

SPREADEX LIMITED
RESPONSE TO THE REMITTAL PROVISIONAL FINDINGS

1. INTRODUCTION

- 1.1 This document constitutes the response of Spreadex Limited ("**Spreadex**") to the CMA's remittal provisional findings report ("**Remittal PFs**") issued on 5 June 2025 in relation to the Competition Appeal Tribunal's remittal of the CMA decision of 22 November 2024 (the "**Final Report**") on the acquisition by Spreadex of the 'business-to-consumer' ("**B2C**") business of Sporting Index Limited ("**Sporting Index**") (the "**Merger**"). Unless otherwise specified, defined terms have the meaning provided for them in the Remittal PFs and the Final Report.
- 1.2 This response is without prejudice to Spreadex's response to the CMA's notice of possible remedies also issued on 5 June 2025 ("**Remittal RN**"), submitted on 19 June 2025 ("**Remittal RN Response**").
- 1.3 Spreadex wishes to respond to certain points raised by the CMA's Remittal PFs. Spreadex has not responded to each and every provisional finding of the CMA. Where Spreadex has not responded to a point, this should not be deemed as acceptance of that point.
- 1.4 In summary, Spreadex notes that the critical background to the Merger (which was relevant at the time of the 2023 Sale Process), is that there has been significant regulatory pressure which has resulted in large decrease in the number of operators and a decline in the size of the market (as described in section 2 in more detail). The potential for further regulatory and fiscal changes means that the outlook for sports betting companies is deteriorating further.
- 1.5 In this context, Spreadex submits that it is not plausible (absent Spreadex's bid) that Sporting Index would have been sold to an Alternative Bidder and been successfully operated as a competitor to Spreadex. In relation to the counterfactual assessment, Spreadex agrees with the CMA's provisional findings on limb 1 of the exiting firm scenario but in relation to limb 2, it submits that:
 - 1.5.1 The CMA's calculation of a liquidation value fails to acknowledge the nature and purpose of a liquidation sale and correspondingly understates the liquidation value of the B2C Business;
 - 1.5.2 Even if the CMA's (overly low) liquidation value were accepted, only one of the Alternative Bidders' bids would have met the threshold and this bid was the one that FDJ expressed the greatest concern about;
 - 1.5.3 The CMA does not properly address in the requisite detail whether FDJ would have been prepared to enter into a TSA with the Alternative Bidders; and
 - 1.5.4 The period over which the CMA has provisionally assessed an Alternative Bidder's ability to operate the Sporting Index business as a competitor to Spreadex is unrealistically short (see section 3).
- 1.6 In relation to the possible horizontal unilateral effects, Spreadex submits that:
 - 1.6.1 The CMA has failed to take into account the declining nature of the spread betting services and its competitive constraint on Spreadex's behaviour post-Merger; and
 - 1.6.2 The CMA's provisional findings fail to properly consider the important constraint of unlicensed sports spread betting providers (i.e. the "grey market") on Spreadex's behaviour post-Merger (see section 4).
- 1.7 Finally Spreadex questions the overall proportionality of the CMA's provisional findings, noting the small and declining size of the market it operates in, the nature of the CMA's provisional findings (that one of the Alternative Bidders may only have been able to operate the B2C Business for a short period of time) and the onerous nature of the remedy that the CMA is minded to impose to address the provisional SLC finding (see section 5).

2. BACKGROUND

- 2.1 Spreadex notes at the outset that it is important to keep in mind the background and the context of the industry. In particular, [REDACTED] described to the CMA [REDACTED] and that Spreadex is now the "last man standing".¹
- 2.2 It is a niche activity operating in a very challenging environment, with a number of alternative options available to customers. As Sporting Group noted in its [REDACTED]
- 2.3 [REDACTED] further explained (as summarised by the CMA) that [REDACTED] also noted that [REDACTED].
- 2.4 Now just [REDACTED] of both Parties' customers account for around 50% of the Parties' sports spread betting revenues.⁴
- 2.5 The former [REDACTED] (one of [REDACTED]) informed the CMA that having thought about it more, [REDACTED] did not consider it necessary to have a secondary sports spread betting brand in the UK, on the basis that it is a niche product that has declined over the past ten years, and that Sporting Index's financials showed diminishing returns.⁵
- 2.6 Spreadex has also noted this decline and has provided data showing how the size of the market has declined since 2013.⁶ In the PFs the CMA dismisses the decline, on the grounds that the overall market has grown in size in revenue terms since 2022.⁷ However this comment fails to take into account two important factors:
- 2.6.1 the figures relied on by the CMA do not take into account sports binary bets, which are FCA-regulated sports bets that operate in an almost identical way to spread bets and are regulated in exactly the same way. As outlined in the note in **Annex 1**, when these data are also included, there has been a real terms decline between 2020 and 2024; and
- 2.6.2 when Spreadex acquired Sporting Index in November 2023, it provided Sporting Index users the ability to bet on all of the sports events (including virtual sports) available to Spreadex users (which represented roughly a seventeen fold increase in sports events to bet on each month).⁸
- 2.7 The recent "growth" is therefore illusory, being based on [REDACTED]. The slight increase from 2022 to 2023 likely stems from the Merger itself. In real terms the market size has shrunk from £[REDACTED] million in 2020 to £[REDACTED] million in 2024 on a gross basis.⁹ The overall market size is also still smaller than it was in 2013, when it was worth approximately £[REDACTED] million in real terms. The real terms decline from 2013 to 2025

