been identified. In the circumstances of this case, our view is that it is necessary

⁷⁸⁶ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraph 2.35.

that Spreadex should coordinate its platform development and divestiture processes to ensure that the eventual purchaser can be involved at the early stages of the platform development process. We would therefore expect this collaborative process to commence formally as soon as a suitable purchaser (ie a purchaser approved by the CMA) has been identified, and has signed an SPA with Spreadex.

- (c) In our view, this approach would obviate the need for us to:
- (i) consider an option to transfer Spreadex development staff to transfer the knowhow relating to the platforms, as the purchaser will have been closely involved in their specification and testing (see also paragraphs 9.221 to 9.235 below); and
 - (ii) be too prescriptive on the specification of the reconstituted platforms and the extent to which the purchaser should be involved in the technical development process – as these would be matters for Spreadex and the purchaser to agree and finalise in the SPA, including (but not limited to) agreeing on matters in relation to (see paragraph 9.41 above): (a) the modules which should form part of the Bespoke Platform Solution (~~the~~ Bespoke Platform Solution – see also paragraph 9.157 above); (b) the extent to which these modules should be based on re-enabling the Acquired Modules and the extent to which they should be New-Build Modules; and (c) the appropriate infrastructure for the Bespoke Platform Solution (see paragraph 9.35(a)(iv) above), having regard both to the Bespoke Platform Solution’s ability to integrate with the purchaser’s systems, and the need for the reconstituted platforms to achieve the KPIs against which their performance will be assessed; and comply with any regulations.
- (d) For the purpose of this collaborative development process, it is our view that Spreadex should form a Spreadex Development Clean Team within its development team to work with the purchaser on the platform development on terms acceptable to the purchaser. Provided that Spreadex forms a Spreadex Development Clean Team on reasonable terms (including safeguards) acceptable to the purchaser, we would have no material concerns if this arrangement involved members of the Spreadex Development Team ~~the~~.
- (e) While, in our view, it sufficient and proportionate for the reconstituted platforms to reference Sporting Index’s pre-Merger ‘back-end’ and ‘front-end’ platforms, we consider that a rigid and static view of what the specifications of the ‘back-end’ and ‘front-end’ platforms should be based on Sporting Index’s pre-Merger platforms (where this is possible) increases the risk profile of the remedy. As we mentioned in paragraph 9.73(a) above, since

Merger completion, Sporting Index's pre-Merger platforms have not been operational and have therefore not been updated or developed further. However, markets continue to evolve and new applications are developed and platforms are enhanced over time. In our view, the parameters and objectives of the reconstituted platforms should be as follows:

- (i) the base line for the specification and performance of the reconstituted platforms should be based on Sporting Index's pre-Merger platforms, and where a reliable benchmark is not available (or cannot be determined) for Sporting Index's pre-Merger platforms, Spreadex's own platforms should provide this benchmark;
- (ii) Spreadex should not be required to develop the reconstituted platforms with functionality that is superior to Sporting Index's pre-Merger platforms, except to reflect technological updates and enhancements, which Sporting Index would reasonably have been expected to have carried out in the ordinary course of business in the context of changing market and regulatory conditions, or where they already form part of Spreadex's Remedy Proposal (for example, in relation to infrastructure hosting on AWS); and
- (iii) Spreadex should not be required to develop the reconstituted platforms with functionality that is superior to Spreadex's platforms (beyond [X]), except where that functionality was already provided by Sporting Index's pre-Merger platforms.

Spreadex will not be required to implement the purchaser's request if the CMA considers that the purchaser's request is unreasonable. The CMA will also consider whether it will be necessary and appropriate in the circumstances to grant Spreadex an extension to the timescales to complete the divestiture remedy, if the CMA considers that the purchaser, having acted unreasonably, has delayed the process.

- (f) The specifications of the reconstituted platforms, once agreed between Spreadex and the potential purchaser, will need to be sufficiently clear in the SPA to avoid the risk of any circumvention and to enable monitoring. As set out in paragraphs 9.164 and 9.165 above, the CMA will reserve the right to appoint an Independent Technical Monitor at any time during the divestiture process (and this will be reflected in any final undertakings or final order), provided that:
 - (i) the Monitoring Trustee confirms that it does not have the required expertise to enable the CMA to make an informed decision; and

- (ii) the appointment of an Independent Technical Monitor would be solely for the purpose of resolving disputes of a technical nature (between Spreadex and the purchaser or the CMA), subject to the Independent Technical Monitor seeking the CMA's views and approval prior to taking any action or decision.⁷⁸⁷

The Monitoring Trustee should have the powers to act as an adjudicator to resolve any disputes arising between Spreadex and the purchaser in relation to the development and delivery of the new platforms as agreed in the SPA, subject to seeking the CMA's views and approval prior to taking any action or decision, but that the Monitoring Trustee may request the appointment of an Independent Technical Monitor to assist it in carrying out its adjudication duties.

- (g) We acknowledge that the Spreadex development staff involved in the development of the reconstituted platforms may have some knowledge of the strengths and weaknesses of the reconstituted platforms. However, in our view, the involvement of a Spreadex Development Clean Team (on terms acceptable to the purchaser), would materially contribute to mitigating these risks. In addition, it is our view that the value of this knowledge will depreciate over time, eg with reference to the parameters of competition set out in paragraph 6.70, ie spread pricing, range and user experience (see paragraph 6.87 above), at the end of the [X] TSA period, the purchaser would have the ability to independently determine spread pricing and the range of spread markets offered, and make changes to support user experience (eg adding other attractive features to the 'front-end' and developing further the 'back-end' platform).

9.170 In our view, the collaborative arrangement between Spreadex and the purchaser, which we have described above in paragraph 9.169(a) above, together with the involvement of an Independent Technical Monitor, would sufficiently mitigate the risks arising from Spreadex's proposal to develop the reconstituted platforms.

Conclusion on Spreadex's role in the development of the platforms

9.171 In summary, our conclusion in relation to Spreadex's role in developing the platforms is that:

- (a) while Spreadex should be fully responsible for the technical development of the reconstituted platforms, Spreadex and the purchaser should collaborate in relation to the other aspects of the development process, namely:

⁷⁸⁷ For the avoidance of doubt, the Independent Technical Monitor would not be engaged on an ongoing basis; rather, the engagement letter should reflect that the appointment would be for the purpose and duration of resolving disputes of a technical nature as and when required.

specifying the relevant outcomes (including KPIs) for the platforms; decisions about how to achieve those outcomes; testing; and handover and customer migration. For these purposes, Spreadex should form a Spreadex Development Clean Team, on terms acceptable to the purchaser;

- (b) the parameters and objectives for the development of the Bespoke Platform Solution should be as follows:
 - (i) the base line for the specification and performance of the reconstituted platforms should be based on Sporting Index's pre-Merger platforms, and where a reliable benchmark is not available (or cannot be determined) for Sporting Index's pre-Merger platforms, Spreadex's own platforms should provide this benchmark;
 - (ii) Spreadex should not be required to develop the reconstituted platforms with functionality that is superior to Sporting Index's pre-Merger platforms, except to reflect technological updates and enhancements, which Sporting Index would reasonably have been expected to have carried out in the ordinary course of business in the context of changing market and regulatory conditions, or where they already form part of Spreadex's Remedy Proposal; and
 - (iii) Spreadex should not be required to develop the reconstituted platforms with functionality that is superior to Spreadex's platforms ([X]), except where that functionality was already provided by Sporting Index's pre-Merger platforms.

Spreadex will not be required to implement the purchaser's request if the CMA considers that the purchaser's request is unreasonable. The CMA will also consider whether it will be necessary and appropriate in the circumstances to grant Spreadex an extension to the timescales to complete the divestiture remedy, if the CMA considers that the purchaser, having acted unreasonably, has delayed the process; and

- (c) the CMA will reserve the right to appoint an Independent Technical Monitor at any time during the divestiture process to resolve technical disputes where necessary (see also paragraph 9.169(f) above for the circumstances where the CMA will consider appointing an Independent Technical Monitor), and the Monitoring Trustee should act as an adjudicator to resolve disputes (having sought the CMA's views and approval prior to taking any action or decision), and may request the appointment of an Independent Technical Monitor (to the extent reasonably required).

Trading Models

Spreadex's views

- 9.172 Spreadex submitted that [REDACTED], it would provide the ability for the purchaser to feed in its own prices via the API Integration [REDACTED].⁷⁸⁸
- 9.173 Spreadex also submitted that it was 'likely that a third party would want to use their own pricing models or third-party feeds to generate prices', and that this would be 'possible' through the API Integration, which would allow 'third-party systems' to connect to the Bespoke Platform Solution, and 'produce spread betting prices that could be displayed to customers via the front-end platforms'.⁷⁸⁹
- 9.174 Spreadex submitted that its 'expectation' was that the 'third party would be able and willing to supply the prices themselves within a short period of time, given the [[REDACTED]], which demonstrates that 10star would already have in place the significant majority of the capabilities, and that Star Spreads already operate a spread betting platform, and as such would have the capability of generating spread prices'.⁷⁹⁰
- 9.175 Spreadex submitted that the timescales needed by a purchaser [REDACTED], Spreadex estimated that the time it would take [REDACTED]. It added that [REDACTED].⁷⁹¹
- 9.176 At its Response Hearing, Spreadex explained [REDACTED], would depend on: (a) [REDACTED]; and (b) [REDACTED]. It added that if a purchaser had its 'own pricing systems which create pricing', then the API Integration would enable it to use its own Trading Models.⁷⁹²
- 9.177 Spreadex stated that Sporting Solutions 'now own and still operate all the pricing technology that was used to provide the full range of spread markets offered by Sporting Index prior to the Merger', and that it was its 'understanding that, [REDACTED]. Spreadex stated that [REDACTED].⁷⁹³ However, it added that should the purchaser 'not wish to use Sporting Solutions',⁷⁹⁴ it was also possible to get spread 'pricing feeds' from third parties 'for some markets',⁷⁹⁵ and identified Sportradar, Decimal Data Services and Genius Sports as possible third-party spread pricing feed providers.⁷⁹⁶
- 9.178 Spreadex submitted that [REDACTED], the above options would enable an alternative purchaser to provide a full level of pricing needed to meet the pre-Merger business levels [REDACTED], and that this 'would mitigate any concerns the CMA has raised around

⁷⁸⁸ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q 3.

⁷⁸⁹ Spreadex, Response to the CMA's RFI, 6 September 2024, Q1.

⁷⁹⁰ Spreadex, Response to the CMA's RFI, , 6 September 2024, Q1.

⁷⁹¹ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q14.

⁷⁹² Spreadex, Response hearing transcript, 11 September 2024, page 51, lines 2-9.

⁷⁹³ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q15.

⁷⁹⁴ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q15.

⁷⁹⁵ Spreadex, Response hearing transcript, 11 September 2024, page 52, lines 9-10.

⁷⁹⁶ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q15.

the alternative purchaser being dependent on a competitor in the short term, although Spreadex does not consider that any such risk would arise in practice during such a transitional period'.⁷⁹⁷

9.179 Spreadex submitted that there was also a 'very large number' of third-party providers of 'odds feed data' (separate from spread pricing feed data),⁷⁹⁸ and that given 'many spread and fixed odds markets are very similar, if not the same, it is likely that if asked to supply odds feeds for given markets (including [redacted]) in a spread betting format ([redacted]), a number of these companies would be able to do so'.⁷⁹⁹

9.180 Spreadex told us that Trading Models would also need 'sports market data feeds', eg 'if a team scores, the pricing model will need to know that', and that there were 'sports data providers' who provided these feeds. Spreadex added that it used [redacted].⁸⁰⁰

Third parties' views

9.181 In relation to the evidence from third parties:

(a) All third parties told us that Trading Models would be required for a purchaser to compete in the relevant market, although the evidence was mixed in relation to whether price differentiation with Spreadex would be required. For example:

(i) Sporting Group told us that there would be a need for pricing models and staff to 'trade the pricing' – it explained that while these models were required to 'create pricing', there was still a 'lot of manual effort' needed to ensure the 'figures are correct'. It added that the extent to which different pricing models could be developed from a common initial model depended on an operator's 'appetite for risk', but added that while it was 'feasible to create different prices', this was 'not advised', as spread prices in the market should be 'very similar' – it explained that increased price differentiation (in terms of the size of the spread) would imply an increase in the risk being taken by the operator. In this regard, Sporting Group told us that 'differentiation' between sports spread betting competitors did not necessarily relate to price differentiation and that prior to the Merger, Sporting Index's and Spreadex's 'views on prices were similar'.⁸⁰¹

⁷⁹⁷ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q15.

⁷⁹⁸ Spreadex provided a list of [redacted]. Source: Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q15.

⁷⁹⁹ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q15.

⁸⁰⁰ Spreadex, Response hearing transcript, 11 September 2024, page 53, lines 1-23.

⁸⁰¹ Sporting Group, Call note.

- (ii) 10star told us that in order for there to be competition between Spreadex and the divestment business, it was important to ensure that there was ‘price differentiation’ by enabling the divestment business to ‘change prices’ and ‘risk manage’ on its own, independently of Spreadex. It told us that if the divestiture package did not include the spread ‘pricing models’ (ie the ‘algorithm’ which produced prices), then this could require a TSA for a period of ‘a lot longer than [REDACTED]’, as the purchaser would need to build its own ‘pricing models’. 10star told us that building these models from scratch, and recruiting traders to run these models, would potentially take two to three years. It added that it considered [REDACTED].^{802, 803}
 - (iii) Star Sports told us that [REDACTED] would be ‘doable’, and from a commercial perspective, this would also be ‘doable’ in the context of a TSA, but added that in the long term, it would need an ‘all or nothing’ approach where Spreadex was not involved. It added that if [REDACTED], it would make it harder to differentiate on pricing, but this would depend on the capabilities of the platform to differentiate and adjust pricing.⁸⁰⁴
- (b) In relation to the time and costs required to build Trading Models:
- (i) 10star told us that it would ‘take a while’ to build pricing models and that this would be a significant investment, although this also depended on whether it would need to build models from scratch. It added that for the ‘major sports’ where it was already ‘skilled in fixed odds’, there would be a period required to amend the model such that it could also offer spreads, but this period would be quicker compared to building models for sports where it did not offer fixed odds pricing, such as [REDACTED]. 10star also told us that building these models from scratch, and recruiting traders to run these models, would potentially take two to three years.⁸⁰⁵
 - (ii) Star Sports told us that it did not have an estimate of the costs required to develop pricing models without knowing the details, such as the range of markets. [REDACTED].⁸⁰⁶

Our assessment

9.182 In paragraph 6.84, we stated that ‘the variety and range of “spread markets” (ie the sporting events and outcomes on which customers are able to place spread bets)

⁸⁰² 10star, Call transcript.

⁸⁰³ 10star, Call transcript.

⁸⁰⁴ Star Sports, Call transcript.

⁸⁰⁵ 10star, Call transcript.

⁸⁰⁶ Star Sports, Call transcript.

offered is important to customers',⁸⁰⁷ and that 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'.⁸⁰⁸

- 9.183 The availability of spread markets is determined by the availability of the underlying Trading Models which generate spread pricing for the various sports and spread markets offered by a sports spread betting provider.
- 9.184 Below, we consider:
- (a) the range of sports spread markets which should be provided under the [X] TSA in paragraphs 9.185 to 9.190 below;
 - (b) Spreadex's obligations under the [X] TSA, eg in terms of duration and parity of service in paragraphs 9.191 to 9.198 below; and
 - (c) the risk that the [X] TSA may be insufficient to attract a suitable purchaser in paragraphs 9.199 to 9.212 below.
- 9.185 First, in relation to the range of sports spread markets which should be provided under the [X] TSA, in paragraph 7.38, we stated our view was that in order for a competitor to exert an effective constraint on the Merged Entity in the supply of licensed online sports spread betting services in the UK, it would need (among others) the 'technology' to 'offer spread betting prices in a manner that is sufficiently comprehensive to compete with the Merged Entity, eg it would need to offer services comparable to those of Sporting Index pre-Merger to prevent an SLC arising from the Merger'.⁸⁰⁹
- 9.186 While in principle, we consider it would be sufficient for the [X] TSA to enable the purchaser to provide the range of spread markets Sporting Index had provided prior to the Merger, given that since Merger completion, Sporting Index customers may have become accustomed to Spreadex's broader sports spread markets offering since November 2023, we first considered whether there would be any risks of customer disruption or customer attrition associated with reverting them to Sporting Index's pre-Merger offering.
- 9.187 Figure 9.3 below shows the monthly sports events covered by each of Spreadex and Sporting Index between April 2022 and April 2023, which cover both the pre-Merger and post-Merger periods.

⁸⁰⁷ Chapter 6, paragraph 6.84.

⁸⁰⁸ Chapter 6, paragraph 6.85.

⁸⁰⁹ Chapter 7, paragraph 7.38.

Figure 9.3: Comparison of monthly sport events covered by the Parties

[REDACTED]

Source: Spreadex, Teach-in slide pack, 1 May 2024.

- 9.188 Figure 9.3 above shows that the number of monthly ‘sports events’ covered by Sporting Index has [REDACTED] since November 2023 when the Merger completed. However, the Monitoring Trustee told us that feedback from [REDACTED] that Sporting Index’s [REDACTED] since Merger completion was [REDACTED].⁸¹⁰ We also note that while Spreadex [REDACTED], in paragraph 6.114, we stated that the evidence from our customer questionnaire for whether customers perceived a material difference between the range of ‘spread markets’ offered by each of the Parties was ‘mixed’,⁸¹¹ and cited evidence from Sporting Group, who told us that [REDACTED].⁸¹²
- 9.189 In our view, being able to offer the same range of spread markets Sporting Index had offered prior to the Merger immediately following completion of the divestiture, would provide us with greater confidence that Sporting Index’s revenues under new ownership would be maintained at least at pre-Merger levels. In this regard, we note that since Merger completion, the Sporting Index business has generated annual revenues of around £[REDACTED] million and performed ahead of pre-Merger levels (for example, Sporting Index generated revenues of around £[REDACTED] million in 2022).⁸¹³ Provided that Sporting Index is able to offer the range of services it had offered prior to the Merger, this would imply that the revenues of the divested business once reconstituted would be broadly similar in the short- to medium-term to that which would be expected under the counterfactual. We also consider that if we required Spreadex to provide a [REDACTED] TSA that [REDACTED], this increases the risk that the costs associated with [REDACTED] could render the divestment business unviable.
- 9.190 Given that Figure 9.3 shows that the number of monthly events offered by Sporting Index has remained broadly stable during the 12 months preceding the Merger, it is our view that the [REDACTED] TSA [REDACTED], which Sporting Index offered immediately prior to the completion of the Merger.
- 9.191 Second, in relation to Spreadex’s obligations under the [REDACTED] TSA, for example, in terms of its duration, and the quality and parity of service the purchaser will receive under it, we first consider its duration. In doing so, we sought to balance the benefit to competition of the purchaser competing on pricing with its own Trading Models [REDACTED] having regard to the complexities of this divestiture process (which could support a longer TSA duration depending on the [REDACTED]).

