

ACQUISITION BY BOTTOMLINE TECHNOLOGIES LIMITED OF CERTAIN ASSETS OF EXPERIAN LIMITED

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that Bottomline Technologies Limited and certain assets of Experian Limited (**Experian Payments Gateway business**) have ceased to be distinct;
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (UK);
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Bottomline Technologies (de), Inc (**Bottomline**) and Bottomline Technologies Limited (**Bottomline UK**) (Order).

Commencement, application and scope

1. This Order commences on the commencement date: 22 May 2019.
2. This Order applies to Bottomline and Bottomline UK.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Bottomline or Bottomline UK to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Bottomline and Experian Payments Gateway businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Bottomline and Bottomline UK shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Experian Payments Gateway business with the Bottomline business;
 - (b) transfer the ownership or control of the Experian Payments Gateway business or the Bottomline business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Experian Payments Gateway business or the Bottomline business to compete independently in any of the markets affected by the transaction.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, Bottomline and Bottomline UK shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Experian Payments Gateway business is carried on separately from the Bottomline business and the business's separate sales or brand identity is maintained;
 - (b) the Experian Payments Gateway business and the Bottomline business are maintained as a going concern and sufficient resources are made available for the development of the Experian Payments Gateway business and the Bottomline business, on the basis of their respective pre-merger business plans;

- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Experian Payments Gateway business or the Bottomline business;
- (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Experian Payments Gateway business and the Bottomline business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Experian Payments Gateway business or the Bottomline business are disposed of; and
 - (iii) no interest in the assets of the Experian Payments Gateway business or the Bottomline business is created or disposed of;
- (f) there is no integration of the information technology of the Experian Payments Gateway or Bottomline businesses, and the software and hardware platforms of the Experian Payments Gateway business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Experian Payments Gateway business will be carried out by the Experian Payments Gateway business alone and for the avoidance of doubt the Bottomline business will not negotiate on behalf of the Experian Payments Gateway business (and vice versa) or enter into any joint agreements with the Experian Payments Gateway business (and vice versa);
- (h) all existing contracts of the Experian Payments Gateway business and the Bottomline business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Experian Payments Gateway business or Bottomline business;

- (j) no key staff are transferred between the Experian Payments Gateway business and the Bottomline business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Experian Payments Gateway business and the Bottomline business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Experian Payments Gateway business (or any of its employees, directors, agents or affiliates) to the Bottomline business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

6. Bottomline and Bottomline UK shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
7. Bottomline and Bottomline UK shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Bottomline and Bottomline UK and their subsidiaries with this Order. In particular, on 5 June 2019, and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Bottomline and Bottomline UK or other persons of Bottomline and Bottomline UK as agreed with the CMA shall, on behalf of Bottomline and Bottomline UK, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
8. At all times, Bottomline and Bottomline UK shall, or shall procure that Experian Payments Gateway shall, actively keep the CMA informed of any material developments relating to the Experian Payments Gateway business or the Bottomline business, which includes but is not limited to:

- (a) details of key staff who leave or join the Experian Payments Gateway business or the Bottomline business;
 - (b) any interruption of the Experian Payments Gateway or Bottomline business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Experian Payments Gateway or Bottomline business including any substantial changes in customers' demand; and
 - (d) substantial changes in the Experian Payments Gateway or Bottomline business's contractual arrangements or relationships with key suppliers.
9. If Bottomline or Bottomline UK has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Bottomline and/or Bottomline UK may be directed to appoint under paragraph 10.
10. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
11. Bottomline and Bottomline UK shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

13. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to

time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

'Bottomline' means Bottomline Technologies (de), Inc (principal executives offices 325 Corporate Drive, Portsmouth, New Hampshire, NH 03801, United States);

'the Bottomline business' means the business of Bottomline Technologies (de), Inc and its subsidiaries (including Bottomline UK), but excluding the Experian Payments Gateway business carried on as at the commencement date;