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 Remittal PFs, paragraph 6.29.
5 Remittal PFs, paragraph 5.143.
6 Spreadex CMA Teach-In Presentation, 1 May 2025, slide 41.
7 Remittal PFs, paragraphs 6.160 and 2.13.
8 Spreadex CMA Teach-In Presentation, 1 May 2025, slide 12.
9 The underlying data is supplied in **Annex 2**.

was £ million at the same time as the number of betting opportunities has increased significantly.

- 2.8 It still remains the case that sports spread betting is in decline in the UK. Furthermore, the prospects of the industry are even more challenging. The Government is currently consulting on changes to the tax regime for "remote gambling".¹⁰ The Government is proposing to consolidate the three betting duties (general betting duty, pool betting duty and remote gaming duty) into a (new) single remote gambling tax to be called the remote betting and gaming duty. Spreadex notes that there are very good reasons for taxing spread betting differently to other forms of remote gambling. However, in light of the fiscal position of the UK Government, there is a real possibility that a

. This would make it harder still for sports spread betting companies to operate.

- 2.9 This background is particularly relevant in assessing:

- 2.9.1 The counterfactual scenario and whether the Alternative Bidders could plausibly have operated Sporting Index as a competitor (see paragraph 3.56);
- 2.9.2 The impact on Spreadex's current behaviour (see paragraph 4.5); and
- 2.9.3 The overall proportionality of the CMA's provisional decision (see paragraph 5.1).

3. THE COUNTERFACTUAL

Introduction

- 3.1 Spreadex profoundly disagrees with the CMA's overall provisional findings on the counterfactual scenario. Its position has remained consistent throughout the CMA's original review and secondary review during the Remittal of the Merger, namely that it is implausible and irrational to conclude that either of the Alternative Bidders would have acquired Sporting Index if the Merger had not taken place.
- 3.2 The CMA's provisional findings on the counterfactual focus on the exiting firm scenario comprising Limb 1 (the likelihood that Sporting Index would have exited the market absent a sale) and Limb 2 (there would not have been a less anti-competitive purchaser for Sporting Index).
- 3.3 Spreadex welcomes and agrees with the CMA's provisional conclusion that Limb 1 of the test would have been met. It is clear from the evidence that FDJ was concerned about the wider reputational risks to its business if Sporting Index were to breach applicable regulation (and so would most likely have closed the B2C Business if a sale was not possible) and that there was no alternative purchaser to Spreadex or one of the Alternative Bidders.¹¹ Spreadex therefore does not wish to make any further submissions on this topic, although Spreadex refers to the CMA to its previous submissions on this for completeness.¹²

Limb 2 – there was no less anti-competitive purchaser than Spreadex

- 3.4 Spreadex refutes the CMA's provisional findings on Limb 2 and makes the following submissions in response:

¹⁰ HM Treasury, Open consultation, *The Tax Treatment of Remote Gambling Consultation*, updated on 6 May 2025, accessed on 23 June 2025 and available [here](#).

¹¹ Remittal PFs, paragraph 5.40.

¹² See section 3 of Spreadex's Submission to the CMA on the scope of the Remittal and the Counterfactual Analysis dated 28 March 2025 ("**Spreadex's Counterfactual Submission**").