⁸¹⁰ Monitoring Trustee, Note of Call, 30 September 2024.

⁸¹¹ Chapter 6, paragraph 6.114.

⁸¹² Chapter 6, paragraph 6.116.

⁸¹³ Spreadex, [Response to the CMA’s Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q4 and Q11.

9.192 In the RWP, we provisionally concluded that the [REDACTED] TSA should have a maximum duration of [REDACTED] from completion of the divestiture remedy, on the basis that this would strike an appropriate balance between the competing considerations set out in paragraph 9.191 above.

9.193 In the RWP response, Spreadex submitted that based on its previous submission (set out in paragraph 9.175 above), while it might take the purchaser up to [REDACTED] to develop Trading Models for ‘all sports’, the purchaser would ‘be able to develop the main sporting events accounting for the largest number of bets in a significantly shorter period’. It added that for [REDACTED], the Trading Models ‘could be completed in a [REDACTED]’. It submitted that the [REDACTED] TSA should be ‘tiered to incentivise’ the purchaser to ‘prioritise the sports that account for the highest volume of bets first’, and proposed the following:⁸¹⁴

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED]; and
- (d) [REDACTED].

9.194 Spreadex submitted that a ‘tiered’ approach to the [REDACTED] TSA ‘would result in better outcomes’ for the purchaser and Sporting Index customers, and added that it would ‘also not be proportionate for Spreadex to be obliged to [REDACTED] when a reasonably efficient new operator could reasonably be expected to have developed its own pricing [REDACTED]’.⁸¹⁵

9.195 As mentioned in paragraph 9.16, after receiving the RWP response, we held further discussions with each of 10star and Star Sports, including on some of Spreadex’s counter-proposals in the RWP response:

- (a) In relation to whether there should be a ‘tiered’ approach to the [REDACTED] TSA along the lines outlined by Spreadex in paragraph 9.193 above, 10star and Star Sports told us that the purchaser should be able to decide the order in which the pricing models (ie the Trading Models) for different sports should be developed:
 - (i) 10star told us that in relation to the order in which the various pricing models should be developed, it should be up to the purchaser to decide which pricing models were prioritised first. It noted that it was difficult to decide this upfront because markets were dynamic and subject to change as new products became available. It believed that it was

⁸¹⁴ Spreadex, Response to the CMA’s Remedies Working Paper, 23 October 2024, paragraphs 2.23 and 2.24.

⁸¹⁵ Spreadex, Response to the CMA’s Remedies Working Paper, 23 October 2024, paragraph 2.25.

important for the purchaser to have the autonomy to decide where to prioritise its resources, and that these strategic commercial decisions should be taken by the purchaser.⁸¹⁶

(ii) Star Sports told us that while it would make sense for the purchaser to develop pricing models for sports with the most revenues first, it believed that the order in which the pricing models should be developed should be decided by the purchaser, and therefore, there was no need for a tiered approach for the TSA from Spreadex.⁸¹⁷

(b) In relation to a possible [redacted] TSA under which Spreadex would [redacted] during a transitional period of up to [redacted], 10star questioned whether it would be desirable to have [redacted] and queried how the divestment business could differentiate its pricing from Spreadex's prices, as the [redacted] under a TSA (reiterating its view set out in paragraph 9.181(a)(ii) above). It also told us that this situation was [redacted].⁸¹⁸

9.196 We have considered Spreadex's submissions as well as the further evidence from 10star and Star Sports that we received after the RWP response, and our view is that it is not appropriate to adopt a 'tiered' approach to the [redacted] TSA as proposed by Spreadex for the following reasons:

(a) It is not appropriate for the CMA to stipulate the order in which the purchaser should develop its own Trading Models for different sports. Rather, this should be determined by the purchaser's own commercial priorities and objectives for the Sporting Index business.

(b) We note that Spreadex's estimate of the time it would take to develop the relevant Trading Models was significantly shorter than the estimate provided by 10star (see paragraph 9.181(b)(i) above). In those circumstances, it is not appropriate to take a tiered approach and timings based only on Spreadex's own estimates.

(c) Based on the evidence from 10star and Star Sports, our view is that a purchaser will likely be incentivised to develop its own Trading Models and compete with Spreadex using its own Trading Models as soon as possible (see paragraphs 9.181(a) and 9.195(b) above), and therefore, the risk of a purchaser [redacted] TSA beyond what is necessary [redacted] is low.

9.197 On the basis set out above, we maintain our view that the [redacted] TSA should have a maximum duration of [redacted] from completion of the divestiture remedy, and that this would strike an appropriate balance between the competing considerations set out

⁸¹⁶ 10star, Call note.

⁸¹⁷ Star Sports, Call note.

⁸¹⁸ 10star, Call note.

in paragraph 9.191 above. In this regard, a purchaser will have the ability to commence its own technical development of its own Trading Models prior to completion, eg at the same time as Spreadex is undertaking the technical development of the reconstituted platforms, thereby reducing the need for a longer [REDACTED] TSA.

- 9.198 We also consider that the terms and conditions of the [REDACTED] TSA should reflect the individual needs and circumstances of the purchaser, and that there should be parity of service and quality levels between [REDACTED] Spreadex [REDACTED] TSA to a purchaser and the services provided to its own business, eg [REDACTED] than for Spreadex's own business.⁸¹⁹ We consider that this will be an area for the Monitoring Trustee and if appointed, the Independent Technical Monitor, to monitor closely post completion.
- 9.199 Finally, we consider the risk that the [REDACTED] TSA may be insufficient to attract a suitable purchaser. In this regard, while we consider that the availability of a [REDACTED] TSA may be sufficient to attract some potential purchasers, who have the capability to develop their own Trading Models (for example, 10star and Star Sports), in our view, there is a risk that this would necessarily restrict the pool of potential purchasers. Furthermore, we also cannot predict what impact the changes in circumstances since the Merger (see paragraph 9.73 above) may have had on [REDACTED] (see paragraph E.3 of Appendix E).
- 9.200 In our view, designing a divestiture remedy that may potentially be suitable for only two potential purchasers represents a material transaction execution risk, noting at this stage that Spreadex has yet to engage in any preliminary discussions with any potential purchaser (see also paragraph 9.293). As such, in order to mitigate this risk and build in greater flexibility into the scope to attract more potential purchasers, we considered [REDACTED].
- 9.201 We note Spreadex's submission in paragraph 9.177 above that Sporting Solutions still owned and operated all the pricing technology that was used to provide the full range of spread markets offered by Sporting Index prior to the Merger, and therefore, it would be possible for the purchaser to obtain spread pricing feeds from Sporting Solutions. However, FDJ stated that 'Sporting Index's pricing systems, including conjoined models, were not included into the transaction perimeter'. It added that following completion of the Merger, Sporting Solutions' 'spread betting market calculations were decommissioned internally', and therefore, the 'the pricing and the ability to trade pricing' would need to either be redeveloped or sourced from 'one or multiple providers' (but not from Sporting Solutions).⁸²⁰

⁸¹⁹ We would require the Monitoring Trustee to monitor Spreadex's compliance with its obligations under the [REDACTED] TSA to ensure parity of quality of service being provided. In Chapter 6, we noted that Spreadex's internal documents showed [REDACTED]. Source: Chapter 6, paragraph 6.22.

⁸²⁰ FDJ, Response to CMA RFI, 2 October 2024, Q1.

9.202 We approached the third parties, whom Spreadex submitted could supply spread pricing feeds to third parties (namely, Sportradar, Decimal Data Services and Genius Sports, see paragraph 9.51 above), to understand whether they currently offered spread pricing feeds, and if so, which sports and spread markets they offered; and their capability to offer spread pricing feeds for new sports and spread markets:

- (a) Decimal Data Services stated that it could ‘supply a full spread betting service for all cricket, padel and kabaddi matches’, and that this service was ‘already operational’, and therefore, ‘would not require any additional work’. It added that it ‘typically’ charged a 10% revenue share, with no set-up or integration fee. It did not comment on its capabilities to offer spread pricing feeds for new sports or spread markets.⁸²¹
- (b) Sportradar told us that it was not currently ‘involved in’ supplying spread pricing feeds.⁸²²

9.203 Based on the above, it is our view that a purchaser will have the option to replace some (but not all) of the [redacted] with spread pricing feeds from third-party providers and that the technical barrier to do so would be lowered through the API Integration proposed under Spreadex’s Remedy Proposal. To the extent that the purchaser wishes to rely on third-party spread pricing feeds for some sports and spread markets, rather than develop its own Trading Models, it is our view that this is a credible option.

9.204 [redacted]:

(a) [redacted] or

(b) [redacted],⁸²³ [redacted].⁸²⁴

9.205 [redacted].⁸²⁵ [redacted].

9.206 [redacted].⁸²⁶

9.207 [redacted].

9.208 [redacted].

9.209 [redacted]:⁸²⁷

⁸²¹ Decimal Data Services, E-mail to the CMA, 26 September 2024.

⁸²² Sportradar, voicemail recording, 2 October 2024.

⁸²³ Spreadex told us that [redacted]. Source: Spreadex, Response to RFI 4, 10 May 2024. Q3.

⁸²⁴ List of Spreadex’s [redacted]. Source: Spreadex, Response to RFI 4, 10 May 2024. Q4.

⁸²⁵ Spreadex, Teach-in slide pack, 1 May 2024.

⁸²⁶ Spreadex, Response to the CMA’s RFI 5, 24 September 2024, Q16.

⁸²⁷ Spreadex, Response to the CMA’s Remedies Working Paper, 23 October 2024, paragraphs 2.18 and 2.19.

(a) [REDACTED]; and

(b) [REDACTED].

9.210 [REDACTED].⁸²⁸

9.211 [REDACTED].

9.212 Based on the above, we conclude [REDACTED].

Conclusion on the Trading Models

9.213 Based on our assessment above, and in relation to the issue of Trading Models, we conclude that:

- (a) the [REDACTED] TSA should [REDACTED] that matches the range of spread markets, which Sporting Index offered immediately prior to the completion of the Merger;
- (b) the terms and conditions of the [REDACTED] TSA should reflect the individual needs and circumstances of the purchaser (subject to a maximum duration of [REDACTED] from completion of the divestiture remedy), and there should be parity of service and quality levels between [REDACTED] and the services provided to its own business – this will be an area for the Monitoring Trustee and, if appointed, the Independent Technical Monitor, to monitor post completion; and
- (c) [REDACTED].

Timescales for the development of the reconstituted platforms

Spreadex's views

9.214 Prior to receiving the RWP, Spreadex provided us with an initial plan for the technical workstreams involved, and told us that its 'best estimate at this stage' was that it would take between [REDACTED] to deliver the reconstituted platforms ([REDACTED]). However, it acknowledged that [REDACTED].^{829, 830} As mentioned in paragraph 9.43(b) above, after receiving the RWP, Spreadex submitted in the RWP response that it had not factored into its 'initial estimates for the project timeline', ie between [REDACTED], the purchaser's 'early involvement' in the development of the Bespoke Platform Solution.⁸³¹ We provide further details of Spreadex's submissions on its revised timings in the RWP response in paragraphs 9.319 to 9.337 where we consider the appropriate timescales for completing a divestiture.

⁸²⁸ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraph 2.20.

⁸²⁹ Spreadex, Response to CMA's RFI, 6 September 2024. Q3.

⁸³⁰ Spreadex, Response to the CMA's Remedies Notice Annex 2, 20 August 2024, p.7.

⁸³¹ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraph 2.4.

Third parties' views

- 9.215 10star told us that it did not have a view on the [redacted] timeframe given by Spreadex as part of the development of the Bespoke Platform Solution as there were 'too many unknowns', but from a business perspective it considered this to be 'bullish'. 10star added that Spreadex's timeline assumed that there would be [redacted] platform.⁸³²
- 9.216 Star Sports told us that intuitively the timelines proposed by Spreadex to build the Bespoke Platform Solution did not seem feasible based on its own experience, but to provide a definitive answer, it would need to see technical documentation, languages, databases, and servers.⁸³³

Our assessment

- 9.217 Spreadex's initial plan for the technical workstreams involved in the development of the reconstituted platforms under Spreadex's Remedy Proposal is at a relatively early stage, and therefore, in our view, its current estimate of the timescales needed to deliver the reconstituted platforms is unreliable. We have also not been able to verify independently whether the timescales appear achievable, but note that the timescales would depend to some extent on the outcome of any negotiations between Spreadex and the purchaser in relation to the specifications of the reconstituted platforms, and the timescales needed to deliver them from a technical perspective.
- 9.218 In paragraph 9.171 above, we concluded that:
- (a) the development of the reconstituted platforms required under the Platform Development Element of Spreadex's Remedy Proposal should be a collaborative exercise, whereby: (i) Spreadex and the purchaser will collaborate during the process for specifying the relevant outcomes (including KPIs) for the platform; decisions on how to achieve those outcomes; testing; and handover and customer migration; and (ii) Spreadex will be fully responsible for carrying out the technical development work needed to develop the reconstituted platforms in accordance with the specifications agreed between Spreadex and the purchaser); and
 - (b) this collaborative process should commence formally once a suitable purchaser has signed an SPA with Spreadex.
- 9.219 At this stage, it is our view that as part of any SPA (the final terms of which the CMA will need to approve), Spreadex and the purchaser should agree a development programme for the delivery of the reconstituted platforms, which will:

⁸³² 10star, Call transcript.

⁸³³ Star Sports, Call transcript.

(a) involve a series of milestones; (b) contain a set of contractual commitments on each of Spreadex and the purchaser; and (c) include provisions enabling the parties to the SPA to enforce these contractual commitments with financial penalties for missing milestones and deadlines. In our view, the exact timescales for completing the development programme should be agreed between Spreadex and the purchaser, provided that it completes within a 'long-stop' date, which we consider later in this paper (see paragraphs 9.319 to 9.337).

Conclusion on the timescales for the development of the reconstituted platforms

9.220 Based on the above, we conclude that:

- (a) Spreadex and the purchaser should agree a development programme for the delivery of the reconstituted platforms, which will: (i) involve a series of milestones; (ii) contain a set of contractual commitments on each of Spreadex and the purchaser; and (iii) enable the parties to the SPA to enforce these contractual commitments with financial penalties for missing milestones and deadlines; and
- (b) the exact timescales for completing the development programme should be agreed between Spreadex and the purchaser, provided that it completes within a 'long-stop' date to be determined by the CMA (see paragraphs 9.319 to 9.337).

Transfer of knowhow to purchaser (including Technical Support TSA)

9.221 In our view, the purchaser should have sufficient knowhow and experience of the reconstituted platforms to enable it to maintain, develop and innovate the reconstituted platforms developed under Spreadex's Remedy Proposal.

Spreadex's views

9.222 Spreadex submitted that it would provide the purchaser with the 'documentation and related know how' for the Bespoke Platform Solution.⁸³⁴

9.223 In order to 'ensure optimal knowledge transfer to the purchaser and minimise the need to rely heavily on Spreadex for initial IT needs', Spreadex stated that the 'following mitigations could be included':⁸³⁵

- (a) **Technology Selection:** [REDACTED];⁸³⁶

⁸³⁴ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraphs 2.5 and 2.7.

⁸³⁵ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q10.

⁸³⁶ These criteria are: [REDACTED]. Source: Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q10.

(b) *Documentation*: [REDACTED];

(c) *Training*: [REDACTED]; and

(d) *Testing*: [REDACTED].

9.224 Spreadex stated that it did ‘not propose [REDACTED] and did not consider it ‘necessary’ [REDACTED]. However, it added that it might ‘consider, as part of the commercial negotiations, whether it might be possible’ for [REDACTED] platform [REDACTED].⁸³⁷

9.225 Spreadex added that following completion of the divestiture transaction, Spreadex would provide the purchaser with a Technical Support TSA for ‘temporary ongoing technical support’ ‘at market rate’ and ‘for a period of up to [REDACTED]’ to:^{838, 839}

(a) ‘assist the purchaser in understanding how the technology functions’;

(b) ‘assist with technical queries and training on the technology’; and

(c) ‘from the perspective of the Sporting Index technology, support the technical integration of the purchaser’s integration of their components into the Sporting Index business’, and ‘facilitate the transition and a Bespoke Platform Solution to ensure that any dependence on Spreadex is limited in time and scope’.

Third parties’ views

9.226 Third parties generally agreed that Spreadex developing and holding the knowledge for the Bespoke Platform Solution would be a concern:

9.227 10star told us that Spreadex being the party who understood the platform, and how to fix it in the event of any issues, was its ‘main concern’, and as set out in paragraph 9.142(b) above, it told us that the operation of a platform in a live environment was different to testing, and so it would need to draw on Spreadex’s knowledge in this scenario. It also told us that ‘the more upfront the purchaser can get involved the better’, in order for the purchaser to understand better the platform it would be acquiring, including its interface.⁸⁴⁰

9.228 Star Sports told us that it would not want to rely on a competitor for the continued support of its platform during a TSA period, and that it would prefer to instead rely on third parties. It added that it was ‘leaning towards’ preferring a third party building the platform instead of Spreadex.⁸⁴¹

⁸³⁷ Spreadex, Response to the CMA’s RFI 5, 24 September 2024, Q10 and Q11.

⁸³⁸ Spreadex, Response to the CMA’s RFI, 6 September 2024, Q2 and Q3.

⁸³⁹ Spreadex, [Response to the CMA’s Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q2.

⁸⁴⁰ 10star, Call transcript.

⁸⁴¹ Star Sports, Call transcript.