'Bottomline UK' means Bottomline Technologies Limited (company number 08098450);

'the Bottomline UK business' means the business of Bottomline Technologies Limited and its subsidiaries but excluding the Experian Payments Gateway business, carried on as at the commencement date;

'business' has the meaning given by section 129(1) and (3) of the Act;

'commencement date' means 22 May 2019;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

'Experian Payments Gateway business' means the business and assets of Experian Limited (company number 00653331) that were the subject of the transaction as at the commencement date;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

'the ordinary course of business' means matters connected to the day-to-day supply of goods and/or services by Experian Payments Gateway business or Bottomline / Bottomline UK and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Experian Payments Gateway business and Bottomline / Bottomline UK;

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the transaction' means the transaction by which Bottomline UK and Experian Payments Gateway business have ceased to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the Bottomline business and the Experian Payments Gateway business;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Susan Zhuang, Assistant Director, Mergers

Compliance statement for Bottomline / Bottomline UK

I *[insert name]* confirm on behalf of Bottomline / Bottomline UK that:

Compliance in the Relevant Period

1. In the period from *[insert date]* to *[insert date]* (the Relevant Period):
 - (a) Bottomline / Bottomline UK has complied with the Order made by the CMA in relation to the transaction on 22 May 2019 (the Order).
 - (b) Bottomline / Bottomline UK's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Bottomline / Bottomline UK that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Experian Payments Gateway business with the Bottomline business;
 - (ii) transfer the ownership or control of the Bottomline business or the Experian Payments Gateway business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Experian Payments Gateway business or the Bottomline business to compete independently in any of the markets affected by the transaction.
 - (b) The Experian Payments Gateway business has been carried on separately from the Bottomline business and the Experian Electronic Payments Gateway business's separate sales or brand identity has been maintained.
 - (c) The Experian Payments Gateway business and the Bottomline business have been maintained as a going concern and sufficient resources have been made available for the development of the Experian Payments Gateway business and the Bottomline business, on the basis of their respective pre-merger business plans.

- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Experian Payments Gateway business or the Bottomline business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Experian Payments Gateway business and the Bottomline business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Experian Payments Gateway business and the Bottomline business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Experian Payments Gateway business or the Bottomline business have been disposed of; and
 - (iii) no interest in the assets of the Experian Payments Gateway business or the Bottomline business has been created or disposed of.
- (g) There has been no integration of the information technology of the Experian Payments Gateway or Bottomline businesses, and the software and hardware platforms of the Experian Payments Gateway business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Experian Payments Gateway business have been carried out by the Experian Payments Gateway business alone and, for the avoidance of doubt, the Bottomline business has not negotiated on behalf of the Experian Payments Gateway business (and vice versa) or entered into any joint agreements with the Experian Payments Gateway business (and vice versa).
- (i) All existing contracts of the Experian Payments Gateway business and the Bottomline business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Experian Payments Gateway business or the Bottomline business.

- (k) No key staff have been transferred between the Experian Payments Gateway business and the Bottomline business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Experian Payments Gateway business and the Bottomline business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Experian Payments Gateway business (or any of its employees, directors, agents or affiliates) to the Bottomline business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
 - (i) key staff that have left or joined the Experian Payments Gateway business or the Bottomline Technologies (de), Inc business;
 - (ii) interruptions of the Experian Payments Gateway business or the Bottomline business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Experian Payments Gateway business or the Bottomline business; or
 - (iv) substantial changes in the Experian or Bottomline business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Bottomline / Bottomline UK and its subsidiaries remain in full compliance with the Order and will, or will procure that Experian Payments Gateway business, continue actively to keep the CMA informed of any material developments relating to the Experian Payments Gateway business or the Bottomline business in accordance with paragraph 8 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

5. It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)

6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF BOTTOMLINE / BOTTOMLINE UK

Signature

Name

Title

Date