- 3.4.1 **The CMA's calculation of a liquidation value fails to acknowledge the nature and purpose of a liquidation sale and correspondingly understates the liquidation value of the B2C Business.**
- 3.4.2 **Even if the CMA's (overly low) liquidation value were accepted, only one of the Alternative Bidders' bids would have met the threshold and this bid was the one that FDJ expressed the greatest concern about.**
- 3.4.3 **The CMA does not properly address in the requisite detail whether FDJ would have been prepared to enter into a TSA with the Alternative Bidders.**
- 3.4.4 **The period over which the CMA has provisionally assessed an Alternative Bidder's ability to operate the Sporting Index business as a competitor to Spreadex is unrealistically short.**
- 3.5 If the CMA had properly reflected the true liquidation value, it would instead have provisionally concluded that neither bid would have exceeded the liquidation value. In any event, if the CMA had properly assessed FDJ's evidence it would have reached the conclusion that it would not have been possible to agree a TSA that would have allowed Sporting Index to be run by one of the Alternative Bidders. We address each of these points in detail below.
- The CMA's calculation of a liquidation value fails to acknowledge the nature and purpose of a liquidation sale and correspondingly understates the liquidation value of the B2C Business*
- Nature of the liquidation process
- 3.6 Spreadex notes FDJ's evidence that it did not contemporaneously give any thought to a potential liquidation process or the liquidation value of the B2C Business.¹³ This is entirely understandable, since FDJ had an acceptable offer on the table for the B2C Business from Spreadex, so there was no reason for it to do so.
- 3.7 Spreadex also notes FDJ's evidence that a liquidation value would likely only have been considered if no viable sale options had materialised.¹⁴ As explained in more detail at paragraph 3.45 et seq. below, it is not plausible that any other viable sale options would have materialised, had FDJ decided to extend the sale process and engage with the Alternative Bidders at the necessary level of detail. FDJ's comment does however reflect the relevance of a liquidation process to the overall analysis, which is not properly addressed in the CMA's Remittal provisional findings.
- 3.8 In a liquidation scenario, the seller is trying to sell the assets in question for the highest possible value, because there is no viable and acceptable offer that would allow all of the assets to be sold together or, if there is an offer, it is below the value of the individual assets, whether sold individually or in combination with some of the other assets available.
- Sporting Index customer list*
- 3.9 The CMA has provisionally placed an overly low value on the customer list [REDACTED] for the following reasons:
- 3.9.1 FDJ was unsure as to whether it would have been able to sell the customer lists under the customer terms in place at the time;
- 3.9.2 FDJ's submission that the sale of operator client lists had become [REDACTED] to purchasers over time due to the fact that "GDPR and other regulations required the customer to insert their banking details and deposit new funds"¹⁵;
- 3.9.3 Sporting Index's customer list predominantly comprised [REDACTED] customers;

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14 Remittal PFs, paragraph 5.52.

15 Remittal PFs, paragraph 5.64(a).

- 3.9.4 There were [REDACTED];
- 3.9.5 FDJ would have been unlikely to be willing to sell the Sporting Index brand or customer list to an unregulated sports spread betting provider without FCA approval being a condition precedent;¹⁶ and
- 3.9.6 An unlicensed sports spread betting provider would have been unlikely to be willing to buy the customer list due to the prohibition on actively soliciting customers in the UK and FDJ's submission that FCA approval would have been required for the transfer of a customer list.
- 3.10 As to the uncertainty about whether customer consent would have been required, Spreadex does not have access to the full pre-Merger terms and conditions of Sporting Index. However an archived copy from Sporting Index's webpage database¹⁷ from 4 November 2022 (Account Operating Rules), implies that Sporting Index had the ability to unilaterally change its customer terms and conditions (see clause 21).
- 3.11 In response to FDJ's submissions that the sale of operator client lists had become [REDACTED] to purchasers, Spreadex notes that the GDPR does not prevent or prohibit the transfer of customer lists. Further, GDPR came into force in the UK on 25 May 2018, before Betfred acquired MoPlay's customer list in 2020. The issue with increased regulatory requirements requiring new customers to potentially provide banking details etc. is not an issue which is specific to acquiring customer lists. The regulatory changes add friction in a customer onboarding scenario, but this is true in any customer onboarding process. This issue does not make acquiring customers by way of acquiring a customer list harder relative to other ways of acquiring customers. Furthermore, beyond FDJ none of the sports betting operators that the CMA asked about acquiring a customer list, supported either of these points in their responses.
- 3.12 It is the case that Sporting Index was (and remains) predominantly a spread betting company, however in a liquidation scenario, the options available to Sporting Index's customers would not have been those available to them pre-Merger (or as outlined in the CMA's questionnaire to the Parties). Essentially the option for customers at that stage would have been using Spreadex, using unlicensed spread betting providers or using fixed odds services from a range of providers. In that scenario, customers' behaviour will not be the same as it is at this point in time, where Sporting Index is available to customers as an alternative brand. Therefore, there may be more interest from customers in switching to fixed odds, as well as more interest from fixed odds providers in acquiring spread betting customers. In addition, as Spreadex has demonstrated in relation to its own customer base, there is significant cross over between spread betting and fixed odds – 90% of its customers use both spread and fixed odds betting.¹⁸
- 3.13 The CMA cites a lack of third party interest in the customer list as a basis for its low valuation. However, a number of providers did indeed indicate either that there might be interest in and value to the list (e.g. [REDACTED] and [REDACTED]) or that they would need more information on the customers to make such an assessment (e.g. [REDACTED]²¹ or BETDAQ²²). Currently the question of whether a third party would purchase a Sporting Index customer list is entirely academic. Third party potential purchasers for such a list lack the necessary information about the customers, so it is difficult for them to meaningfully engage with the question. In addition, the list would primarily be of interest to smaller sports betting providers and/or entrants, which do not currently benefit from strong brand recognition, whereas many of the parties that the CMA has requested information from are large, well established brands. In support of its argument, the CMA also cites [REDACTED], a third party fixed odds provider, lack

¹⁶ Remittal PFs, paragraph 5.72.