Our assessment

- 9.229 In paragraph 9.171 above, we concluded that the development of the reconstituted platforms required under the Platform Development Element of Spreadex's Remedy Proposal should be a collaborative exercise, whereby: (a) Spreadex and the purchaser will collaborate during the process for specifying the relevant outcomes (including KPIs) for the platform; decisions on how to achieve those outcomes; testing; and handover and customer migration; and (b) Spreadex will be fully responsible for carrying out the technical development work needed to develop the reconstituted platforms in accordance with the specifications agreed between Spreadex and the purchaser. Given this, it is our view that comprehensive documentation for any reconstituted platforms, together with the purchaser optionally being involved in their development, would mitigate the need to consider the possible transfer of Spreadex development staff working on the development of the reconstituted platforms, or the requirement of a more extensive Technical Support TSA.
- 9.230 Spreadex's submission on the types of transitional services it would offer under the Technical Support TSA was set out in paragraphs 9.46 and 9.225 above.
- 9.231 In the RWP, we provisionally concluded that the scope and duration of the Technical Support TSA should be based on the individual needs and circumstances of the purchaser (but on mutually acceptable terms) and subject to a maximum duration of [X] from completion of the divestiture remedy.
- 9.232 In the RWP response, Spreadex submitted that while it accepted the 'CMA's provisional view that the scope of the Technical Support TSA should be based on the individual needs and circumstances' of the purchaser, 'subject to such arrangements being agreed on mutually acceptable terms', it considered that the 'CMA's proposed duration' of [X] was 'excessive', and that [X] was 'more than sufficient' for the purchaser 'to understand and operate the technology'. It explained that the purchaser would 'itself have been closely involved in the development and testing of the [Bespoke Platform Solution] and so will have had as much experience with it as Spreadex', and the purchaser would 'also have benefit of documentation provided by Spreadex'. It added that a 'longer TSA' would encourage the purchaser 'to remain dependent on Spreadex for longer, which is something that third parties themselves have expressed concerns about'.⁸⁴²
- 9.233 While we acknowledge the possibility that a purchaser may consider a Technical Support TSA for [X] (or even less) following completion to be sufficient, we cannot predict with any precision how long a purchaser will need under a Technical Support TSA, noting also that we cannot predict the materiality of any technical

⁸⁴² Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraphs 2.26 and 2.27.

issues that may arise following completion, where the purchaser may require Spreadex's support. We note, however, Spreadex's submission that the purchaser will have been closely involved in the development and testing of the Bespoke Platform Solution prior to completion, which in our view would justify a TSA duration of less than [X] notwithstanding any uncertainty in relation to how long a purchaser would require. On balance, and in light of the purchaser's close involvement in the development and testing process for the Bespoke Platform Solution, our view is that a duration of up to [X] for the Technical Support TSA would represent an appropriate duration, noting that the purchaser will have the ability to agree a shorter duration if that is required.

- 9.234 Based on the above, our view is that the scope and duration of the Technical Support TSA should be based on the individual needs and circumstances of the purchaser (but on mutually acceptable terms) and subject to a maximum duration of [X] from completion of the divestiture remedy. The final terms of the Technical Support TSA will need to be approved by the CMA. As part of its assessment of whether to approve the Technical Support TSA, the CMA will have regard to whether the scope of services and the service levels being offered by Spreadex (eg Spreadex's response times to a query made by the purchaser in relation to an issue concerning the reconstituted platforms) sufficiently mitigate the risks that failure to resolve these issues in a comprehensive and timely manner, could undermine the viability of the divestment business following completion.

Conclusion on the transfer of knowhow to the purchaser

- 9.235 We conclude that Spreadex should provide the purchaser with the technical support, documentation and any other knowhow the purchaser needs under the Technical Support TSA, on mutually acceptable terms. We also conclude that the Technical Support TSA should not exceed [X]. The final terms of the Technical Support TSA will need to be approved by the CMA.

Alternative development options

- 9.236 In the Remedies Notice, we set out our initial view that in order to ensure that a divestiture package has the requisite functions and capabilities to allow a purchaser to compete as a standalone business, in relation to the spread betting technology, this would involve 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.⁸⁴³

⁸⁴³ CMA, [Remedies Notice](#), 25 July 2024, paragraph 29(a).

Spreadex's views

- 9.237 Spreadex told us that prior to making its remedy proposal, it had investigated whether to reconstitute Sporting Index's 'back-end' platform ([REDACTED]) or build a new 'back end' platform by cloning Spreadex's platform, and that the outcome of its internal investigation was to develop the Bespoke Platform Solution.⁸⁴⁴
- 9.238 Spreadex made submissions on three options for the inclusion of an operational 'back-end' platform within the divestiture package:
- (a) *Reconstituting the 'back-end' based solely on the Acquired Source Code (requiring Sporting Group support)*: under this development option, Spreadex would attempt to reconstitute Sporting Index's 'back-end' with only the Acquired Source Code, [REDACTED]. Spreadex told us that it would be 'unviable to recreate the back-end platform solution based solely on the source code in its possession for the pre-Merger Sporting Index spread betting platform (ie Atlas)', as it would 'face the following significant and insurmountable practical difficulties in attempting this solely on the basis of Atlas'.⁸⁴⁵
 - (i) [REDACTED];
 - (ii) [REDACTED],⁸⁴⁶ [REDACTED]; and
 - (iii) [REDACTED],⁸⁴⁷ [REDACTED].
 - (b) *Development of the Bespoke Platform Solution*: this development option (and the option which Spreadex has proposed under its proposed remedy) represents an alternative route to reconstituting Sporting Index's pre-Merger 'back-end' platform, which involves starting with the Acquired Source Code for the 'back-end' platform, and building up a 'back-end' platform by developing the missing modules to enable it to be fully operational. In this regard, it told us that it would 'create the Bespoke Platform Solution to ensure' that the source code it had acquired under the Merger (namely, Atlas, [REDACTED]), were 'capable of operating on a standalone basis, given the assets Spreadex acquired were not'.⁸⁴⁸ At its Response Hearing, Spreadex told us that its proposal to develop a Bespoke Platform Solution represented the 'quickest and most [REDACTED]'.⁸⁴⁹ Spreadex submitted that it 'currently believed' that the development of the Bespoke Platform Solution would 'be simpler, and provide a more robust end-product', than attempting to reconstitute the

⁸⁴⁴ Spreadex, Response hearing transcript, 11 September 2024, page 24, lines 16-19.

⁸⁴⁵ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.5.

⁸⁴⁶ At its Response Hearing, Spreadex clarified that [REDACTED]. (Source: Spreadex, Response hearing transcript, 11 September 2024, page 26, lines 5-6.)

⁸⁴⁷ Betsson Group, [Betsson Group Announces Strategic Acquisition of Sporting Solutions - Betsson Group](#), 1 August 2024, (last accessed 14 November 2024).

⁸⁴⁸ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q7.

⁸⁴⁹ Spreadex, Response hearing transcript, 11 September 2024, page 59, lines 1-2.

Sporting Index 'back-end' platform,⁸⁵⁰ with only the source code it had acquired.⁸⁵¹

- (c) *Cloning of the Spreadex platform*: Spreadex strongly opposed the possibility of any form of cloning of Spreadex's platform, and submitted that:
- (i) '[REDACTED]', trying to separate out, copy and re-integrate the components would be extremely difficult, take much longer and would create a significant level of unnecessary risk of harm to both Sporting Index and Spreadex customers';⁸⁵²
 - (ii) 'insofar as [cloning] means creating a fully operational copy of Spreadex's platform and offering that to a potential purchaser with or without ongoing development and support, such "cloning" would amount to expropriating intellectual property and technology painstakingly developed over years, damaging Spreadex's ability to effectively compete. Spreadex's platform is a result of its own investment over time and its key competitive advantage in the market. Requiring it to be made available to a purchaser to compete with Spreadex would amount to a fundamental distortion of the pre-Merger competitive position';⁸⁵³
 - (iii) transferring 'Spreadex's knowhow and intellectual property to an independent Sporting Index would cause significant harm to Spreadex as well as distorting competition in the market more broadly'. It told us that 'Spreadex has made substantial investments in its business pre-Merger. Forcing Spreadex to provide the fruits of its investment to a competitor would significantly harm its business. It will also distort the market more broadly – if the two principal providers of regulated online sports spread betting services are in the long term using the same underlying technology it will limit innovation in the sector, in contradiction to the CMA's aims in seeking to prohibit the Merger (assuming that the CMA is correct in determining that the Merger will result in a SLC)';⁸⁵⁴
 - (iv) in relation to the timeline to delivery for cloning, [REDACTED] "bespoke platform", [REDACTED] Spreadex expects that successful completion of this project would likely take between [REDACTED] and [REDACTED], although accurately estimating any maximum time period for this project with any confidence is very difficult given the huge amount of uncertainty involved';⁸⁵⁵ and

⁸⁵⁰ Spreadex, Response to the CMA's RFI. 6 September 2024. Q4.

⁸⁵¹ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.5.

⁸⁵² Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.2.

⁸⁵³ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.10.

⁸⁵⁴ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.24.

⁸⁵⁵ Spreadex, Response to the CMA's Remedies Notice Annex 2, 20 August 2024, p.7.

- (v) [REDACTED]. Spreadex also considers that any cloned system would be vulnerable to significant technical risks [REDACTED].⁸⁵⁶

Third parties' views

9.239 Third parties generally agreed that while the specific details of what Spreadex acquired from Sporting Group were unclear, reconstituting the 'back-end' based solely on the Acquired Source Code would likely be quite challenging. For example:

- (a) 10star told us that it was not clear on what had happened to [REDACTED] since the Merger, and it [REDACTED]. 10star told us that it would be a 'bigger ask' to take on these source code now, given: (i) the loss in technical knowledge of the source code following the Sporting Index IT staff who had left the business' and (ii) that the source code had been 'mothballed' since the Merger.⁸⁵⁷
- (b) 10star also told us that it 'feels like the main components' of the pre-Merger Sporting Index spread betting platform had been acquired by Spreadex, and it therefore should be possible in theory to reconstitute this if the source code was what it had been prior to the Merger, but a long process would be needed to do so and this would be harder without a team of individuals with the relevant knowledge of the source code. 10star added that there was not a clean perimeter between Sporting Index and Sporting Solutions, and in 'the absence of being able to get anything from Sporting Solutions and the absence of a TSA with Sporting Solutions', there was considerable risk with regards to what had not 'come across' from Sporting Solutions, and what would subsequently need to be built. 10star therefore considered that it would be easier to clone the Spreadex platform.⁸⁵⁸
- (c) Star Sports told us that it was difficult to comment without understanding what was and was not acquired by Spreadex, and that it would want to know why reconstituting this platform was unviable. It told us that it should be possible to 'get a version' of the source code at the time of the sale with FDJ, and that it should be possible to reconstitute the pre-Merger 'infrastructure' using the acquired source code as long as Spreadex also acquired the relevant diagrams and documentation, but added that there were too many 'unknowns' to conclude on this.⁸⁵⁹
- (d) One third party (bet365) told us that the source code for the pre-Merger Sporting Index Spread Betting Platform acquired by Spreadex would have degraded, as it had not been operational since the Merger, and bet365

⁸⁵⁶ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.14.

⁸⁵⁷ 10star, Call transcript.

⁸⁵⁸ 10star, Call transcript.

⁸⁵⁹ Star Sports, Call transcript.

considered that generally it was very difficult to reinvigorate a degraded platform, so an alternative solution would be required.⁸⁶⁰

9.240 In relation to cloning of the Spreadex platform, third parties generally told us that this was an option that should be explored and that cloning of IT platforms was quite common, although it was difficult to comment on the feasibility of cloning the Spreadex platform specifically without understanding the Spreadex platform. For example:

- (a) 10star told us that a purchaser would need to have an equivalent to what was there pre-Merger and that it did not consider the Bespoke Platform Solution to offer this, and so 'if Atlas is off the table then cloning should be the only option'. 10star added that one 'would think cloning an existing system is easier to do than recreating a bespoke solution that achieves a subset of functionality that is currently within Spreadex', although it 'can understand why Spreadex would not want to do this'. It also told us that it did not have enough information to know whether cloning the spread betting part of the Spreadex platform was more complex than cloning the whole platform, and that 'it is probably tightly coupled in places'.⁸⁶¹
- (b) Star Sports told us this [cloning] was an option that would need to be considered if it would not be possible to recreate or reconstitute the pre-Merger Sporting Index platform. However, it told us that it had concerns about Spreadex managing and developing such a platform as Spreadex might not 'be forthcoming to working with a competitor and wouldn't provide the necessary technical support'. It told us that it would need to understand what the Spreadex platform looked like in order to assess the cloning option, and that there was 'not much it can say' without understanding the 'technical specification limits'. It told us that in theory cloning should be less timely and costly, but in [redacted]. It added that the length of a cloning process would depend on the specifications of the platform, although intuitively this should be simpler and more timely than building a platform, unless the platform being cloned was 'riddled with technical debt'.^{862, 863, 864}
- (c) OddsMatrix told us that cloning 'would probably not be too hard to do', and based on its past experience, cloning could be done very quickly and was 'very feasible to do'. OddsMatrix added that it had cloned a platform in 30 days in the past and that if Spreadex had 'cloud-native stacks which were automated and followed best practice in the past', then this could be cloned

⁸⁶⁰ Third party call note, bet365.

⁸⁶¹ 10star, Call transcript.

⁸⁶² Star Sports, [Response to the Remedies Notice](#), 7 August 2024.

⁸⁶³ Star Sports, Call note.

⁸⁶⁴ Star Sports, Call transcript.

easily. However, it told us that if the technology was 20 years old, then this could be difficult.⁸⁶⁵

- (d) AlixPartners told us that based on its experience, cloning platforms was common. It also told us that the length and cost of the cloning process depended on the platform, and that sometimes, it was very easy but at other times, it was very complicated (for example, the pre-Merger Sporting Index IT eco-system). It added that it had worked on a cloning process where the cost was around £[redacted], but that it had 'no ballpark figure' and that it could be much lower, depending on the complexity of the architecture.⁸⁶⁶
- (e) Software Mind told us that 'cloning is normal' and that 'every engineer is taught how to clone and reverse engineer'. It added that the timing of a cloning process would depend on the documentation and complexity of the architecture, and that the complexity depended on the interdependencies of the platform, and its ability to integrate with third parties, such as third party market feeds and payment providers.⁸⁶⁷

Our assessment

Reconstituting Sporting Index's 'back-end' platform based on the Acquired Source Code

9.241 In relation to the development option of reconstituting Sporting Index's 'back-end' platform solely based on the Acquired Source Code, as mentioned in paragraph 9.73(a)(2) above, we do not have powers to direct third parties (such as FDJ, Sporting Group or Betsson Group) to support the implementation of our divestiture remedy, and in the particular circumstances of this case, we do not consider it appropriate for a core element of the divestiture remedy (ie the development of the 'back-end' and 'front-end' platforms) to be contingent on the ongoing cooperation of third parties.

Cloning of Spreadex's platform

9.242 In relation to the option of cloning Spreadex's sports spread betting platform (or if this is not feasible, the cloning of a broader platform), we note Spreadex's submissions on the complexity of pursuing a cloning option, and its view that it would be disproportionate to do so.

⁸⁶⁵ Odds Matrix, Call note.

⁸⁶⁶ AlixPartners, Call note.

⁸⁶⁷ Software Mind, Call note.

9.243 Our understanding is that, in general, cloning is a common software development practice.⁸⁶⁸ The CMA has previously accepted a remedy involving the creation of a copy of a platform,⁸⁶⁹ however each case will need to be assessed on its specific facts and context. In the present case, the specific characteristics of Spreadex's platform pose particular challenges. In our view, Spreadex's knowhow of its own internal systems would make it best placed to comment on the challenges posed by pursuing a cloning option. We explored the option of cloning Spreadex's platform further during Spreadex's Response Hearing and through our follow-up questions to Spreadex, as well as subsequently in a call with Spreadex's development team:

- (a) Spreadex told us [REDACTED]. It also told us that [REDACTED].⁸⁷⁰ Spreadex also stated that [REDACTED].⁸⁷¹
- (b) Spreadex told us that its platform was 'inherently tied to the physical infrastructure', [REDACTED].⁸⁷²
- (c) Spreadex told us that [REDACTED].⁸⁷³
- (d) Spreadex stated that the 'platform clone would result in less innovation' given that.⁸⁷⁴
 - (i) Spreadex had 'a vastly more complex infrastructure including [REDACTED]; and
 - (ii) Spreadex had 'a much more complex service architecture' because it had 'evolved over time to meet the requirements of both sports and financial spread betting as well as allowing Spreadex to pursue other business ventures such as [REDACTED]. It explained that as a result, the 'Spreadex network' consisted of 'around [REDACTED] services versus the approximately' it believed were 'required to run Sporting Index'.
- (e) Spreadex provided evidence to illustrate the complexity of Spreadex's system. For example, Spreadex compared its 'database system' with Sporting Index's system and stated that its system contained '[REDACTED]'. For example, Spreadex stated that [REDACTED].⁸⁷⁵
- (f) In relation to undertaking a cloning of Spreadex's platform, Spreadex stated that this would be a 'significant project', and that while it would 'put in safeguards wherever possible to try to mitigate the issues', it 'would be

⁸⁶⁸ See for example: <https://docs.github.com/en/repositories/creating-and-managing-repositories/cloning-a-repository>. (Last accessed 19 November 2024)

⁸⁶⁹ Completed acquisition by PUG LLC (viagogo) of the StubHub business of eBay Inc., [final report](#), 2 February 2021.

⁸⁷⁰ Spreadex, Response hearing transcript, 11 September 2024, page 64, lines 1-8.

⁸⁷¹ Spreadex, s.109 response, 8 October 2024, Q2.

⁸⁷² Spreadex, Response hearing transcript, 11 September 2024, page 64, lines 19-25 - page 65, lines 1-4.

⁸⁷³ Spreadex, Response hearing transcript, 11 September 2024, page 67, lines 4-24.

⁸⁷⁴ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q16.

⁸⁷⁵ Spreadex, Response to the CMA's s.109 notice, 8 October 2024, Q2.

difficult to eliminate risk entirely to Spreadex customers', for example, 'mistakes could be made' in the form of 'developer error' at various stages of the process.⁸⁷⁶

9.244 Based on our assessment of the evidence, our view is that for the purpose of providing a purchaser with the appropriate spread betting platform necessary to compete in this market, cloning Spreadex's platform either partially (ie cloning just the sports spread betting and sports fixed odds elements of Spreadex's platform) or fully (ie cloning Spreadex's entire platform) to include within the scope of the divestiture package, would give rise to significant and unavoidable risks in relation to its delivery and risks to the purchaser that we consider, would undermine the effectiveness of a divestiture remedy – we set out these risks below:

- (a) Under a full cloning approach, a purchaser would acquire a clone of Spreadex's entire platform, including elements not required for UK sports spread betting. This would place an ongoing requirement on the purchaser to divert resources to maintain the extraneous elements of the platform, for example applying patches and updates to avoid security issues which would otherwise adversely affect the security of the operation of the sports spread betting element of the platform.
- (b) Under a partial cloning approach, this would involve first, the cloning of the entire platform, before taking steps to remove elements not relevant to the divestment, for example, the financial spread betting element. In our view, attempting to remove elements from [REDACTED], creates both delivery risk and risks that the purchaser would inherit:
 - (i) Our understanding is that Spreadex [REDACTED]. In this regard, Spreadex stated that there were [REDACTED].⁸⁷⁷ We also note the evidence we have received in relation to the complexity of Spreadex's own [REDACTED]. Based on our review of this evidence, our view is that removing elements carries a risk of unintended breakages (for example, if an element is removed before dependencies are fully understood and isolated). The requirement to isolate dependencies means that changes must be made in sequence, which slows the process of removing elements not relevant to the divestment. The lack of [REDACTED] could also make it more challenging for a purchaser to make changes as their changes would also carry a risk of unintended breakages.
 - (ii) Our understanding is also that Spreadex's platform does not include [REDACTED]. The purchaser could therefore acquire a platform containing broken dependencies that may only become apparent months or years

⁸⁷⁶ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q16.