¹⁷ https://web.archive.org/web/20230610114943mp_/https://www.sportingindex.com/account-operating-rules#

¹⁸ Final Report, paragraph 6.11(b).

¹⁹ [REDACTED]

²⁰ [REDACTED]

²¹ [REDACTED]

²² Remittal PFs, paragraph 5.60(c).

of interest in Sporting Index's fixed odds *business*, but this is not directly relevant to their potential interest in a *customer list*. With a customer list, they would be acquiring customers to contact and onboard onto their fixed odds platform, as opposed to the entire business. [REDACTED] were not asked by the CMA about their interest in a *customer list* and did not express any views on that.²³

- 3.14 The CMA also fails to acknowledge that one party, [REDACTED], a financial spread betting provider, did indicate that they would be potentially interested in acquiring such a list (noting that an [REDACTED]), subject to finding out more information about the customers.²⁴
- 3.15 In response to the CMA's contention that essentially only the "active" customer details would be of interest and sold to a third party, this is unlikely to be the case in practice. Whilst it is true that the most valuable customers will be those who are active and spending significant sums of money, in this scenario, a purchaser would acquire all of the customers available, not least because, as [REDACTED] submitted, there can be value in "dormant" customers who can potentially be reactivated. The greatest value would of course be placed on the active customers, but there would be some value associated with the remainder of the list. Furthermore, different potential purchasers will have different metrics for whether they assess customers to be active or high value depending on how they operate their own businesses, as is clear from the fact that Spreadex and FDJ had different figures for the number of active customers.
- 3.16 The CMA also fails to acknowledge the reality of the circumstances of a liquidation sale. In a liquidation scenario, the Sporting Index business would no longer have been operational and so FDJ / Sporting Group would just have been selling the business assets to whoever might purchase them for the best possible price. The statutory FCA change of control process would only be relevant if FDJ were selling the Sporting Index legal entity.
- 3.17 FDJ would doubtless have taken care in selecting a purchaser for the different assets, but an unlicensed purchaser can still be a legitimate one, for example a purchaser registered in another jurisdiction. [REDACTED] has explained that there is some nuance around the regulatory position, which means that they are effectively able to operate in the UK even though they are not FCA-licensed. Furthermore, although there is a prohibition on unregulated providers attempting to solicit customers in the UK, this does in fact take place. Spreadex has already provided the CMA with a recent example of one of its customers being actively solicited by an unlicensed provider.
- 3.18 For all these reasons, the CMA understates the value of the Sporting Index customer list. For the reasons Spreadex has submitted previously, a valuation of at least £2 million is more realistic (this assumes that there is no value in the spread betting customer details which may not be the case).

The Sporting Index IT platform

- 3.19 It is also irrational for the CMA to exclude from the liquidation value any value for the platform included within the B2C Business - Sporting Index IT - when two interested parties ([REDACTED] [REDACTED]) both told the CMA that they would have been interested in acquiring this in a liquidation process.
- 3.20 It is correct that the platform would not have been operational on a standalone basis, but it could have been restored, incorporated into those parties' existing systems or otherwise developed. The fact that the parties expressed an interest in it clearly indicates that it would still have had value to them. Neither of those parties told the CMA that the only scenario in which they would have acquired it would have been with a supporting TSA (which would never have been available in a liquidation sale, in any event). The question here is not whether they would have been able to operate it, but whether they would have paid FDJ money for it and they have responded to indicate that potentially they would have.

²³ [REDACTED]

²⁴ [REDACTED]

- 3.21 The technology would also potentially have been of interest to operators of spread betting businesses in countries where spread betting is permitted including Australia, Ireland and Denmark, for the same reasons that [REDACTED] expressed interest.

- 3.22 It is also irrational to argue that there would have been no interest in the Sporting Index brand. It may not be of interest to established household names with their own brands, but to a startup or an international entrant, an established brand would have had some value.

- 3.23 Even if the CMA's liquidation value, which Spreadex submits is unrealistically low, is accepted, it is still the case that only one of the bids, that of [REDACTED], would have exceeded it and therefore potentially been acceptable to FDJ. It can therefore be surmised that an offer from [REDACTED] would not have been accepted by FDJ.

- 3.25 First, Spreadex notes that £[REDACTED] million, is below the upper limit of the CMA's estimate for the liquidation value [REDACTED], so FDJ was not actually asked the correct question.

- 3.27 It is important to consider the other evidence that FDJ has provided on this. In particular FDJ and/or Sporting Group have stated the following:

- 3.27.2 [REDACTED] (Emphasis added)

- 3.27.4 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Emphasis added.)

| Year | Percentage of respondents |
|------|---------------------------|
| 25 | ~85% |
| 26 | 100% |
| 27 | ~95% |
| 28 | ~90% |
| 29 | ~80% |
| 30 | ~95% |

- 3.28 The CMA has failed to properly address this evidence in its Provisional Findings. It is very clear that a transaction with [REDACTED] from FDJ's perspective would have been very challenging.

The CMA does not properly address in the requisite detail whether FDJ would have been prepared to enter into a TSA with the Alternative Bidders.

- 3.29 The key issue in terms of the Alternative Bidders being able to agree terms with FDJ and Sporting Group, was the negotiation of a TSA. As the CMA has noted, both of the Alternative Bidders required a TSA to acquire the B2C Business.

- 3.30 There are three key points about the TSA which would have needed to have been agreed:

3.30.1 The scope of the TSA;

3.30.2 The duration of the TSA; and

3.30.3 The cost of the TSA.

- 3.31 It is clear from the third party submissions that neither Alternative Bidder was involved in detailed discussions on the terms of the TSA. [REDACTED]

[REDACTED] did not even receive a TSA costing. As such, neither had the opportunity to engage with and negotiate with FDJ over this. The necessary scope of the TSA would have depended on each Alternative Bidder. Save as outlined below, Spreadex does not have any specific submissions to make on the scope, beyond the fact that neither Alternative Bidder had the opportunity to substantively engage and agree a scope with Sporting Group. However, the duration and cost of the TSA are important.

Duration of the TSA

- 3.32 The CMA has noted that the estimated service terms in Alix Partners December 2022 Report envisaged the TSA lasting up to 12 months, and that FDJ also submitted during the Remittal inquiry that it understood that transitional support would be part of the discussions and that FDJ would have accepted such an arrangement, provided its duration remained limited and its operational impact was therefore manageable.³² The CMA's provisional view is that FDJ would likely have been willing to enter into a TSA as long as:

3.32.1 the scope, duration and overall operational impact of the TSA was manageable from FDJ's perspective, and

3.32.2 the overall economics of the deal made sense.³³

- 3.33 In the original outlined proposal of the TSA communicated to [REDACTED], the TSA was expected to last up to 24 months. The document refers to no minimum duration, but equally the "Contemplated TSA Term Sheet Outline" does not indicate that Sporting Group and FDJ were expecting a TSA that would exceed two years.

- 3.34 In the course of the review, the Alternative Bidders informed the CMA that they would have been able to transition away from particular aspects of the TSA relatively quickly (as outlined in paragraph 5.106 of the Remittal PFs). This evidence is not contemporaneous nor is it informed by having had the opportunity to engage in detailed transaction due diligence. However, it is clear from the evidence provided by FDJ during the review period that they were of the view that a TSA with the Alternative Bidders would have had a considerable duration. [REDACTED] explained to the CMA that:

[REDACTED]

31 [REDACTED]

32 Remittal PFs, paragraph 5.102.

33 Remittal PFs, paragraph 5.103.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- 3.35 In support of its position that the duration could have been shorter in practice, the CMA cites Spreadex's submission that [REDACTED] % of Sporting Index's pricing models could be developed by a potential remedy taker within [REDACTED] months.³⁵ However in the Final Report the CMA did not accept that submission and the associated submission that the TSAs should be tiered to reflect this, with the support significantly reduced after 12 months (with football, horse and greyhound racing, cricket, rugby and tennis pricing all no longer supplied after 12 months).³⁶ In part this was because [REDACTED] separately told the CMA that building Trading Models from scratch, and recruiting traders to run these models, would potentially take two to three years.³⁷ Whilst [REDACTED] also indicated that it would be quicker to develop models where [REDACTED] had existing capabilities, they disclosed that: [REDACTED]
[REDACTED]³⁸ [REDACTED] also told the CMA that it was very aware that it was taking a risk that it could not transition (away from the TSA) earlier.³⁹
- 3.36 If two to three years was indeed the period under discussion for a TSA between Sporting Group and [REDACTED], and Sporting Group's instinctive response to that timeline was that this amounted to an [REDACTED] this is strongly indicative that it would have been very difficult to reach an agreement on a duration that worked for both sides.
- 3.37 The CMA provisionally raise the point that the TSA could have been tiered with a wide scope for one year and a narrower scope for the next one to two years. However, retaining traders generating spread prices for [REDACTED] - sports which [REDACTED] itself acknowledges offer [REDACTED] - would have placed a significant burden on Sporting Group.
- 3.38 The other major difficulty with the duration of the TSA is the separate sale of the B2B Business. At the time that the bidders were conducting their due diligence and negotiating with Sporting Group in the 2023 Sale Process, FDJ was actively considering the sale of the B2B Business as well.
- 3.39 If Spreadex had not bid in 2023 and FDJ/Sporting Group were left to negotiate with the Alternative Bidders, then this issue would have come to the forefront during the 2023 Sale Process. Since Spreadex was the favoured bidder and required at most a very short TSA, this issue did not need to be considered at the time.
- 3.40 During the CMA's original review, FDJ were clear that this would have made sale of the B2B business more difficult: [REDACTED]
[REDACTED]
[REDACTED]
- 3.41 FDJ reinforced this point during the Remittal noting that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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35 Remittal PFs, paragraph 5.107.