⁸⁷⁷ Spreadex, Response to CMA's s.109 notice, 8 October 2024, Q2.

after the purchase (for example, if the broken dependency affects a system process that runs periodically, such as annually). It is our view that the risk that these unintended consequences will be borne by the purchaser and its customers to be material given the scale of Spreadex's platform and the extent of the interdependencies we have seen between the possible retained and removed system elements.

- 9.245 From a hardware perspective (both for a partial and full cloning approach), Spreadex's infrastructure is [REDACTED].⁸⁷⁸ It is our view that a purchaser would, at least initially, need to recreate an identical or near identical infrastructure to host the cloned system and that the technical complexity and risk associated with attempting to rationalise that infrastructure (including, as applicable, to integrate it with the purchaser's own hardware) would be borne by the purchaser.
- 9.246 Spreadex stated that for its last financial year, the annual third-party running costs for Spreadex's current infrastructure, were around [REDACTED] (covering hosting costs, software licences, maintenance, hardware and connectivity), with 'staffing related costs required to run and maintain Spreadex's current infrastructure environment on an ongoing basis', [REDACTED].⁸⁷⁹ While we do not have the annual third-party costs associated with running and maintaining Sporting Index's pre-Merger infrastructure (on a fully standalone basis), we note that as part of its preparations for the 2023 Sale process, FDJ's adviser, AlixPartners, had assumed a lower annual cost of £[REDACTED] for a TSA to the purchaser covering the purchaser's use of Sporting Index's '[REDACTED]'.⁸⁸⁰ As such, in our view, a purchaser could potentially face around [REDACTED] the costs (eg in terms of hardware and licensing costs) to support a clone of Spreadex's infrastructure.
- 9.247 We also consider that a purchaser could face risks in attempting to build on a cloned system. [REDACTED] would also increase the risk of changes the purchaser sought to make (for example, to improve the cloned system). These risks could be more acute for the purchaser once any TSA arrangements for the cloned platform ended. For example, Spreadex stated that their platform contains [REDACTED] than the Sporting Index system. Spreadex identified [REDACTED]. The large number of [REDACTED] would make it extremely complex for a purchaser to simplify the system by removing tables not relevant to sports spread betting.
- 9.248 Based on the above, our view is that pursuing a cloning of Spreadex's system either in part or in full would give rise to significant risks in relation to its delivery (arising largely from human error during the cloning process) and for the purchaser, and that these risks cannot be avoided or mitigated. It is our view that these risks would likely result in a sub-optimal platform with inherently greater risks

⁸⁷⁸ Spreadex, Response to CMA's s.109 notice, 8 October 2024, Q1(d).

⁸⁷⁹ Spreadex, Response to CMA's s.109 notice, 8 October 2024, Q1(a).

⁸⁸⁰ FDJ internal document.

than the Bespoke Platform Solution, and that these risks are sufficient to undermine the effectiveness of a divestiture remedy and result in a divestiture remedy having an unacceptable risk profile.

Conclusion on the alternative development options

9.249 Based on our assessment above, we conclude that the development of the Bespoke Platform Solution would be the most appropriate option for the inclusion of the required platform within the scope of the divestiture package, subject to the modifications we have set out in this Chapter. We also conclude that cloning Spreadex's platform (in part or in full) would give rise to significant risks which would undermine the effectiveness of a divestiture remedy.

Business Support TSA Element (including staff and business functions)

9.250 In the Remedies Notice, we set out our initial view that in order to ensure that a divestiture package has the requisite functions and capabilities to allow a purchaser to compete as a standalone business, in relation to staffing, this would involve 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 should have suitable retention incentives.⁸⁸¹

9.251 In relation to the staff required by the purchaser for the divestiture package, Spreadex is proposing the transfer of the five current SPIN Employees, together with the Business Support TSAs to provide the purchaser with transitional business support while the purchaser recruits the necessary staff. We have considered separately the Pricing TSA and the Technical Support TSA elements of the Business Support TSAs under the relevant sections of this chapter.

Spreadex's views

9.252 Spreadex submitted that in relation to staffing, 'each potential bidder will have different staffing requirements depending on their existing business', and that a potential purchaser would 'also want to take any hiring decisions for themselves. [✂️]'.⁸⁸²

9.253 Spreadex submitted that it was proposing to divest the 'same assets and functions that were put up for sale by FDJ with the Bespoke Platform Solution':⁸⁸³

⁸⁸¹ CMA, [Remedies Notice](#), 25 July 2024, paragraph 29(b).

⁸⁸² Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q12.

⁸⁸³ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q12.

- (a) '[REDACTED]' would not be included within the proposed divestiture package beyond the individuals from Sporting Index that transferred from Sporting Group' (ie the five SPIN Employees).
- (b) 'Neither the [REDACTED] were available for sale from FDJ'.
- (c) '[REDACTED], were never available for sale from FDJ and will not be included in any divestiture package'.

9.254 'Compliance staff were initially included within the FDJ transaction perimeter, however, are not proposed to be included within the divestiture package as the bidder is expected to want to hire their own staff given the importance of regulatory compliance in sports spread betting.⁸⁸⁴ A short, time-limited TSA will be offered at market rate to facilitate the handover'.

9.255 Spreadex told us that [REDACTED], and that following the divestiture, 'the business would be operated and managed by the new owner'.⁸⁸⁵

9.256 Spreadex submitted that it 'would be able to provide the reasonable support required by a purchaser in accordance with a TSA. The eventual purchaser could then hire such employees as it needs, depending on its particular circumstances'.⁸⁸⁶

9.257 Spreadex submitted a pro forma profit and loss account for the Sporting Index business once it has been 'stood up' (ie becomes fully standalone) (see Table 9.4 below). Spreadex has maintained a 'likely' annual cost (down to EBITDA) of £[REDACTED] million ([REDACTED]) for the forecast years,⁸⁸⁷ and assumed that Sporting Index would require around [REDACTED] staff, ie 'staffing levels equivalent to the Spreadex sports business' in order to 'operate a sports spread betting and fixed odds business in a compliant manner'.⁸⁸⁸ Spreadex submitted that the 'actual costs' would 'depend on the successful bidder'. For reference, in the 12 months to May 2024, Spreadex generated consolidated revenues of £[REDACTED] million.⁸⁸⁹

Table 9.4: Pro forma Profit and Loss account (prepared by Spreadex)

[REDACTED]

Source: [REDACTED].

9.258 Spreadex submitted that the 'employees that a purchaser will need will depend on what their business is. [REDACTED], for example, already has a trading function and so would not have needed such employees [REDACTED]. In order to make the package as

⁸⁸⁴ Spreadex stated that [REDACTED]. Source: Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q19.

⁸⁸⁵ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q4.

⁸⁸⁶ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.7.

⁸⁸⁷ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q11.

⁸⁸⁸ Spreadex, Response to the CMA's RFI 5, 24 September 2024, Q19.

⁸⁸⁹ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q4 and Q113 .

attractive to as many purchasers as possible, it would be best to leave it to the successful purchaser to hire what staff they will need in due course, providing any services required in the interim via a TSA'.⁸⁹⁰ Spreadex submitted that 'given that the CMA has itself provisionally found that the Acquired Assets could have been purchased and run as a viable competitor (with the benefit initially of a TSA, while the acquirer hired the additional personnel needed), it would not be proportionate to transfer Spreadex employees to the independent Sporting Index business. This would cause significant harm to the pre-Merger Spreadex business. In any event Spreadex cannot force, and the CMA cannot order, Spreadex employees to transfer to an independent Sporting Index'.⁸⁹¹

9.259 Spreadex submitted that it 'would also not make any sense for Spreadex to hire a workforce for the new business. Whoever acquires the Sporting Index business will have their own views on who they want to hire. Therefore, in order for the package to be sufficiently attractive to as many potential purchasers as possible, Spreadex would offer a TSA to provide any functions required whilst the purchaser hires the staff it wants to run the business in the long term'.⁸⁹²

9.260 Spreadex submitted [REDACTED].⁸⁹³ Spreadex submitted that therefore, 'it would not be possible for Spreadex to transfer staff (even if they were able to) [REDACTED]. Any remedy that involved such transfers would therefore be disproportionate'. Spreadex also submitted that 'a purchaser of Sporting Index is also unlikely to want Spreadex to hire staff on its behalf'.⁸⁹⁴

9.261 Spreadex submitted that [REDACTED].⁸⁹⁵

Third parties' views

9.262 The third parties we spoke to in relation to Spreadex's Remedy Proposal, generally agreed with Spreadex that a purchaser would want to hire its own staff and operate under a TSA with Spreadex in the meantime, although there were questions on who should bear the cost for this recruitment and what would happen if a purchaser could not find the required staff from the open market. In particular:

- (a) 10star told us that broadly [REDACTED], and that this TSA would include trading support and back office support for compliance, but added that [REDACTED]. 10star told us this gap could potentially be covered by additional TSAs while it hired additional staff from the open market, and that generally it would prefer to hire its own staff rather than leave it to Spreadex to transfer staff to a purchaser. However, 10star also told us that some of the staff required were

⁸⁹⁰ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.4.

⁸⁹¹ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.3.

⁸⁹² Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.5.

⁸⁹³ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.21.

⁸⁹⁴ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.22.

⁸⁹⁵ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.20.

scarce, and so if a purchaser could not find the required staff in the open market, then there was a question of whether Spreadex should provide these resources.⁸⁹⁶

- (b) Star Sports told us that a TSA with Spreadex would be required while a purchaser recruited the required staff, but that there was a question of whether the FCA would be 'okay' for a purchaser to operate under a TSA with Spreadex until it recruited the relevant staff. It added that it was not sure how the FCA would look at a compliance TSA from Spreadex to a competitor, and that FCA approval would need to be a condition precedent to the transaction. It also told us that it agreed with Spreadex that a purchaser should recruit its own staff, although there was a question of who should bear the cost for this. It added that generally staffing was not a 'huge issue', but added that as there would need to be many expensive senior hires, there was a question of whether Sporting Index revenues could support that investment.⁸⁹⁷ Star Sports also told us that it did not know the current size of the Sporting Index business.⁸⁹⁸

Our assessment

9.263 We note that at the time of the 2023 Sale Process, FDJ / Sporting Group was offering up to [REDACTED] staff to potential purchasers (see Table 9.5 below).⁸⁹⁹ Sporting Group told us that in addition to the below, [REDACTED].⁹⁰⁰

Table 9.5: [REDACTED]

[REDACTED]

Source: Spreadex Internal Documents: [REDACTED]

9.264 While we note that Spreadex considers that the appropriate headcount for Sporting Index should be based on the [REDACTED] staff employed in its own 'sports' business (see paragraph 9.257 above), this is based on Spreadex's views, rather than based on Sporting Index's actual or historic headcount. In the absence of any meaningful current headcount data for Sporting Index, our view is that Sporting Group's views on the standalone staff headcount, which would reconcile closely with Sporting Index's historic cost base of around £[REDACTED] million (which is an adjusted historic figure to remove the B2B cost elements, and was presented to potential purchasers during the 2023 Sale Process)⁹⁰¹ provides a more reliable starting point. While it is our view that for Sporting Index to be able to compete successfully on an ongoing basis, it would need a similar roster of staff as it had at

⁸⁹⁶ 10star, Call transcript.

⁸⁹⁷ Star Sports, Call transcript.

⁸⁹⁸ Star Sports, Call note.

⁸⁹⁹ Spreadex Internal Documents: [REDACTED]

⁹⁰⁰ Sporting Group, Call note.

⁹⁰¹ FDJ, Response to the CMA's RFI, 10 February 2023.

the time of the Merger, the exact number of staff and the resulting cost base will depend on the identity of the purchaser.

9.265 We consider below how the issue of recruiting staff for the Sporting Index may best be achieved to minimise composition and other risks to the effectiveness of the divestiture. We considered the following three options:

- (a) a purchaser-hired team;
- (b) a Spreadex-hired team; and
- (c) the transfer of Spreadex staff.

9.266 There are benefits and drawbacks to each option:

- (a) In relation to the first option (a purchaser-hired team), it may be the case that a purchaser would wish to install its own team after the acquisition, which would be aligned with the purchaser's needs, incentives and vision. However, this team would not be in place until after the divestiture, and this could adversely affect the competitiveness of the divested business until the new teams were familiar with the Sporting Index business, putting the effectiveness of the divestiture remedy at risk.
- (b) In relation to the second option (a Spreadex-hired team), the principal benefit of this option is that a team would be in place on completion of the divestiture. However, there is a material risk that Spreadex may not have strong incentives to recruit a good team for a future competitor – while this risk could be mitigated by appointing an independent hold-separate manager under the Initial Order to lead the recruitment process, it would not mitigate the risk that either Spreadex or a hold-separate manager does not recruit staff whom the eventual purchaser either requires or wishes to retain (eg because it already employs such staff).

9.267 Finally, in relation to the third option (transferring Spreadex staff), we note Spreadex's submission that Spreadex and the CMA cannot force employees to transfer to Sporting Index. We agree that staff would need to consent to any proposed changes to their employer and terms of employment. If the CMA considered that a transfer of staff were necessary to ensure the viability of the divestment business, the CMA could order Spreadex to put in place requisite incentives for that to happen. We also note Spreadex's submission that [REDACTED], which, in our view, could have an unintended consequence of harming Spreadex's ongoing ability to compete in the relevant market, and undermining competition more generally. We note that while Spreadex employs a total of around [REDACTED] staff, it employs [REDACTED] in its [REDACTED] Team;⁹⁰² [REDACTED] in its [REDACTED] Team; [REDACTED] in [REDACTED] Teams

⁹⁰² Spreadex, Teach-in slide pack, 1 May 2024.

(responsible for Spreadex's [REDACTED]); and [REDACTED] in the [REDACTED] Team (responsible for Spreadex's [REDACTED]).⁹⁰³

- 9.268 We note that the third parties, who had expressed a possible interest in acquiring a divestiture package under our remedies process, did not raise material concerns, and were broadly comfortable with the risk of staffing the business, preferring to recruit the staff needed themselves. These third parties also did not consider it necessary for Spreadex to transfer its own staff, or that Spreadex should recruit any staff ahead of any divestiture. However, some third parties told us that in the event Spreadex was developing the platform, which would be divested, then a purchaser would be concerned that the staff with knowledge of the platform would remain with Spreadex.
- 9.269 We also note the evidence from our Third-Party Remedy Calls that there would be no major barriers to recruiting staff for the business functions required by Sporting Index, including traders and compliance staff (see Appendix E, paragraphs E.23 to E.25).
- 9.270 In the RWP, we provisionally concluded that:
- (a) the purchaser should be given the ability to make a request to the CMA to recruit new staff for the Sporting Index business following signing of any SPA and prior to completion, provided that this: (i) assists the purchaser in obtaining any necessary regulatory approvals; and/or (ii) is considered necessary by the purchaser to enable the divestment business to compete effectively;
 - (b) these newly-recruited staff would sit within the Sporting Index legal entity; be paid out of Sporting Index's revenues; and act on behalf of the Sporting Index business in a manner similar to the current SPIN Employees; and
 - (c) Spreadex should provide the necessary HR administrative support to facilitate their employment with Sporting Index.
- 9.271 In the RWP response, in relation to the purchaser's ability to recruit staff for Sporting Index ahead of completion, for the purpose of assisting the purchaser in obtaining the necessary regulatory approvals, while Spreadex did not object to the purchaser recruiting staff for the Sporting Index business prior to completion, it made the following submissions:⁹⁰⁴
- (a) Spreadex submitted that 'the only staff required for obtaining FCA approval' would be: [REDACTED] (**Key Regulatory Staff**);

⁹⁰³ Spreadex Internal Documents [REDACTED].

⁹⁰⁴ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraph 2.31.

- (b) it envisaged that ‘the FCA regulatory approval process would commence [X] months prior to completion, given the FCA’s 60 working day approval timeframe and allowing’ the purchaser one month to complete its FCA notification form, although Spreadex estimated that this could be completed by an ‘efficient’ purchaser in around one week;
- (c) ‘it would be sufficient to have identified and confirmed onboarding arrangements, of Key [Regulatory] Staff [X] months prior to completion, for the purposes of obtaining FCA approval’, and therefore, the recruitment of Key Regulatory Staff ‘should take place at the last possible moment and in any event no more than [X] months prior to completion’. It added that to allow the purchaser to ‘request the recruitment of Key [Regulatory] Staff from an earlier stage’:
 - (i) ‘would result in disproportionate costs to the Sporting Index business ahead of completion’; and
 - (ii) it would ‘be very difficult to recruit Key [Regulatory] Staff if they will have nothing to do for a long period’ – in this regard, Spreadex submitted that while Spreadex owned Sporting Index, Spreadex had ‘ultimate responsibility for regulatory compliance’, and therefore, any ‘Key [Regulatory] Staff should not commence their substantive role until completion’, and added that it was ‘essential’ that until completion, Spreadex staff remained ‘in charge of these aspects of the business, in line with its regulatory requirements’, and
- (d) prior to completion, any ‘newly recruited Sporting Index Key [Regulatory] Staff’s involvement in the Sporting Index business should be limited to the undertaking of relevant onboarding training’ – Spreadex added that ‘appropriate confidentiality arrangements’ will be ‘put in place to limit the newly recruited Key [Regulatory] Staff’s access to confidential information relating to Spreadex’, and these Key Regulatory Staff ‘should also have restricted access to the Spreadex premises, and to the extent possible, relevant onboarding should be carried out remotely’.

9.272 Spreadex further submitted that ‘it would be more appropriate that any recruited Key [Regulatory] Staff are not employed by the Sporting Index entity prior to completion and are instead employed by’ the purchaser. It added that there were ‘practical reasons why this would be a more practical arrangement’, for example, Spreadex submitted that pursuant to its FCA regulatory obligations, it was ‘required under the SMCR [Senior Managers and Certification Regime] to annually certify staff including material risk takers (effectively senior management and staff in trading roles and compliance) that are employed by the entities within Spreadex’s wider corporate group’. It added that under the ‘CMA’s proposed arrangements for the recruitment of new staff, it would not be possible for

Spreadex to comply with these regulatory requirements if they have not recruited and do not have oversight over the staff in question'. It submitted that the purchaser would 'need to be responsible for hiring its own staff but it would be wholly unreasonable to put Spreadex at risk of breaching FCA regulations, by having these staff employed by Sporting Index and, thus, under Spreadex's certification supervision prior to completion, or to require Spreadex to hire and remunerate people who are not in fact able to perform the functions for which they are being hired'. Spreadex submitted that [REDACTED].⁹⁰⁵

9.273 In relation to the purchaser's ability to recruit staff for Sporting Index ahead of completion, whom the purchaser considered necessary to compete effectively, in the RWP response, Spreadex submitted that:⁹⁰⁶

- (a) 'it would be disproportionate to allow' the purchaser 'to request the recruitment of any other new staff (beyond Key [Regulatory] Staff) prior to completion, simply because the recruitment of such staff is considered necessary' by the purchaser, and that this was 'an unjustifiably loose threshold';
- (b) such 'new staff would not be required for the purposes of obtaining FCA approval and progressing to completion, which Spreadex considers should be the only reason to justify the recruitment of new staff prior to completion';
- (c) '[s]uch staff would not have anything to do and so would be an unnecessary cost to the business. It would therefore not be in the interests of the Sporting Index business to hire them at that point'. It added that to the extent that the purchaser 'wishes to hire such staff in advance in preparation for completion', the purchaser 'should pay for them themselves'; and
- (d) the purchaser would have access to a Technical Support TSA provided by Spreadex, and Spreadex did not consider that potential purchasers 'would have difficulty in recruiting necessary staff, to the extent that such staff would need to be recruited and employed by the Sporting Index business prior to completion'.

9.274 As mentioned in paragraph 9.16, after receiving the RWP response, we held further discussions with each of 10star and Star Sports to test potential remedy scenarios, including certain aspects of Spreadex's proposals in the RWP response. Both 10star and Star Sports told us that the purchaser should have the ability to recruit staff for the divestment business prior to completion, but acknowledged that Spreadex would ultimately be responsible for Sporting Index's regulatory compliance until completion:

⁹⁰⁵ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraphs 2.31 and 2.33.

⁹⁰⁶ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraph 2.31.

- (a) 10star told us that since Spreadex would be accountable for the Sporting Index business from a regulatory compliance perspective, compliance staff who have been recruited for the divestment business should stay under the control of Spreadex until completion. It also told us that as many staffing gaps should be filled as possible when the divestment business was handed over as a going concern. It told us that apart from compliance staff, it would make sense if all other functions sat within the purchasing entity.⁹⁰⁷
- (b) Star Sports told us that it made sense for the purchaser to employ staff prior to completion, and in relation to regulatory compliance, acknowledged that Spreadex would be responsible for Sporting Index's regulatory compliance prior to completion.⁹⁰⁸

9.275 We have considered Spreadex's submissions, as summarised above and detail our assessment below.

9.276 In relation to the purchaser's ability to recruit staff for Sporting Index ahead of completion, for the purpose of assisting the purchaser in obtaining the necessary regulatory approvals, we note that Spreadex has not objected to the principle of the purchaser being able to recruit staff for this purpose prior to completion, but considers that: such staff should be limited to Key Regulatory Staff; they should be recruited no more than [X] months prior to completion; and they should be recruited by the purchaser rather than the Sporting Index entity (with Spreadex [X]). As we set out later in paragraphs 9.327 and 9.328, it is for the FCA to decide which FCA regulatory process will apply and the state of readiness the divestment business and the reconstituted platforms need to be in, in order to grant FCA approval. Therefore, in our view, it is not appropriate to be overly prescriptive at this stage in relation to whether staff other than Key Regulatory Staff need to be recruited for the purpose of obtaining regulatory approval, or that they should only be recruited [X] months prior to completion. In this regard, our view is that the purchaser should be able to recruit prior to completion the staff necessary to ensure it can obtain regulatory approval. However, we would in principle have no material objections for any staff hired prior to completion to sit within the purchaser's group rather than the Sporting Index entity, provided that [X]; and these newly-recruited staff could transfer across to the Sporting Index entity prior to completion, if this is necessary to obtain FCA approval.

9.277 In relation to the purchaser's ability to recruit staff for Sporting Index ahead of completion, whom the purchaser considers necessary to compete effectively, although Spreadex submitted that this was 'an unjustifiably loose threshold', our view is that it is necessary for the CMA (with assistance from the Monitoring Trustee) to be involved in reviewing and approving requests for such recruitment

⁹⁰⁷ 10star, Call note.

⁹⁰⁸ Star Sports, Call note.

to ensure that these staff are strictly necessary to enable the divestment business to compete effectively, noting that some potential purchasers may consider it necessary to do so (eg see paragraph 9.274 above).

- 9.278 Based on our assessment above, we stated above in paragraph 9.266, that one of the risks of a purchaser-hired team was that the team would not be in place until after the divestiture, which could adversely affect the competitiveness of the divested business. We considered that this risk could partly be mitigated by introducing flexibility into the divestiture process, by giving the purchaser the ability to make a request to the CMA to start recruiting for the Sporting Index business after signing of the SPA, but prior to completion provided that this: (a) assists the purchaser in obtaining any necessary regulatory approvals; and/or (b) is considered strictly necessary by the purchaser to enable the divestment business to compete effectively, for example, if the purchaser has concerns about relying on Spreadex for the provision of certain business-critical functions under the Business Support TSAs. The CMA will consider whether to grant the purchaser's request with input from the Monitoring Trustee, to ensure that any recruitment of new staff prior to completion is appropriately controlled and limited to facilitating an effective divestiture remedy.
- 9.279 We would in principle have no material objections for any staff hired prior to completion to sit within the purchaser's group rather than the Sporting Index entity, provided that [X]; and these newly-recruited staff could transfer across to the Sporting Index entity prior to completion, if this is necessary to obtain FCA approval. In our view, Spreadex should provide the necessary HR administrative support to facilitate their employment with Sporting Index, such as in relation to payroll administration. We also consider that any costs associated with the development of the new platforms should not be incurred by the Sporting Index legal entity, to ensure that Sporting Index's revenues and cash flows are available to cover the costs of any additional Sporting Index staff who may be recruited prior to completion.
- 9.280 Given the potentially significant requirement on the purchaser to recruit the additional staff required by the Sporting Index, it is our view that the Business Support TSAs should equally be broad and flexible in scope and duration (subject to a maximum limit of [X] following completion of any divestiture – with the exception of the [X] TSA, for which the maximum duration should be [X] – see paragraph 9.213(b)) to tailor to the individual needs and circumstances of the purchaser.
- 9.281 To ensure that the Sporting Index business can compete as a standalone business in a more timely manner, Spreadex should also be required to give potential purchasers the option to request tailored training programmes to be provided by Spreadex. If these are required by the purchaser, Spreadex will be given an opportunity to agree the scope and terms of any tailored training

programme with the purchaser, unless there is a need for CMA intervention. The Monitoring Trustee will be tasked with monitoring the operation of the Business Support TSAs and inform the CMA of any material issues which could undermine the competitive position of the divestiture package.⁹⁰⁹

- 9.282 The CMA will approve the terms and conditions of any TSAs under the Business Support TSAs to ensure that they are aligned with the objectives of our divestiture remedy to restore competition lost as a result of the Merger.⁹¹⁰

Regulatory issues

- 9.283 While the Business Support TSAs apply following completion, we note that FCA approval will need to be obtained prior to completion of the divestiture remedy (see also paragraphs 9.327 and 9.328). At this stage, the state of readiness of the divestment business, eg in terms of its platform, systems and people, and the extent to which it can rely on a TSA, before the FCA can grant approval remains unclear. These uncertainties give rise to material execution risk. In paragraphs 9.274 to 9.279 above, we considered that the purchaser should have the ability to recruit staff for the divestment business prior to completion and ahead of making an application to the FCA (where this assists the purchaser in obtaining the necessary regulatory approvals).
- 9.284 In the RWP, we had provisionally concluded that Spreadex should also make every effort to assist the purchaser in obtaining the appropriate regulatory approvals.⁹¹¹ In this regard, in the RWP response, Spreadex submitted that it was 'uncertain as to exactly what the CMA has in mind', and noted that 'obtaining FCA approval (in the context of any transaction) is a matter for the acquiring party'. It explained that FCA approval was 'primarily dependent on' the acquiring party's 'FS 178 submission which includes details on areas that Spreadex will necessarily not be privy to, eg the ownership and corporate structure of the acquirer, their proposed business plan, financial controls, capital resources and other commercially sensitive information'. It also submitted that given 'the duration of the [Bespoke Platform Solution] development', the purchaser would 'have plenty of time to put in place any measures, policies and functions that it does not already have'. It therefore submitted that while Spreadex would 'cooperate with' the purchaser and provide it 'with the information it needs about the existing Sporting Index business to obtain the approval', 'due to the nature of the process', Spreadex could not have 'material involvement', and imposing 'any requirement on Spreadex over which it has no influence or control would be disproportionate'.⁹¹²

⁹⁰⁹ [CMA87](#), paragraph 5.35.

⁹¹⁰ [CMA87](#), paragraph 5.45.

⁹¹¹ CMA, Remedies Working paper, 10 October 2024, paragraph 1.245(c).

⁹¹² Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraphs 1.3.9, 2.45 and 2.46.

9.285 We agree that obtaining regulatory approval will be the responsibility of the purchaser. However, as Spreadex has illustrated in paragraph 9.284 above, there will be some aspects of the regulatory approval process in respect of which Spreadex could assist the purchaser without being directly involved itself in the regulatory approval process, for example, by providing the purchaser with all of the relevant information about the Sporting Index business, including information required by regulators relating to the reconstituted platforms, in a timely and complete manner. Therefore, our view is that although the purchaser will ultimately be responsible for obtaining the appropriate regulatory approvals, Spreadex should make every effort to cooperate with, and assist, the purchaser as may be required (and to the extent permitted by the relevant regulatory process) to enable it to obtain the appropriate regulatory approvals in a timely manner.

Summary of conclusions on the Business Support TSA Element

9.286 Based on our assessment above, we conclude that:

- (a) the purchaser should be given the ability to make a request to the CMA to recruit new staff for the Sporting Index business following signing of any SPA and prior to completion, provided that this: (i) assists the purchaser in obtaining any necessary regulatory approvals; and/or (ii) is considered necessary by the purchaser to enable the divestment business to compete effectively – we would in principle have no material objections for any staff hired prior to completion to sit within the purchaser’s group rather than the Sporting Index entity, provided that [X]; and these newly-recruited staff could transfer across to the Sporting Index entity prior to completion, if this is necessary to obtain FCA approval. Spreadex should provide the necessary HR administrative support to facilitate their employment with Sporting Index;
- (b) the Business Support TSAs should be flexible and its scope and duration (subject to a maximum limit of [X] from completion of the divestiture remedy – with the exception of the [X] TSA, for which the maximum duration should be [X] – see paragraph 9.213(b)) and should be tailored to the individual needs and requirements of the purchaser. The Business Support TSAs should give potential purchasers the option to request tailored training programmes to be provided by Spreadex. If these are required, Spreadex will be given an opportunity to agree the scope and terms of any tailored training programme, unless there is a need for CMA intervention;
- (c) prior to completion, while the purchaser will ultimately be responsible for obtaining the appropriate regulatory approvals, Spreadex should make every effort to cooperate with, and assist, the purchaser as may be required (and to the extent permitted by the relevant regulatory process) to enable it to obtain the appropriate regulatory approvals in a timely manner (see also paragraph 9.285); and

- (d) the final terms and conditions of any TSA under the Business Support TSAs will be subject to CMA approval.

Summary of our views on the scope of the divestiture package

9.287 We conclude that the scope of the divestiture package and remedy obligations contained within Spreadex's Remedy Proposal, as modified and amended in this section, would be effective in addressing the SLC and adverse effects we have found.

Identification and availability of a suitable purchaser

9.288 Having identified the scope of the divestiture package in paragraphs 9.81 to 9.287 above, we now consider the identification, and availability, of a suitable purchaser for the divestiture package.

9.289 Purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser or if a suitable purchaser is not available. As such, as explained in the Merger Remedies Guidance, the CMA will normally need to be satisfied that a prospective purchaser meets the following criteria (together, the **CMA Purchaser Suitability Criteria**):⁹¹³

- (a) The acquisition by the proposed purchaser must remedy, mitigate or prevent the SLC concerned or any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable.
- (b) *Independence*: the purchaser should have no significant connection to the merger parties that may compromise the purchaser's incentives to compete with the merged entity.⁹¹⁴
- (c) *Capability*: the purchaser must have access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets to enable the divested business to be an effective competitor in the market.⁹¹⁵
- (d) *Commitment*: the CMA will wish to satisfy itself that the purchaser has an appropriate business plan and objectives for competing in the relevant market(s), and that the purchaser has the incentive and intention to maintain and operate the relevant business as part of a viable and active business in

⁹¹³ [CMA87](#), paragraphs 5.20 and 5.21.

⁹¹⁴ For example, an equity interest, common significant shareholders, shared directors, reciprocal trading relationships or continuing financial assistance).

⁹¹⁵ This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor. The proposed purchaser will be expected to obtain in advance all necessary approvals, licences and consents from any regulatory or other authority. This is because the CMA wishes to be satisfied that the divestment to the proposed purchaser will in fact go ahead.

competition with the merged party and other competitors in the relevant market.

- (e) *Absence of competitive or regulatory concerns*: divestiture to the purchaser should not create a realistic prospect of further competition or regulatory concerns.

Spreadex's views

- 9.290 Spreadex told us that the CMA Purchaser Suitability Criteria was too restrictive,⁹¹⁶ and submitted that it [REDACTED].⁹¹⁷ Spreadex explained that [REDACTED]. Spreadex added that [REDACTED].⁹¹⁸
- 9.291 Spreadex submitted that if 'it really was the case that the Alternative Bidders (and other potential bidders who were approached) were viable bidders, then there is no reason to believe that this is not the case now'.⁹¹⁹
- 9.292 Spreadex submitted that it had 'identified [REDACTED] initial potential purchasers': [REDACTED]. It added that [REDACTED].⁹²⁰
- 9.293 At its Response Hearing, Spreadex told us that [REDACTED]. However, it told us that it had not yet started any engagement with any potential purchasers[REDACTED].⁹²¹

Third parties' views

- 9.294 Third parties generally agreed with the CMA Purchaser Suitability Criteria and did not have any other broad criteria to add to this. Third parties also told us that a purchaser with experience in an adjacent market, such as sports fixed odds betting or financial spread betting, was at least desirable, although evidence was mixed on whether this was essential. For example:
- (a) Two third parties (10star and Star Sports) told us that a purchaser without experience in an adjacent market might fail to meet the CMA Purchaser Suitability Criteria,⁹²² and one third party sports fixed odds betting provider told us that it would be 'essential' for a purchaser to understand the 'compliance nature of gaming', and that this could be, eg a UK financial spread betting provider as it would be FCA-regulated, or a GC-regulated

⁹¹⁶ Spreadex, Response hearing transcript, 11 September 2024, page 91, lines 1-13.

⁹¹⁷ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.22.

⁹¹⁸ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q24.

⁹¹⁹ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.13.

⁹²⁰ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q23.

⁹²¹ Spreadex, Response hearing transcript, 11 September 2024, page 91, lines 19-20.

⁹²² 10star, Call transcript. Star Sports, Call Transcript.

operator, which would have ‘compliance experience’ which was transferrable to sports spread betting.⁹²³

- (b) Two third parties ([REDACTED] and bet365) told us that it was ‘desirable’ but ‘not essential’ for a purchaser to operate in the same or adjacent market.⁹²⁴ [REDACTED] added that it would caution against a purchaser being an ‘offshore operator’ operating in the UK without a licence, and that if the purchaser had individuals with experience of previously running a spread betting firm, or having experience in ‘financial markets’ (eg in an investment company or broking company), this could help with obtaining FCA approval.⁹²⁵

Our assessment

Identification of a suitable purchaser

9.295 When assessing the characteristics that a suitable purchaser should have, we start with the CMA’s standard criteria of independence, capability, commitment to the market, and absence of competition concerns.

9.296 It is our view that the CMA Purchaser Suitability Criteria are sufficiently broad and appropriate in relation to a divestiture remedy in this case.

9.297 In our view, the factors relating to the operation of the divested business and the design of this remedy which should be taken into account in applying each of these criteria:

(a) *Independence:*

- (i) In our view, the purchaser should not have a financial interest in or other connection to Spreadex that may compromise the purchaser’s incentives to compete.
- (ii) The CMA will examine and consider any connections between Spreadex and a potential purchaser of the divestiture package.

(b) *Capability:*

- (i) In line with the Merger Remedies Guidance, it is our view that a purchaser must have access to appropriate financial resources, expertise and assets to enable Sporting Index to be an effective competitor and develop over time.

⁹²³ Third party call note.

⁹²⁴ Third party call note, bet365. Third party call note.

⁹²⁵ Third party call note.

- (ii) Any purchaser wishing to demonstrate that it could effectively address these factors is likely to have had experience of managing and operating a related business, or be able to demonstrate that it could acquire this experience.
 - (iii) While the divested business includes the platforms and a TSA required to support and develop it, the complexity of the reconstituted platforms and its linkages with third-party systems mean that any purchaser should have experience in managing critical or complex IT environments, preferably those relating to betting or developing IT platforms.
 - (iv) Given the need for a purchaser to recruit additional staff and/or have the necessary staff to carry out the relevant business functions, this would mean that a purchaser would necessarily need to have some prior experience or expertise in order to have the necessary capability to compete. Any purchaser will need to have the management resources and capability to lead on the staffing and formation of the relevant teams and business functions.
 - (v) Sporting Index currently has no business function or independent strategy. In our view, a purchaser should have the ability to develop a detailed revenue and cost strategy. We would expect a purchaser will have its own plans and financial projections, which the CMA can assess as part of its purchaser suitability assessment to mitigate strategic risks.
 - (vi) Given the lack of an existing strategy or management team, it is our view that a purchaser would need to be able to demonstrate its capability to develop and grow these functions effectively post completion.
- (c) *Commitment:*
- (i) A suitable purchaser needs to show a commitment to providing licensed online sports spread betting services in the UK.
 - (ii) The CMA will assess the purchaser's business plans to understand its commitment to the relevant market.
- (d) *Absence of competition or regulatory concerns:*
- (i) A suitable purchaser should not raise competition concerns.
 - (ii) It will also need to demonstrate how it plans to obtain the necessary FCA and GC consents.

- (iii) CMA approval of the final terms of any SPA or transaction agreements, including the Business Support TSAs, will be required prior to signing.