36 Spreadex Response to the Remedies Working Paper, 23 October 2024, paragraphs 2.23-2.24.

37 Final Report, paragraph 9.181(b)(i).

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- 3.42 FDJ concludes by stating that: [REDACTED]
- 3.43 The CMA dismisses this consideration on grounds that FDJ had caveated their statement by noting that it was speculative.⁴³ However this is an unjust framing of the response, since by asking FDJ to answer these questions, the CMA was inviting FDJ to speculate. FDJ did not have to consider these issues at the relevant time because it had an unproblematic buyer for the B2C Business, Spreadex. The CMA also cites FDJ's remark that entering into a TSA would not have prevented a sale with an alternative buyer if the overall economics of the deal remained compelling.⁴⁴ However, in order for the overall economics of the deal to remain compelling, necessarily the TSA cannot represent a material burden on the business being sold. In that respect Sporting Group told the CMA that:
- 3.43.1 decommissioning spread pricing models had improved latency [REDACTED] for the remaining B2B Business; and
- 3.43.2 maintaining the B2C business resulted in the diversion of management attention and activity outside the strategic focus of the company: "... [REDACTED]
- 3.44 These are significant factors that would have influenced the saleability of the company. Furthermore, necessarily maintaining a TSA would have imposed a cost on the B2B Business.
- The costs of the TSA*
- 3.45 In the Remittal PFs, the CMA fails to assess and consider what the costs of a TSA with the Alternative Bidders would have been on FDJ and how it would have impacted the sale of the B2C Business. The CMA acknowledges that TSA would have been unattractive on a standalone basis. However, the CMA does not engage with the trade-offs that would have been involved in negotiating the price of the TSA.
- 3.46 Instead, the CMA simply cites the fact that it presented its calculation of the bid values compared to its estimates for the liquidation values and quotes FDJ's response that these could reasonably have been viewed as being aligned with FDJ's expectations.⁴⁶ However FDJ's full response was that: [REDACTED]
- [REDACTED] The key point was therefore whether the negotiation of the TSA terms rendered the offer financially viable.
- 3.47 In this respect and following Spreadex's submissions, the CMA has revised its estimate of the costs base for the Sporting Index business up to £13.5 million.⁴⁷ Spreadex maintains that this represents an understatement of the cost base of the business. However, even if it is

⁴² [REDACTED]
⁴³ Remittal PFs, paragraph 5.109.

⁴⁴ Remittal PFs, paragraph 5.109.

⁴⁵ [REDACTED]
⁴⁶ Remittal PFs, paragraph 5.112.

⁴⁷ Remittal PFs, Table 5.2.

accepted, it would have left the owners of Sporting Index immediately operating at a loss of £[REDACTED].

- 3.48 Given that there were limited staff available in the B2C Business who could have been made redundant and given the cost base assumes a low marketing spend, the most likely way that they could have closed the profitability gap would have been to insist on lower TSA costs. The CMA's revised calculation assumes a TSA cost of £[REDACTED] million per year. The CMA did not ask but should have asked FDJ what the financial impact would have been to Sporting Group, if it had been effectively required to offer a £[REDACTED] million TSA at, for example, [REDACTED] or £[REDACTED] to agree the sale of the B2C Business and what impact that would have had on their assessment of the Alternative Bidders' bids. This would have made a substantial difference to the effective value of the Alternative Bidders' bids, potentially placing both bids below the CMA's liquidation value estimate. It would also have imposed a significant burden on the acquirer of the B2B Business to maintain this contract. This is exactly the kind of significant commercial issue that would have impacted the overall economic balance of the transaction.

- 3.49 It is also clear from the contemporaneous documents that the cost of the TSA at [REDACTED] was a concern to [REDACTED] and that they were interested in exploring ways of bringing this down. For example, [REDACTED]

[REDACTED]

3.49.2 [REDACTED]

- 3.50 It was also clear that, at that point in time, [REDACTED] had understood that the B2C Business was profitable. [REDACTED] also wrote to [REDACTED] to say that: [REDACTED]

[REDACTED]

[REDACTED].⁴⁹ As is known to Spreadex (and the CMA now), the B2C Business was in fact operating at a loss.