Availability of a suitable purchaser

- 9.298 During our Third-Party Remedy Calls, two third parties indicated an initial interest in acquiring a possible divestiture package. We also received an unsolicited approach from a third party expressing an interest in acquiring a possible divestiture package.⁹²⁶
- 9.299 We also note that during our investigation, Spreadex submitted that it had identified a number of firms currently licensed to offer sports spread betting.⁹²⁷ We have not approached these third parties at this remedies stage of our process, although Spreadex may wish to do so as part of any divestiture process, noting that while the financial spread betting or contracts for difference providers we contacted during our investigation⁹²⁸ did not indicate an interest in entering the market, they may have a different view if presented with an alternative to organic entry by way of acquiring the divestiture package on offer.
- 9.300 In paragraph 6.56, we noted that while FCA regulations prohibit unlicensed sports spread betting providers from actively soliciting customers in the UK, 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.⁹²⁹ We have not ruled out the possibility that such providers may consider the divestiture package to be sufficiently attractive to consider the acquisition opportunity and enter the supply of licensed online sports spread betting. Given that in paragraph 6.60, we considered that providers based outside of the UK did not appear to show a 'strong competitive constraint',⁹³⁰ it is our view that the risk that these purchasers raise further competition concerns is low.
- 9.301 While 10star and Star Sports have expressed an interest in acquiring a possible divestiture package under a possible divestiture process, there remains some uncertainty at this stage in relation to the extent to which the divestiture package on offer would be of interest. As mentioned in paragraph 9.16, after receiving the RWP response, we held further discussions with each of 10star and Star Sports to test potential remedy scenarios. During these calls, we provided a high-level description of one of the potential remedy scenarios, which after the event was broadly in line with the divestiture remedy we have decided in this Chapter. Based on the outline that we provided, while 10star and Star Sports told us that they would require further details on how certain elements of the potential remedy

⁹²⁶ [REDACTED], Email to the CMA, 19 September 2024.

⁹²⁷ Spreadex, Response to CMA Enquiry Letter, Q32.

⁹²⁸ Third party responses to RFI].

⁹²⁹ Chapter 6, paragraph 6.56.

⁹³⁰ Chapter 6, paragraph 6.60.

would work in practice, they did not identify any material omissions from the scope of the potential remedy:

- (a) 10star told us that in general terms, the potential remedy scenario outlined by the CMA was 'sound in theory', but added that more details would be required to understand how that scenario would work in practice. It also told us that it was unclear how much further the CMA could go than the potential remedy scenario the CMA had outlined.⁹³¹
- (b) Star Sports told us that the potential remedy scenario outlined by the CMA was very reasonable, although it said it had questions over the 'achievability in practice' of certain aspects which would require further discussion.⁹³² It considered however that overall, in terms of an end goal for a purchaser, the potential scenario was reasonable.⁹³³

9.302 We note that the Merger Remedies Guidance states that 'substantial uncertainty as to whether a suitable purchaser will emerge will generally not be sufficient for the CMA to conclude that any form of divestiture remedy is not feasible', and that 'it is normally possible to implement divestiture remedies, despite such uncertainties, given flexibility in the disposal price'.⁹³⁴ In light of the reactions of 10star and Star Sports summarised above, our view is that although there remains uncertainty at this stage in relation to the extent to which the divestiture package on offer would be of interest it is not sufficient to lead us to conclude that the remedy we have adopted is not feasible.

Conclusion on the identification and availability of a suitable purchaser

9.303 Based on our assessment above, we conclude that the CMA will assess the suitability of potential purchasers against the CMA Purchaser Suitability Criteria as set out in paragraph 9.289 above.

9.304 We also conclude that while we have at this stage, identified two potentially interested purchasers, there remains uncertainty in relation to whether these potential purchasers will ultimately conclude a transaction under a divestiture remedy (eg see paragraphs 9.73 and 9.74), or whether other potential purchasers will emerge. However, in line with the Merger Remedies Guidance, it is our view that these factors are not in themselves sufficient to lead us to conclude that a divestiture remedy is not feasible.

⁹³¹ 10star, Call note.

⁹³² For example, Star Sports told us that it questioned whether it could assume that Sporting Index customers were being treated separately by Spreadex at the moment, but added that this was more of a commercial issue for discussion rather than one around practicalities. (Source: Star Sports, Call note).

⁹³³ Star Sports, Call note.

⁹³⁴ [CMA87](#), paragraph 3.51.

Ensuring an effective divestiture process

- 9.305 We turn now to a discussion on procedural safeguards to ensure an effective divestiture process.
- 9.306 An effective divestiture process will protect the competitive potential of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale. The process should also allow prospective purchasers to make an appropriately informed acquisition decision.⁹³⁵ As set out in the Merger Remedies Guidance, the incentives of merger parties to limit the future competitive impact of a divestiture on themselves may result in the merger parties allowing the competitiveness of the divestiture package to decline during the divestiture process.⁹³⁶
- 9.307 We consider below the following procedural safeguards which may be required to minimise the risks associated with this divestiture:
- (a) Spreadex's asset maintenance and hold-separate obligations;
 - (b) timescales to complete a divestiture process;
 - (c) Divestiture Trustee; and
 - (d) post-completion matters.

Spreadex's asset maintenance and hold-separate obligations

- 9.308 As set out in the Merger Remedies Guidance, the merger parties may have significant incentives to run down or neglect the business or assets of a divestment package, in order to reduce its future competitive impact. The resulting asset risk may also be influenced by such factors as the length and complexity of the divestiture process and the pace at which customer goodwill and employee relations may erode.⁹³⁷
- 9.309 As is also set out in the Merger Remedies Guidance, the appointment of a 'hold-separate' manager, or management team, may also be required to manage the assets/business to be divested, in order to maintain their competitiveness and separation from the retained assets.⁹³⁸

⁹³⁵ [CMA87](#), paragraph 5.33.

⁹³⁶ [CMA87](#), paragraph 5.4.

⁹³⁷ [CMA87](#), paragraph 5.34.

⁹³⁸ [CMA87](#), paragraph 5.36.

Spreadex's views

- 9.310 Spreadex submitted that [REDACTED].⁹³⁹ Spreadex also submitted [REDACTED].⁹⁴⁰ Spreadex added that Spreadex had 'also cooperated fully and transparently in good faith with the CMA and the Monitoring Trustee to preserve the value of the Sporting Index business through the Merger review'. It told us that there were 'therefore no grounds for the CMA to be concerned that Spreadex will not continue to preserve and maintain the Acquired Assets in good faith', and that there was 'therefore no need for additional oversight or procedural safeguards over the process'.⁹⁴¹
- 9.311 Spreadex submitted that it already had a Monitoring Trustee in place and would expect that to continue. Spreadex added that the measures already in place to preserve the viability and competitive capabilities of the business being divested, remained 'appropriate and sufficient', [REDACTED]; and 'the ongoing monitoring from the monitoring trustee'. Spreadex also submitted that [REDACTED].⁹⁴²

Third parties' views

- 9.312 Third parties told us that the main risk to asset maintenance related to Sporting Index's customer base.⁹⁴³ Star Sports told us that there was a risk that [REDACTED],⁹⁴⁴ while another third party sports fixed odds betting provider told us that there was a risk that Spreadex would 'pick off the best clients from Sporting Index', and that if this was the case, then this would be 'irreversible' and that Sporting Index would cease to exist, such that it would be 'too late' to implement a divestiture remedy.⁹⁴⁵

Our assessment

- 9.313 The CMA imposed interim measures by issuing an Initial Order on 15 January 2024 for the purpose of preserving 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.⁹⁴⁶
- 9.314 Sporting Index has performed ahead of pre-Merger levels in revenue terms, and the Monitoring Trustee has not yet identified any material asset risk. We also note

⁹³⁹ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.23.

⁹⁴⁰ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.23.

⁹⁴¹ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.23.

⁹⁴² Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q22. [REDACTED].

⁹⁴³ Third party call note, Star Sports, Call transcript.

⁹⁴⁴ Star Sports, Call Transcript.

⁹⁴⁵ Third party call note.

⁹⁴⁶ CMA, [Derogation Letter](#), 15 January 2024.

that there has been a net increase in the number of Sporting Index customers since Merger completion listed in the SPIN Customer List (see footnote 582).

- 9.315 Monitoring customer attrition is not straight-forward as the number of active customers fluctuates from month-to-month. However, the Monitoring Trustee's investigation into customer attrition has not revealed any material issues or concerns. Sporting Index continues to have its own [redacted] responsible for SPIN HVCs, and we have taken steps to ensure that Sporting Index continues its client entertainment activities in line with pre-Merger levels of activity, and to ensure that [redacted].
- 9.316 The Initial Order will expire upon final determination of the reference (ie when the CMA accepts final undertakings or makes a final order). In line with usual CMA practice, we would seek to include relevant provisions from the Initial Order in the final undertakings or final order. We will continue to use the Monitoring Trustee to provide us with information on compliance and the integrity of the Sporting Index business during the divestiture period. The Monitoring Trustee's mandate should also be extended to cover compliance with the divestiture obligations in any final undertakings or final order, and to provide the CMA with information on the progress of the divestiture process. Relatedly, as mentioned in paragraph 9.169(f) above, the final undertakings or final order will reserve the right for the CMA to appoint an Independent Technical Monitor.
- 9.317 At this stage, we have seen no evidence to require the appointment of an independent hold-separate manager with executive powers to operate the target business separately from the acquiring business.⁹⁴⁷ However, the CMA will reserve the right to appoint a hold-separate manager if circumstances change.

Conclusion

- 9.318 Based on the above, we conclude that:
- (a) At this stage, we have not identified the need for any additional asset maintenance obligations on Spreadex to maintain the Acquired Assets, and therefore, any final undertakings or final order should continue with the current asset maintenance obligations set out in the Initial Order, including the continued involvement of the Monitoring Trustee to monitor Spreadex's compliance with any final undertakings or final order.
 - (b) However, to the extent that the CMA considers that there has been an increase in the risk of asset deterioration, the CMA will reserve the right to

⁹⁴⁷ The 'hold-separate manager's role is a day-to-day management role in the target business, reporting to the CMA rather than the acquiring firm. This role is distinct from that of a monitoring trustee'. Source: [CMA87](#), paragraph 4.13.

enhance Spreadex's asset maintenance obligations, eg through the possible appointment of a hold-separate manager

Timescales to complete a divestiture process

- 9.319 We consider below the appropriate timescales for Spreadex to complete the divestiture transaction. This period will commence from the acceptance of any final undertakings or the making of any final order to the legal completion of the divestiture transaction (the **Initial Divestiture Period**).
- 9.320 As set out in the Merger Remedies Guidance, the length of the Initial Divestiture Period will depend on the circumstances of the merger, but will normally be a maximum period of six months from the acceptance of the final undertakings or making of the final order. The CMA, when determining the divestiture period, will seek to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that favour a longer duration, such as canvassing a sufficient selection of potential suitable purchasers and facilitating adequate due diligence. The Initial Divestiture Period may be extended by the CMA where this is necessary to achieve an effective disposal.⁹⁴⁸

Spreadex's views

- 9.321 Prior to receiving the RWP, Spreadex estimated that the development of the reconstituted platforms under Spreadex's Remedy Proposal would take [X].⁹⁴⁹ It added that the divestiture process [X]. It added that its 'expectations' were that the divestiture process would involve: (a) canvassing the market for potential buyers; (b) preparing and sending the required information; (c) due diligence; (d) contract negotiation; (e) signing; (f) regulatory approval; and (g) completion.⁹⁵⁰
- 9.322 In the RWP, we provisionally concluded that the Initial Divestiture Period should be [X] and that this would be sufficient to accommodate: (a) the divestiture process to signing an SPA; (b) the development process for the reconstituted platforms (commencing from the SPA signing date); (c) the FCA's regulatory approval process (absent any unforeseen complications arising during that process); and (d) the customer migration process (concluding with completion).
- 9.323 In the RWP response, Spreadex submitted that in light of the 'CMA's provisional view on the appropriate remedy expressed in the RWP', it anticipated that in practice this process would take longer', and provided an updated estimated

⁹⁴⁸ [CMA87](#), paragraph 5.41.

⁹⁴⁹ Spreadex, [Response to the CMA's Remedies Notice Annex 2](#), 20 August 2024,

⁹⁵⁰ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q19.

timeline, in which it outlined a 'likely' [redacted] for the process.⁹⁵¹ In this regard, in the RWP response, Spreadex made the following submissions:⁹⁵²

(a) *Starting work before negotiating the SPA:*

- (i) Spreadex submitted that when it provided its 'initial best estimate for the build time' of the Bespoke Platform Solution of [redacted], it 'had assumed that it would be able to commence work on the [Bespoke Platform Solution], immediately following the conclusion of the CMA's review and any SLC finding, ie during the 12 week period for agreeing or finalising final undertakings or a final order'. It added that the 'CMA's revised proposal' to involve the purchaser 'in the specifications for the [Bespoke Platform Solution] removes its ability to do this and directly impacts the proposed timeframe'.
- (ii) Spreadex also submitted that the 'RWP contemplates the scenario where one or more initial attempts at divestiture are unsuccessful, resulting in the potential for multiple negotiations on the scope of the [Bespoke Platform Solution] with different parties'. It added that in 'this scenario, it is likely that it will take longer' than [redacted] from the start of the process to sign the SPA, and that as 'development work cannot start until the SPA is signed, that will have a resultant knock-on effect on the completion date'.

(b) *Development time:*

- (i) Spreadex submitted that its 'initial estimate assumed that it would not face any material issues during the build and that the [purchaser] would only have involvement in the process during the testing phase'. It added that even if a purchaser 'cooperating in good faith is involved in the development phase, this will almost certainly extend the build time. Before any development work is started, the specifications will need to be agreed'.
- (ii) Spreadex submitted that the purchaser might 'seek to include other items that are "nice to haves" that go beyond the creation of a functioning platform that operates in a manner similar to the pre-Merger Sporting Index platform'. It added therefore, that 'the process of agreeing the specifications of the reconstituted platforms and further interventions by the [purchaser] during the development process will take time. How much time will depend on the reasonableness of the [purchaser] and the effectiveness of the Monitoring Trustee'.

⁹⁵¹ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraph 2.7.

⁹⁵² Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraphs 2.8 to 3.13.

- (iii) Spreadex further submitted that the purchaser's 'involvement during the development stage will also mean that the process takes longer as there will almost certainly be further discussions at that point and potentially feedback that Spreadex will need to implement. Spreadex estimates that the purchaser's involvement will add at least [X] to the development time'.

(c) *Obtaining FCA approval:*

- (i) Spreadex submitted that obtaining FCA approval was a matter for the purchaser, and while Spreadex would 'take all reasonable steps to assist' the purchaser 'to be in a position to seek and obtain FCA approval within the Initial Divestiture Period', this would 'ultimately not be within Spreadex's control'. It added that 'this process normally takes 60 working days. In order to be as efficient as possible, Spreadex envisions this running in parallel to the final stages of the development, at which point there will be maximum certainty over what the FCA is being asked to approve'.

9.324 Spreadex submitted that for the reasons set out in paragraph 9.323 above, it might be 'practically very difficult or impossible, to complete the divestiture within an [X] initial Divestiture Period', and proposed an Initial Divestiture Period of [X] months. It added that Spreadex would 'exercise all reasonable endeavours to complete the divestiture as soon as possible but it would not be fair for Spreadex to be sanctioned (either under the SPA with the [purchaser] or by the CMA using its enforcement powers) for delays to the timetable that result from factors outside of Spreadex's control'.⁹⁵³

Third parties' views

9.325 As set out in paragraphs 9.215 and 9.216 above, both 10star and Star Sports have expressed doubts over Spreadex's proposed timeline for the development of the Bespoke Platform Solution, although they could not definitively comment on this without knowing what specifically Spreadex proposed to build. 10star and Star Sports also told us that a purchaser should get involved as early as possible, prior to the development of the platform.⁹⁵⁴

Our assessment

9.326 While the Initial Divestiture Period will normally be a maximum period of six months,⁹⁵⁵ in our view there are good reasons to depart from our usual practice of

⁹⁵³ Spreadex, Response to the CMA's Remedies Working Paper, 23 October 2024, paragraphs 2.14 and 2.15.

⁹⁵⁴ Star Sports, Call note, 10star, Call transcript.

⁹⁵⁵ [CMA87](#), paragraph 5.41.

six months to accommodate the complex development process required under the Platform Development Element, commencing from the date of signing of any SPA between Spreadex and the purchaser, to the delivery of the reconstituted platforms (see paragraph 9.169(b) above).

- 9.327 The Initial Divestiture Period will also need to accommodate the FCA’s regulatory approvals process, whereby the purchaser must obtain the FCA’s approval prior to completion of any divestiture remedy. We understand that approval from the GC (if necessary) can be obtained after completion of the divestiture remedy. We would need to take the regulatory requirements from the FCA into account when assessing the suitability of potential purchasers. Specifically, the FCA has to give its consent prior to a licence transfer being allowed under a ‘Change in Control’ process. As part of this consent, the FCA must be satisfied that the person to whom the licence is transferring to (or the ‘Proposed Controller’) is ‘considered suitable’.⁹⁵⁶ Alternatively, if the FCA considers that the ‘Change in Control’ process does not apply, the purchaser would need to seek the FCA’s approval for a ‘New Firm Authorisation’ to obtain a new FCA licence – as set out in paragraph 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.⁹⁵⁷
- 9.328 We note that it is for the FCA to decide whether FCA approval will be required under a ‘Change in Control’ process (which would last 60 working days),⁹⁵⁸ or under a ‘New Firm Authorisation’ process (which could last between six and 12 months from the application date).⁹⁵⁹ We also note that in addition to either a ‘Change in Control’ or ‘New Firm Authorisation’ approval, FCA approval would also be ‘required to sign off on all personal management licence holders, these would be expected to include’ the following ‘senior management functions’ or ‘SMFs’: SMF 1: CEO; SMF 3: Directors; SMF 16: Head of Regulatory Compliance; and SMF 17: and Head of MLRO [Money Laundering Reporting Officer].⁹⁶⁰
- 9.329 At its Response Hearing, Spreadex told us [REDACTED]. It added that [REDACTED].⁹⁶¹

⁹⁵⁶ Under a ‘Change in Control’ process, the ‘Proposed Controller’ must first submit a ‘Notice’ to the FCA. The FCA will assess the ‘Proposed Controller’ against the criteria set out in s.186 of the Financial Services and Markets Act 2000 (FSMA), namely: (a) reputation of the ‘Notice Giver’; (b) reputation, knowledge, skills and experience of any person who will direct the business of the ‘Target Firm’ (including new directors and those individuals to be appointed as SMFs); (c) financial soundness of the ‘Notice Giver’; (d) whether the ‘Target Firm’ will be able to comply with prudential requirements (including ‘threshold conditions’); (e) whether it will be possible for the ‘Target (or Group)’ to: (i) exercise effective supervision; (ii) exchange information among regulators; and (iii) determine allocation of responsibility among regulators; and (f) consider whether there are reasonable grounds to suspect: (i) ‘AML or Terrorist Financing’ has taken place; or (ii) the risk of this is likely to increase as a result of the ‘Change in Control’. Source: [Section 186](#) of the FSMA. and FCA, Response to CMA RFI, 23 May 2024, Q4.

⁹⁵⁷ Chapter 2, paragraph 2.16.

⁹⁵⁸ FCA, Response to CMA RFI, 23 May 2024, Q4.

⁹⁵⁹ See also Chapter 2, paragraphs 2.15 and 2.16.

⁹⁶⁰ Spreadex, [Response to the CMA’s Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q10.

⁹⁶¹ Spreadex, Response hearing transcript, 11 September 2024, page 86, lines 16-19.

- 9.330 FCA approval in some form will be required prior to the completion of any divestiture remedy, where the FCA will likely consider the suitability of both the divestment business and its new owner as part of any FCA approval process. However, the outcome of any decision to be taken by the FCA will not be known until well after our final report, and most likely sometime after an SPA will have been signed. We also note that the FCA will apply a different set of criteria when considering whether to grant the necessary approvals, compared to the criteria the CMA will apply for its assessment of an effective remedy and (separately) of a suitable purchaser. We cannot predict whether the FCA will grant the necessary approvals to enable a divestiture remedy to complete, and the risk that FCA approval is not obtained cannot be fully mitigated. However, in designing a divestiture remedy, we have put in place a number of measures to assist the purchaser in this regard, for example, giving the purchaser the ability to recruit staff for the divestment business prior to completion and ahead of making an application to the FCA (see paragraphs 9.274 to 9.279 above); and requiring Spreadex to assist the purchaser in obtaining any regulatory approvals (see paragraph 9.286(c) above). We will also consider as part of our assessment of a potential purchaser's suitability, its plans to obtain the necessary regulatory approvals (see paragraph 9.297 above) although we cannot, and will not, seek to anticipate any decisions or views, which the FCA will take.
- 9.331 In paragraphs 9.323 and 9.324 above, we set out Spreadex's submissions in the RWP response on why the Initial Divestiture Period should be [X] months.
- 9.332 Our view is that an Initial Divestiture Period of [X] would be sufficient for the following reasons, and we have found no compelling reasons to justify a [X]-month Initial Divestiture Period:
- (a) In the RWP, we had provisionally concluded that the Initial Divestiture Period should be [X] on the basis that the development of the reconstituted platforms would commence only after the signing of the SPA. While Spreadex submitted that the 'RWP contemplates the scenario where one or more initial attempts at divestiture are unsuccessful, resulting in the potential for multiple negotiations on the scope of the [Bespoke Platform Solution] with different parties', our view is that this risk of delays to signing an SPA could partly be mitigated through a well-planned and coordinated divestiture process, noting that running a divestiture process, and negotiating terms, with multiple bidders before granting exclusivity and signing an SPA is not uncommon in sale transactions.
 - (b) Once the specifications of the reconstituted platforms will have been agreed between Spreadex and the purchaser, and set out in the SPA, the technical development will be led solely by Spreadex. While Spreadex estimates that the purchaser's involvement will add at least [X] months to the development time, provided that Spreadex's technical development delivered on the

agreed specifications, we would not expect the purchaser's involvement to give rise to material delays to Spreadex's initial estimate of [X] for the technical development and testing of the reconstituted platforms.

- (c) Spreadex submitted that the purchaser might 'seek to include other items that are "nice to have" that go beyond the creation of a functioning platform that operates in a manner similar to the pre-Merger Sporting Index platform'. To mitigate this risk, we set out in paragraph 9.169(e) the details of the parameters and objectives for the reconstituted platforms, which would seek to mitigate the risks associated with the purchaser making unreasonable demands during its negotiations on the specifications of the reconstituted platforms.

- 9.333 We note however Spreadex envisions running the FCA approval process in parallel to the final stages of the development of the reconstituted platforms. In our view, the timescales needed to accommodate the FCA process remains a major area of uncertainty. However, at this stage, and in the absence of any evidence justifying a longer period, we see no reason to grant a [X]-month Initial Divestiture Period. The CMA will however consider a request for an extension if necessary to achieve an effective disposal, eg to accommodate the FCA regulatory process. The CMA will also take into account when deciding whether to grant an extension to the Initial Divestiture Period, whether the extension is required due to factors outside of Spreadex's control (eg see paragraph 9.169(e)).
- 9.334 While Spreadex has only indicated [X], given our conclusion that the development process should commence from SPA signing, we consider at this stage, and noting the uncertainties outlined above, including in relation to which FCA approval process will apply, that an Initial Divestiture Period of [X] from the date of any final undertakings or final order should act as a 'long-stop' date for any divestiture remedy to complete. In our view, this Initial Divestiture Period should be sufficient to accommodate: (a) the divestiture process to signing an SPA; (b) the development process for the reconstituted platforms (commencing from the SPA signing date); (c) the FCA's regulatory approval process (absent any unforeseen complications arising during that process); and (d) the customer migration process (concluding with completion).
- 9.335 Within one week following the acceptance of any final undertakings or making a final order, Spreadex will be required to submit a timetable for the CMA's approval setting out the key workstreams and milestones setting out how it intends to fulfil its obligations under the divestiture remedy within the Initial Divestiture Period.
- 9.336 The progress of the divestiture process and the development of the platforms to be reconstituted against the approved timetable, shall be monitored by the Monitoring Trustee and, if appointed, the Independent Technical Monitor.

Conclusion

9.337 Based on the above, we conclude that:

- (a) the Initial Divestiture Period should be [✂];
- (b) within one week of the final undertakings or final order, Spreadex will be required to submit a timetable for the CMA's approval setting out how it intends to fulfil its remedy obligations within the Initial Divestiture Period; and
- (c) the Monitoring Trustee and, if appointed, the Independent Technical Monitor shall monitor Spreadex's progress against the approved timetable.

Divestiture Trustee

9.338 If the merger parties cannot procure divestiture to a suitable purchaser within the Initial Divestiture Period, then, unless this period is extended by the CMA, the CMA may require the merger parties to appoint an independent Divestiture Trustee to dispose of the package within a specified period (the **Trustee Divestiture Period**). The divestiture will be at the best available price in the circumstances, but subject to prior approval by the CMA of the purchaser and the divestiture arrangements.⁹⁶²

9.339 The CMA may require that a divestiture trustee is appointed before the end of the Initial Divestiture Period (eg if the CMA is not satisfied that divestiture is likely to take place within that period) or, in unusual cases, at the outset of the divestiture process.⁹⁶³

Spreadex's views

9.340 Spreadex submitted that it saw 'no need for the appointment' of a Divestiture Trustee given that it had 'maintained the Acquired Assets and efficiently and effectively run the Sporting Index business under its ownership for the benefit of Sporting Index customers'; and had 'cooperated fully and transparently in good faith with the CMA and the Monitoring Trustee to preserve the value of the Sporting Index business through the Merger review'.⁹⁶⁴

Third parties' views

9.341 10star and Star Sports both told us that appointing an independent divestiture trustee at the outset of the divestiture process might help.⁹⁶⁵ In particular, 10star

⁹⁶² [CMA87](#), paragraph 5.43.

⁹⁶³ [Merger Remedies Guidance](#), paragraph 5.44.

⁹⁶⁴ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 3.23.

⁹⁶⁵ 10star, Call transcript; Star Sports, call note.

told us that appointing a Divestiture Trustee at the outset would make it more likely that a 'competitive purchaser' would be found, than if the process of selecting potential purchasers was run by Spreadex,⁹⁶⁶ while Star Sports told us that this might help given the 'amount of work that needs to be taken'.⁹⁶⁷

Our assessment

- 9.342 We currently have no evidence that would lead us to conclude that Spreadex would not achieve an effective disposal within the Initial Divestiture Period. As a result, we do not propose to appoint a Divestiture Trustee at the outset of the divestiture process.
- 9.343 However, we also recognise that Spreadex may have conflicting incentives in relation to achieving an effective and prompt divestiture, and that the ability to appoint a Divestiture Trustee is an important means by which the CMA is able to bring the implementation of this remedy to a conclusion.
- 9.344 Therefore, we will reserve the right to appoint a Divestiture Trustee to take control of the divestiture process from Spreadex in any one or more of the following situations:
- (a) Spreadex fails to complete the divestiture process within the Initial Divestiture Period;
 - (b) Spreadex fails to comply with its contractual commitments (to be agreed with the purchaser and specified under any SPA) in relation to the development of the new platforms (see paragraph 9.219 above);
 - (c) the CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period, or that the platform development process would be delayed or fail to complete within the agreed timescales set out in an SPA;
 - (d) Spreadex is not engaging constructively with the divestiture process or the development process; or
 - (e) there is a material deterioration in the divestiture package during the divestiture process.
- 9.345 If a Divestiture Trustee is appointed, the Divestiture Trustee will:

⁹⁶⁶ 10star, Call transcript.

⁹⁶⁷ Star Sports, Call transcript.

- (a) be required to complete the divestiture remedy at no minimum price and within a further period (ie the Trustee Divestiture Period) to be determined by the CMA based on the relevant circumstances applicable at that time; and
- (b) (to the extent applicable and necessary) require more resources to be devoted by Spreadex for the timely development of the reconstituted platforms.

Conclusion

9.346 Based on the above, we conclude that:

- (a) we do not propose to appoint a Divestiture Trustee at the outset of the divestiture process, however, we will reserve the right to appoint a Divestiture Trustee; and
- (b) if a Divestiture Trustee is appointed, the Divestiture Trustee will be required to complete the divestiture remedy at no minimum price and within the Trustee Divestiture Period.

Post-completion matters

9.347 Following completion of any divestiture remedy:

- (a) the Monitoring Trustee shall continue to be engaged to monitor Spreadex's compliance with its post-completion obligations under the Business Support TSAs; and customer non-solicitation obligations;
- (b) as mentioned in paragraph 9.99 above, following completion and within a period to be agreed with the CMA, Spreadex will be required to destroy all confidential information relating to the Acquired Assets and the reconstituted platforms (except confidential information which Spreadex is required under law or regulation to retain, or which is required for Spreadex to comply with its obligations under the divestiture remedy, eg in relation to the provision of any services under the Business Support TSAs); and
- (c) in line with the Merger Remedies Guidance, if the divestiture remedy is ultimately imposed, Spreadex would be prohibited from subsequently acquiring the assets or shares of Sporting Index or acquiring any material influence over them. The Merger Remedies Guidance states that the CMA will normally limit this prohibition on re-acquisition to a period of 10 years from completion of the divestiture remedy.⁹⁶⁸ We find no compelling reason

⁹⁶⁸ [CMA87](#), paragraph 5.10.

to depart from the Merger Remedies Guidance in this case by seeking a shorter or longer prohibition period.

Conclusion on the effectiveness of a divestiture remedy

9.348 We have assessed Spreadex's Remedy Proposal and where we have identified risks to its overall effectiveness, we have set out the modifications and supplementary measures to Spreadex's Remedy Proposal which, in our view, could potentially mitigate those risks.

9.349 Based on our assessment above, we conclude that subject to the modifications we have set out in this section, a divestiture remedy (based on a modified version of Spreadex's Remedy Proposal) as specified in this section would represent an effective remedy to the SLC and adverse effects we have found.

Conclusion on effective remedy options

9.350 Based on the evidence provided to us and assessed above, we conclude that a divestiture remedy as specified in paragraphs 9.81 to 9.349 above would be effective in remedying the SLC and adverse effects that we have found.

Relevant Customer Benefits

9.351 In deciding the question of remedies, the CMA may, in particular, have regard to the effect of any remedial action on any RCBs in relation to the creation of the relevant merger situation.⁹⁶⁹

Framework for assessing RCBs

9.352 RCBs are defined by the Act as benefits to relevant customers⁹⁷⁰ in the form of: (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not in the market(s) in which the SLC has, or may have, occurred, or may occur); or (b) greater innovation in relation to such goods or services'.⁹⁷¹ The Act provides that, in relation to a completed merger, a benefit is only an RCB if it has accrued, or may be expected to accrue within a reasonable period, as a result of the merger, and it was, or is, unlikely to accrue without the merger 'or a similar lessening of competition'.⁹⁷²

⁹⁶⁹ [Sections 35\(5\)](#) and [41\(5\)](#) of the Act, see also [CMA87](#), paragraph 3.15.

⁹⁷⁰ For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution; they are therefore not limited to final consumers ([section 30\(4\)](#) of the Act; see also [CMA87](#), paragraph 3.18).

⁹⁷¹ [Section 30\(1\)\(a\)](#) of the Act, see also [CMA87](#), paragraph 3.17.

⁹⁷² [Section 30\(2\)](#) of the Act, see also [CMA87](#), paragraphs 3.19 and 3.24.

- 9.353 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy⁹⁷³ and may be taken into account in our assessment of the proportionality of a remedy. It is possible that, in unusual circumstances, any effective remedy will result in disproportionate costs that far exceed the scale of the SLC or a disproportionate loss of RCBs. In such circumstances, the CMA will select the effective remedy that minimises the level of costs or loss of RCBs.⁹⁷⁴
- 9.354 The CMA may modify a remedy to ensure retention of RCBs or it may change its remedy selection. For instance, it may decide to implement an alternative effective remedy which retains RCBs, or in rare cases it may decide that no remedy is appropriate.⁹⁷⁵
- 9.355 The burden of proof of whether RCBs arise from a merger is on the merger parties: the merger parties will be expected to provide convincing evidence regarding the nature and scale of RCBs that they claim to result from the merger and demonstrate that these fall within the Act's definition of such benefits.⁹⁷⁶

Spreadex's views

- 9.356 In the Remedies Notice, we invited views on what costs were likely to arise in implementing a divestiture remedy option, and on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the divestiture remedy or any other remedies that they may put forward.⁹⁷⁷
- 9.357 Spreadex submitted that [REDACTED].⁹⁷⁸

Our assessment

- 9.358 Spreadex has not made any further submissions on RCBs arising from the Merger, and reiterated its previous submissions on efficiencies which we had considered in paragraph 7.74.⁹⁷⁹ In paragraph 7.76, we concluded that (among others) the efficiencies claimed by Spreadex were not Merger-specific.⁹⁸⁰
- 9.359 As a result, our conclusion is that Spreadex's claimed RCBs have not accrued, and may not be expected to accrue, as a result of the Merger, and they could have

⁹⁷³ [CMA87](#), paragraph 3.16.

⁹⁷⁴ [CMA87](#), paragraph 3.53.

⁹⁷⁵ [CMA87](#), paragraph 3.16.

⁹⁷⁶ [CMA87](#), paragraph 3.20.

⁹⁷⁷ CMA, [Remedies Notice](#), 25 July 2024, paragraphs 41 and 45.

⁹⁷⁸ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q27.

⁹⁷⁹ Chapter 7, paragraph 7.74.

⁹⁸⁰ Chapter 7, paragraph 7.76(a).

been, or could be, achieved by plausible less anti-competitive alternatives to the Merger. Therefore, they do not qualify as RCBs.

Conclusion on RCBs

9.360 Based on the above, we conclude that there are no RCBs that we should take into account in our evaluation of the proportionality of the only effective remedy we have found.

Proportionality assessment of effective remedy options

9.361 In this section, we consider the proportionality of effective remedy options.

Spreadex's views

9.362 In relation to whether there were any relevant costs the CMA should have regard to in considering possible remedies, Spreadex submitted that its remedy proposal 'entails considerable cost to be incurred by Spreadex. Spreadex considers that the CMA should have regard to those costs in assessing the viability and appropriateness of the proposed divestment package. Spreadex does not consider that the CMA need to have regard to other relevant costs in relation to the remedy described in this form. Insofar as the CMA were to propose alternative remedies or alternative elements to the present remedy, Spreadex reserves the right to make submissions on the proportionality or otherwise of relevant costs'.⁹⁸¹

9.363 Spreadex submitted that in 'order to be proportionate, the remedy must be appropriate and necessary in order to achieve the objectives legitimately pursued. When there is a choice between several appropriate measures, recourse must be had to the least onerous measure, and any harm caused must not be disproportionate to the aims pursued. Requiring a divestiture package to include any Spreadex assets would extend well beyond the scope of addressing the SLC and would reject a less intrusive and equally effective remedy'.⁹⁸²

9.364 Spreadex submitted that [X], and therefore, any divestiture package comprising the transfer of any Spreadex assets would cause 'significant harm to Spreadex's business and therefore to Spreadex's customers'.⁹⁸³

9.365 Spreadex submitted that there was 'an alternative less onerous measure' that would address the provisional SLC, 'namely the transfer of the Acquired Assets

⁹⁸¹ Spreadex, [Response to the CMA's Remedies Notice, Annex 1](#), 20 August 2024, Annex 1, Q28.

⁹⁸² Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.18.

⁹⁸³ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.20.

and the optional Bespoke Platform Solution, which is a viable remedies package'.⁹⁸⁴

9.366 Spreadex submitted that it acknowledged that there 'may be some financial costs to Spreadex in a divestiture process and that the CMA does not take account of such costs. However those costs should not extend to causing lasting and significant commercial harm to the Spreadex business, as it existed pre-Merger'.⁹⁸⁵

Framework for assessing proportionality

9.367 In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction.⁹⁸⁶ We call this the 'least onerous effective remedy'.

9.368 When considering relevant costs, the CMA's considerations may include (but are not limited to):⁹⁸⁷

- (a) distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the CMA or other monitoring agencies; and
- (c) the loss of any RCBs arising from the Merger which are foregone as a result of the remedy.

9.369 The CMA will endeavour to minimise such costs, subject to the effectiveness of the remedy not being reduced.⁹⁸⁸

9.370 In addition, the CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁹⁸⁹

9.371 As merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties, the CMA or other monitoring agencies.⁹⁹⁰ In particular, in relation to completed mergers, the CMA will not normally take account of costs or losses

⁹⁸⁴ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.19.

⁹⁸⁵ Spreadex, [Response to the CMA's Remedies Notice](#), 20 August 2024, paragraph 2.25.

⁹⁸⁶ [CMA87](#), paragraph 3.6.

⁹⁸⁷ [CMA87](#), paragraph 3.10.

⁹⁸⁸ [CMA87](#), paragraph 3.10.

⁹⁸⁹ [CMA87](#), paragraph 3.6.

⁹⁹⁰ [CMA87](#), paragraph 3.8.

that will be incurred by the merger parties as a result of a divestiture remedy, save in exceptional circumstances.⁹⁹¹

Our assessment

9.372 In our assessment of proportionality, we first identify those remedies that would be effective and then select the remedy with the lowest cost, or that is least restrictive ('the least onerous effective remedy'). We then consider whether this remedy is disproportionate in relation to the SLC and its adverse effects we have found.