- 3.51 Spreadex maintains that the ultimate cost of the TSA to the Alternative Bidders would likely have been significantly higher than the £[REDACTED] million quoted to [REDACTED]. Spreadex notes FDJ's explanation that the difference between the TSA costs quoted to Spreadex (£[REDACTED] million including VAT) and [REDACTED] (£[REDACTED] million) related to £[REDACTED] of staff costs who were not to be transferred to Spreadex but would be required to operate the business.

- 3.52 Since neither of the Alternative Bidders had the staff to operate the business, it stands to reason that this £[REDACTED] cost (or a similar cost) would have been faced by the bidders either in the form of TSA costs or in the form of salary costs for the staff they each would have needed.

The period over which the CMA has provisionally assessed a competitor's ability to operate the Sporting Index business as a competitor to Spreadex is unrealistically short.

- 3.53 In response to Spreadex's submissions that the Alternative Bidders would not have been able to operate Sporting Index as a competitor, the CMA has provisionally determined that the time period over which the Merger's impact on competition should be assessed is two years.

48 [REDACTED]

49 [REDACTED]

- 3.54 Spreadex submits that it is irrational for the CMA to adopt such a short period for this assessment. The CMA's reasoning for adopting a two year period is not clear, although it appears to be linked to the duration of the current proceedings.
- 3.55 If one of the Alternative Bidders had acquired Sporting Index rather than Spreadex, considering the CMA's other provisional findings it is almost certainly the case that Sporting Index would still have been operating under a TSA now and would not have recruited all of the staff it needed to run the business. That TSA would more likely than not also have needed to be subsidised to enable Sporting Index to stem the losses faced by the business. In those circumstances, it is irrational to consider such a short period. As a minimum the period should extend beyond the point at which Sporting Index no longer would have needed a TSA, at which point they would have been operating independently without subsidy from the seller.
- 3.56 The CMA has provisionally found that the Alternative Bidders would have encountered significant challenges in operating the B2C Business and notes that they may ultimately have been unsuccessful. However, the CMA provisionally considers that the Alternative Bidders were committed and would have been able to continue running the business for at least two years. If that period was extended to three years, Spreadex is strongly of the view that Sporting Index's survival would have been unlikely. As the [REDACTED] told the CMA, sports spread betting in the UK is a niche product that has declined over the past ten years and Sporting Index's financials showed diminishing returns.
- 3.57 For all of these reasons, Spreadex submits that in the counterfactual scenario, it is more likely than not that Sporting Index would not have been sold to an Alternative Bidder and it would have been closed down, or if it had been sold, it would not have survived.

4. HORIZONTAL UNILATERAL EFFECTS

- 4.1 As regards horizontal unilateral effects, the CMA has provisionally concluded that the Parties were each other's closest competitors and that in the absence of sufficient alternative competitive constraints, the Merger raises competition concerns in the supply of licensed online sports spread betting services in the UK, with resulting adverse effects in terms of one or more of worse range, user experience and prices than would otherwise have been, or be, the case absent the Merger.⁵⁰
- 4.2 Spreadex disagrees with the CMA's provisional findings in this respect. First, Spreadex stands by its previous submissions⁵¹ to the CMA in respect of the CMA's competitive assessment of the Merger. In particular, Spreadex stands by its previous submissions to the CMA in respect of the constraint imposed by the wider fixed odds market, which Spreadex sees as its principal competition (and did so pre-Merger).
- 4.3 Spreadex wishes to make further submissions in respect of the CMA's provisional conclusions on the competitive assessment of the Merger as outlined below, namely that:
- 4.3.1 The CMA has failed to take into account the declining nature of the spread betting services and its competitive constraint on Spreadex's behaviour post-Merger; and
- 4.3.2 The CMA's provisional findings fail to properly consider the important constraint of unlicensed sports spread betting providers (i.e. the "grey market") on Spreadex's behaviour post-Merger.
- 4.4 **The constraint imposed by the nature of the sports spread betting segment**
- 4.5 The CMA has rejected Spreadex's submission that it is constrained by the shrinking nature of the sports spread betting segment, based on its observation that licensed sports spread betting has grown in size in revenue terms over the years.⁵² This inference fails to take account of the evidence the CMA has received from multiple third parties regarding the

⁵⁰ Remittal PFs, paragraph 6.164.

⁵¹ Spreadex's Response to the PFs dated 30 August 2024, Section 4 and Annex 1, Spreadex Submission on Competitive Assessment dated 14 April 2025 and Spreadex's Supplemental Submission Competitive Assessment dated 28 April 2025.