Is the remedy the least onerous, effective remedy?

9.373 We have only identified one effective remedy – a divestiture remedy, based on a modified version of Spreadex's Remedy Proposal as specified in paragraphs 9.81 to 9.349 above – in deciding on these modifications we have considered a number of different options, including in some cases, the possible transfer of Spreadex assets or a cloning of Spreadex's systems. Our view is that the modifications we have decided result in the least onerous, effective remedy (see also paragraph 9.77). Accordingly, we are not in the position of choosing between multiple remedies that we consider will be effective, and our proportionality assessment is therefore focused on considering whether this remedy would be disproportionate in relation to the SLC and its adverse effects we have found.⁹⁹² In doing so, we compare the magnitude of harm associated with the SLC and the scale of its adverse effects with the relevant costs of the proposed remedy.

Is the remedy disproportionate to the SLC and its adverse effects?

9.374 We have considered whether the divestiture remedy is disproportionate to the SLC and its adverse effects we have found.

9.375 We first consider the scale of the SLC and its adverse effects. The Parties are the only suppliers of licensed online sports spread betting services in the UK. This reduction in competition could harm consumers. In paragraph 6.150, we concluded that the adverse effects resulting from the SLC we had found were in terms of one or more of worse range, user experience and prices than would otherwise have been, or would be, the case absent the Merger.

9.376 In paragraph 2.12, we estimated the licensed online sports spread betting sector in the UK to have had a size of £[£] million in 2023.⁹⁹³ As the Merger has resulted in the Merged Entity being the only supplier of licensed online sports spread betting

⁹⁹¹ [CMA87](#), paragraph 3.9.

⁹⁹² [CMA87](#), paragraph 3.6.

⁹⁹³ Chapter 2, paragraph 2.12.

in the UK, these adverse effects would potentially affect all UK customers in this market.

- 9.377 The SLC we have found is not time-limited in duration and we would expect absent effective intervention, the cumulative effect of its adverse effects to be substantial, and to increase over time.
- 9.378 Without effective intervention, this would have the adverse effect of worsening one or more of these parameters relative to what a more competitive market would have delivered, or may be expected to deliver, in the absence of the Merger.
- 9.379 In turn, in assessing whether the divestiture remedy is disproportionate to addressing the SLC and its adverse effects:
- (a) We have considered the relevant costs of the divestiture remedy. We have received no evidence that the divestiture remedy is likely to cause market distortions.
 - (b) In the present case, it is not disproportionate for the divestiture remedy to go beyond divestiture of the Acquired Assets, for the reasons already given above, in particular:
 - (i) the assets acquired by Spreadex were not standalone in nature, as Spreadex already had its own capabilities;
 - (ii) Spreadex did not require the retention of all pre-Merger Sporting Index employees who were offered in the original purchase and other Sporting Index pre-Merger employees are no longer at the company or otherwise available;
 - (iii) Atlas has not been operational since the Merger and reconstituting Sporting Index's 'back-end' platform with assistance from Sporting Group or Betsson Group is not reasonably feasible and/or would be unduly onerous;
 - (iv) a standalone sports spread betting business requires the 'front-end' and 'back-end' platforms that are proposed as part of the Platform Development Element of Spreadex's Remedy Proposal, along with API Integration for spread pricing, in order to operate and compete successfully in the market; and
 - (v) the additional elements of the divestiture remedy necessary in order to attract a suitable purchaser.
- 9.380 While the divestiture remedy will require some monitoring following completion, the costs of monitoring will not be borne by third parties; monitoring will be limited in

scope to the Business Support TSAs and customer non-solicitation clause; and will only be required for a limited time period.

- (a) As set out in paragraph 9.360 above, we found that there would be no RCBs that would be foregone as a result of the divestiture remedy. Accordingly, we therefore consider the relevant costs of this remedy to be low as it does not produce adverse effects such as costs to third parties or loss of RCBs.
- (b) Spreadex will incur costs as a result of the divestiture remedy. We have selected an option which, in our view, will minimise the costs, to the extent the effectiveness of the remedy would not be reduced. However, the circumstances in which the remaining costs will be incurred are not considered exceptional and in line with our Merger Remedies Guidance set out above, we do not attribute material weight to these costs.

9.381 On the basis of the above, we conclude that the divestiture remedy is the least onerous effective remedy and is not disproportionate in relation to the SLC and its adverse effects that we have found.

Implementation issues

9.382 Having identified the divestiture remedy, we now consider how it should be implemented.

9.383 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings if the merger parties wish to offer them, or by making a final order.⁹⁹⁴ Either the final undertakings or the final order must be implemented within 12 weeks of publication of our final report (or if extended once, by up to six weeks),⁹⁹⁵ including the period for any formal public consultation on the draft undertakings (minimum 15 days) or order (minimum 30 days) as specified in Schedule 10 of the Act.

Enforcement

9.384 In the present case, the 12-week period for acceptance of final undertakings or making a final order could run well into February 2025. That is because the statutory deadline for the publication of the final report was 26 November 2024 (following extension on 25 July 2024) and that deadline was further extended on 30 September 2024 until Spreadex complies with the requirements of a section

⁹⁹⁴ [Section 82](#) (final undertakings) and [section 84](#) (final order) of the Act.

⁹⁹⁵ [CMA87](#), paragraph 4.68. An extension may be made if the CMA considers there are 'special reasons' for doing so ([section 41A\(2\)](#) of the Act).

109 notice⁹⁹⁶ to the CMA's satisfaction, or the CMA publishes its decision to cancel the extension.

- 9.385 Under the Act,⁹⁹⁷ compliance with a final undertaking or final order may be enforced by civil proceedings brought by the CMA for an injunction or for an interdict or for any other appropriate relief or remedy. The Digital Markets, Competition and Consumers Act 2024 (**DMCCA2024**), expands the enforcement powers available to the CMA in relation to final undertakings and final orders.⁹⁹⁸ This includes the ability to impose financial penalties in respect of a failure to comply with a remedy undertaking or order without reasonable excuse. The Government has stated⁹⁹⁹ that it aims to commence the part of the DMCCA2024 containing these new penalty powers in December 2024 or January 2025. The Government has stated that it intends to make the commencement order giving effect to these new powers at least 28 days before the commencement date.
- 9.386 Depending on how and when the Government commences these new penalty powers, it is possible that they will apply to any undertaking accepted or order made by the CMA within the 12-week statutory period following the final report in this case. [✂].

Decision on remedies

- 9.387 We have decided that a divestiture remedy (as specified in paragraphs 9.81 to 9.349 above and as summarised by reference to our conclusions below), would be an effective and proportionate remedy to address the SLC and its resulting adverse effects we have found.

Scope of the divestiture remedy

- 9.388 As set out in paragraph 9.100, in relation to the Acquired Assets Element, we concluded that:
- (a) The transaction should be structured as a sale of 100% of Spreadex's shares in the Sporting Index legal entity to the purchaser.
 - (b) The Acquired Assets should be transferred to the purchaser in full, with no elements retained by Spreadex, except in relation to the SPIN Employees, in respect of which the purchaser may opt to transfer fewer than the five SPIN Employees.

⁹⁹⁶ The section 109 notice was issued on 25 September 2024.

⁹⁹⁷ [Section 94](#) of the Act.

⁹⁹⁸ New [sections 94AA](#) and [94AB](#) of the Act introduced by [section 143](#) and [schedule 11, paragraph 11](#) of the DMCCA2024.

⁹⁹⁹ [Written statements - Written questions, answers and statements - UK Parliament](#).

- (c) During the Customer Non-Solicitation Period, Spreadex shall be prohibited from contacting, soliciting (whether through direct or indirect contact) and entertaining the Restricted SPIN HVCs. The Monitoring Trustee will monitor Spreadex's compliance with this obligation.
- (d) Following completion of the divestiture, within a period to be agreed with the CMA and unless strictly necessary for compliance with the law and regulations or its obligations under a divestiture remedy, Spreadex shall destroy all confidential information relating to Sporting Index.

9.389 In paragraph 9.121, we concluded that Spreadex should design the Bespoke Platform Solution to allow a third-party sports fixed odds betting platform to be plugged into the Bespoke Platform Solution. If the purchaser wishes to offer sports fixed odds betting services to Sporting Index customers immediately upon completion of the divestiture, Spreadex must collaborate with the purchaser (eg by providing relevant information about the technical design) to enable the purchaser to 'plug in' its fixed odds betting platform in parallel with the Bespoke Platform Solution development process and to enable the purchaser to supply both sports spread betting and sports fixed odds betting as Sporting Index had done prior to the Merger. For the avoidance of doubt, Spreadex will not be required to undertake the technical development of the fixed odds platform or be required to divest such a platform.

9.390 In relation to the Platform Development Element:

- (a) In paragraph 9.249, we concluded that the development of the Bespoke Platform Solution would be the most appropriate option for the inclusion of the required platform within the scope of the divestiture package, subject to the modifications we have set out in this Chapter. We also concluded that cloning Spreadex's platform (in part or in full) would give rise to significant risks which would undermine its effectiveness as a divestiture remedy.
- (b) As set out in paragraph 9.169, in relation to Spreadex's role in developing the platforms, we concluded that:
 - (i) while Spreadex should be fully responsible for the technical development of the reconstituted platforms, Spreadex and the purchaser should collaborate in relation to the other aspects of the development process, namely: specifying the relevant outcomes (including KPIs) for the platforms; decisions about how to achieve those outcomes; testing; and handover and customer migration. Therefore, Spreadex should coordinate its platform development and divestiture processes accordingly to ensure that the purchaser can be involved at the early stages of the platform development process. For these purposes, Spreadex should form a Spreadex Development Clean

Team, on terms acceptable to the purchaser – provided that Spreadex forms a Spreadex Development Clean Team on terms acceptable to the purchaser, we would have no material concerns if this arrangement [✂];

- (ii) the parameters and objectives of the reconstituted platforms should be as follows: (a) the base line for the specification and performance of the reconstituted platforms should be based on Sporting Index’s pre-Merger platforms, and where a reliable benchmark is not available (or cannot be determined) for Sporting Index’s pre-Merger platforms, Spreadex’s own platforms should provide this benchmark; (b) Spreadex should not be required to develop the reconstituted platforms with functionality that is superior to Sporting Index’s pre-Merger platforms, except to reflect technological updates and enhancements, which Sporting Index would reasonably have been expected to have carried out in the ordinary course of business in the context of changing market and regulatory conditions, or where they already form part of Spreadex’s Remedy Proposal (eg in relation to infrastructure hosting on AWS); and (c) Spreadex should not be required to develop the reconstituted platforms with functionality that is superior to Spreadex’s platforms ([✂]), except where that functionality was already provided by Sporting Index’s pre-Merger platforms. Spreadex will not be required to implement the purchaser’s request if the CMA considers that the purchaser’s request is unreasonable. The CMA will also consider whether it will be necessary and appropriate in the circumstances to grant Spreadex an extension to the timescales to complete the divestiture remedy, if the CMA considers that the purchaser, having acted unreasonably, has delayed the process; and
- (iii) the CMA will reserve the right to appoint an Independent Technical Monitor at any time during the divestiture process (and this will be reflected in any final undertakings or final order), provided that: (a) the Monitoring Trustee confirms that it does not have the requisite expertise to enable the CMA to make an informed decision; and (b) the appointment of an Independent Technical Monitor would be solely for the purpose of resolving disputes of a technical nature (between Spreadex and the purchaser or the CMA), subject to the Independent Technical Monitor seeking the CMA’s views and approval prior to taking any action or decision.¹⁰⁰⁰ The Monitoring Trustee should have the powers to act as an adjudicator to resolve any disputes arising between Spreadex and the purchaser in relation to the development and delivery

¹⁰⁰⁰ For the avoidance of doubt, the Independent Technical Monitor would not be engaged on an ongoing basis; rather, the engagement letter should reflect that the appointment would be for the purpose and duration of resolving disputes of a technical nature as and when required.

of the new platforms as agreed in the SPA, subject to seeking the CMA's views and approval prior to taking any action or decision, but that the Monitoring Trustee may request the appointment of an Independent Technical Monitor to assist it in carrying out its adjudication duties.

9.391 As set out in paragraph 9.213, in relation to the proposed [REDACTED] TSA, we concluded that:

- (a) the [REDACTED] TSA [REDACTED] that matches the range of spread markets which Sporting Index offered immediately prior to the completion of the Merger;
- (b) the terms and conditions of the [REDACTED] TSA should reflect the individual needs and circumstances of the purchaser (subject to a maximum duration of two years from completion of the divestiture remedy), and there should be parity of service and quality levels between the spread pricing services provided by Spreadex to a purchaser and the services provided to its own business – this will be an area for the Monitoring Trustee and the Independent Technical Monitor to monitor post completion; and
- (c) [REDACTED].

9.392 As set out in paragraph 9.220 above, in relation to the development of the Bespoke Platform Solution and the Proposed Front-End Platform, we concluded that:

- (a) Spreadex and the purchaser should agree a development programme for the delivery of the reconstituted platforms, which will: (i) involve a series of milestones; (ii) contain a set of contractual commitments on each of Spreadex and the purchaser; and (iii) enable the parties to the SPA to enforce these contractual commitments with financial penalties for missing milestones and deadlines; and
- (b) the exact timescales for completing the development programme should be agreed between Spreadex and the purchaser, provided that it completes by the Initial Divestiture Period.

9.393 In relation to the transfer of knowhow to the purchaser, in paragraph 9.235, we concluded that:

- (a) Spreadex should provide the purchaser with the technical support, documentation and any other knowhow the purchaser needs under the Technical Support TSA, on mutually acceptable terms; and
- (b) the Technical Support TSA should not exceed [REDACTED]. The final terms of the Technical Support TSA will need to be approved by the CMA.

9.394 In paragraph 9.286, in relation to the Business Support TSA Element, we concluded that:

- (a) the purchaser should be given the ability to make a request to the CMA to recruit new staff for the Sporting Index business following signing of any SPA and prior to completion, provided that this: (i) assists the purchaser in obtaining any necessary regulatory approvals; and/or (ii) is considered necessary by the purchaser to enable the divestment business to compete effectively – we would in principle have no material objections for any staff hired prior to completion to sit within the purchaser’s group rather than the Sporting Index entity, provided that [X]; and these newly-recruited staff could transfer across to the Sporting Index entity prior to completion, if this is necessary to obtain FCA approval. Spreadex should provide the necessary HR administrative support to facilitate their employment with Sporting Index;
- (b) the Business Support TSAs should be flexible and its scope and duration (subject to a maximum limit of [X] from completion of the divestiture remedy – with the exception of the [X] TSA, for which the maximum duration should be [X]) and should be tailored to the individual needs and requirements of the purchaser. The Business Support TSAs should give potential purchasers the option to request tailored training programmes to be provided by Spreadex. If these are required, Spreadex will be given an opportunity to agree the scope and terms of any tailored training programme, unless there is a need for CMA intervention;
- (c) prior to completion, while the purchaser will ultimately be responsible for obtaining the appropriate regulatory approvals, Spreadex should make every effort to cooperate with, and assist, the purchaser as may be required (and to the extent permitted by the relevant regulatory process) to enable it to obtain the appropriate regulatory approvals in a timely manner; and
- (d) the final terms and conditions of any TSA under the Business Support TSAs will be subject to CMA approval.

Identification and availability of a suitable purchaser

9.395 In relation to purchaser risk, in paragraphs 9.303 and 9.304, we concluded that:

- (a) the CMA will assess the suitability of potential purchasers against the CMA Purchaser Suitability Criteria as set out in paragraph 9.316 above; and
- (b) while we have at this stage, identified two potentially interested purchasers, there remains uncertainty in relation to whether these potential purchasers will ultimately conclude a transaction under a divestiture remedy, or whether other potential purchasers will emerge. However, in line with the Merger

Remedies Guidance, in our view, these factors are not in themselves sufficient to lead us to conclude that a divestiture remedy is not feasible, given, for example, the flexibility in the disposal price.

Ensuring an effective divestiture process

9.396 To ensure an effective divestiture process, we concluded the following:

- (a) In relation to Spreadex's asset maintenance and hold-separate obligations (see paragraph 9.318):
 - (i) At this stage, we have not identified the need for any additional asset maintenance obligations on Spreadex to maintain the Acquired Assets, and therefore, any final undertakings or final order should continue with the current asset maintenance obligations set out in the Initial Order, including the continued involvement of the Monitoring Trustee to monitor Spreadex's compliance with any final undertakings or final order.
 - (ii) However, to the extent that the CMA considers that there has been an increase in the risk of asset deterioration, the CMA will reserve the right to enhance Spreadex's asset maintenance obligations, eg through the possible appointment of a hold-separate manager
- (b) In relation to the timescales to complete a divestiture (see paragraph 9.337):
 - (i) the Initial Divestiture Period should be [redacted] – the CMA will consider a request for an extension if necessary to achieve an effective disposal, eg to accommodate the FCA regulatory process. The CMA will also take into account when deciding whether to grant an extension to the Initial Divestiture Period, whether the extension is required due to factors outside of Spreadex's control (eg see paragraph 9.169(e));
 - (ii) within one week of the final undertakings or final order, Spreadex will be required to submit a timetable for the CMA's approval setting out how it intends to fulfil its remedy obligations within the Initial Divestiture Period; and
 - (iii) the Monitoring Trustee and, if appointed, the Independent Technical Monitor shall monitor Spreadex's progress against the approved timetable.
- (c) In relation to the potential appointment of a Divestiture Trustee (see paragraph 9.346):

- (i) we do not propose to appoint a Divestiture Trustee at the outset of the divestiture process, however, we will reserve the right to appoint a Divestiture Trustee; and
 - (ii) if a Divestiture Trustee is appointed, the Divestiture Trustee will be required to complete the divestiture remedy at no minimum price and within the Trustee Divestiture Period.
- (d) Following completion of any divestiture remedy, we concluded that (see paragraphs 9.347 and 9.347(c)):
- (i) the Monitoring Trustee shall continue to be engaged to monitor Spreadex's compliance with its post-completion obligations under the Business Support TSAs; and customer non-solicitation obligations;
 - (ii) within a period to be agreed with the CMA, Spreadex will be required to destroy all confidential information relating to the Acquired Assets and the reconstituted platforms (except confidential information which Spreadex is required under law or regulation to retain, or which is required for Spreadex to comply with its obligations under the divestiture remedy, eg in relation to the provision of any services under the Business Support TSAs); and
- (e) Spreadex would be prohibited from subsequently acquiring the assets or shares of Sporting Index or acquiring any material influence over them for 10 years from completion of the divestiture remedy.