⁵² Remittal PFs, paragraph 6.160.

challenge of the sports spread betting sector including the [REDACTED], which is consistent with the evidence that Spreadex has provided to the CMA.

4.6 In addition to the third party evidence previously disclosed by the CMA, it is noted that:

4.6.1 [REDACTED]

4.6.2 [REDACTED]

4.7 This evidence further supports Spreadex's previous submissions that it ultimately has no choice other than to ensure its offer is not worsened for customers in light of increasing regulatory headwinds.⁵⁵

4.8 **The constraint imposed by the unlicensed grey betting market**

4.9 In Spreadex's submission on the competitive assessment⁵⁶, Spreadex provided ample evidence (from third party sources as well as the CMA's customer questionnaire) of the rapid growth of unlicensed betting in the UK.

4.10 In its provisional findings, the CMA has considered the supply of unlicensed sports spread betting in its assessment of the relevant market definition, where it has determined that unlicensed sports spread betting providers do not form part of the relevant product market, on the grounds that they were not referred to in the original customer complaints about the Merger and the Financial Services and Markets Act 2000 prohibits unlicensed sports spread betting providers from actively soliciting customers in the UK.⁵⁷ On that same basis, the CMA provisionally concludes that such providers do not act as a material competitive constraint on Spreadex.⁵⁸

4.11 Spreadex notes that the CMA has not fully investigated this evidence. In particular, it has not asked any further questions of customers, competitors or other interested third parties about their experience of the impact of unlicensed operators in practice. This is a live topic within the industry which has received a lot of media coverage and it should have been explored further by the CMA.

4.12 The evidence of [REDACTED] which Spreadex previously provided to the CMA⁵⁹, is a very clear example of the pressure faced by Spreadex and Sporting Index, as a result of the growth of unlicensed providers. This also demonstrates that the prohibition of the active solicitation of sports spread betting customers does not deter unlicensed operators from soliciting customers in the UK.

4.13 The CMA has considered further the impact of unlicensed operators as potential entrants to the market (in chapter 7 of the Remittal PFs). However, Spreadex does not consider entry to licensed market from such providers to be likely. The burdens faced by licensed operators are considerable and increasing and more and more customers are being diverted to the grey market. As Spreadex noted, around [REDACTED] of the Parties' customers who responded to the CMA's questionnaire [REDACTED].⁶⁰ There is therefore little incentive for such providers to register with the FCA and become

53 [REDACTED]

54 [REDACTED]

55 Spreadex's Submission on Competitive Assessment dated 14 April 2025, paragraph 3.32.

56 Spreadex's Submission on Competitive Assessment dated 14 April 2025.

57 Remittal PFs, paragraph 6.60.

58 Remittal PFs, paragraph 6.162.

59 Spreadex's Supplemental Submission Competitive Assessment dated 28 April 2025.

60 Spreadex's Supplemental Submission Competitive Assessment dated 28 April 2025, paragraph 3.53.

licensed operators since they have a foothold and obtaining a licence would place additional burdens on them. There is also a real prospect of potential [REDACTED], as outlined at paragraph 2.8 above.

- 4.14 The threat from unlicensed operators is one that causes Spreadex's senior management serious concern and the CMA should have taken proper steps to ask third parties about to verify it.

5. OVERALL PROPORTIONALITY OF THE CMA'S PROVISIONAL FINDINGS

- 5.1 Finally, Spreadex questions the overall proportionality of the CMA's provisional findings. In the context of a very small segment of the sports betting market (with a very small number of customers), which has been in decline (as evidenced by Spreadex and most other parties), the CMA has provisionally found that absent Spreadex's bid, one of the Alternative Bidders would have acquired Sporting Index instead, but would potentially only have been able to operate it as a competitor for two years, during which period it would have been wholly reliant on a TSA from Sporting Group to be able to operate the business.
- 5.2 In the context where the likely remedy for the Merger will require a substantial investment of Spreadex's own resources to establish a competitor that may itself only be able to be operate in competition with Spreadex for two years, the CMA's provisional findings are not proportionate or rational.

Annex 1

Spreadex note explaining the recent decline in the sports spread betting market

Sports spread betting is a form of contract for difference, which in turn is a [designated investment](#), regulated by the FCA. Contracts for difference are sub-divided into four categories by the FCA as below.

(k) *contract for differences* (article 85); for the purposes of the *permission* regime, this is sub-divided into:

- (i) *contract for differences* (excluding a *spread bet* and a *rolling spot forex contract*);
- (ii) *spread bet*;
- (iii) *rolling spot forex contract*;
- (iv) *binary bet*;

The CMA has provisionally found that the sports spread betting market has been growing in recent years based on the data below, which Spreadex shared with the CMA at their request via a request for information.



