

**ACQUISITION BY BOTTOMLINE TECHNOLOGIES (DE), INC OF
EXPERIAN LIMITED'S EXPERIAN PAYMENTS GATEWAY
BUSINESS AND RELATED ASSETS**

**Directions issued on 7 June 2019 pursuant to paragraph 10 of the
Initial Enforcement Order imposed by the Competition and Markets
Authority on Bottomline Technologies (de), Inc and Bottomline
Technologies Limited on 22 May 2019**

On 6 March 2019, Bottomline Technologies (de), Inc (**Bottomline**), through its subsidiary, Bottomline Technologies Limited (**Bottomline UK**), completed the acquisition of certain assets of Experian Limited (the **Transaction**).

The Competition and Markets Authority (**CMA**) became aware of material facts relating to the Transaction on 15 May 2019. On 22 May 2019, the CMA made an Initial Enforcement Order (the **Order**) addressed to Bottomline and Bottomline UK in accordance with section 72(2) of the Enterprise Act 2002 to prevent pre-emptive action. The Order is still in force.

The CMA now issues written directions under paragraph 10 of the Order that, for the purpose of securing compliance with the Order, Bottomline and Bottomline UK must appoint a monitoring trustee in accordance with the terms provided for in this Annex and must comply with the obligations set out in the Annex.

Susan Zhuang
Assistant Director, Mergers
Competition and Markets Authority
7 June 2019

Annex

Directions to appoint a monitoring trustee

Interpretation

1. In these Directions:

'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 affiliates (including Bottomline UK), but excluding the Experian Payments Gateway business carried on as at 22 May 2019, the commencement date of the Order;

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

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

'CMA' means the Competition and Markets Authority;

'Derogations' means any derogations granted whether before or after the appointment of the MT by the CMA by which Bottomline or Bottomline UK may undertake certain actions that derogate from the Order;

'Experian Payments Gateway business' means the business and assets of Experian Limited (company number 00653331) that were the subject of the transaction as at 22 May 2019, the commencement date of Order;

'MT' means the monitoring trustee appointed in accordance with paragraphs 2 to 4 below;

'Order' means the initial enforcement order made by the CMA on 22 May 2019 and addressed to Bottomline and Bottomline UK;

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

Terms and expressions defined in the Order have the same meaning in these directions, unless the context requires otherwise.

Appointment

2. Bottomline and Bottomline UK must appoint a MT in order to ensure compliance with the Order, in particular to:
 - a. monitor and report to the CMA on compliance by Bottomline and Bottomline UK with the Order; and
 - b. support the CMA taking any remedial action which may be required to maintain the Experian Payments Gateway business as a going concern.
3. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
4. Bottomline and Bottomline UK must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Bottomline and Bottomline UK business as set out in these directions.

General

5. The MT must possess appropriate qualifications and experience to carry out his or her functions.
6. The MT must neither have, nor become exposed to, a conflict of interest that impairs his or her objectivity and independence in discharging his or her duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
7. Bottomline and Bottomline UK shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.
8. Bottomline and Bottomline UK must appoint the MT as soon as is reasonably practicable and in any event by **17 June 2019** and the MT will continue to act either until the CMA reaches a decision to clear the Merger or until the CMA directs that the MT is no longer required.
9. The appointment of a MT by Bottomline and Bottomline UK is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
 - a. the name of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable and in any event by **12 June 2019**;

- b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **12 June 2019**; and
- c. once the MT has been approved by the CMA and appointed, Bottomline and Bottomline UK must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

10. The functions of the MT will be to:

- a. ascertain and report to the CMA in relation to the current level of compliance by Bottomline and Bottomline UK and their subsidiaries with the Order;
- b. assess and report to the CMA in relation to the arrangements made by Bottomline and Bottomline UK for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
- c. identify and supervise if necessary the arrangements made by Bottomline and Bottomline UK for ensuring compliance with the Order;
- d. monitor compliance by Bottomline and Bottomline UK and their subsidiaries with the Order; and
- e. without prejudice to the right of Bottomline and Bottomline UK to contact the CMA, respond to any questions which Bottomline and Bottomline UK may have in relation to compliance with the Order, in consultation with the CMA.

11. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Bottomline business and Experian Payments Gateway business, such as written and electronic communications, telephone conversations and meetings as may be required.

12. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by with the Order.

Obligations of Bottomline and Bottomline UK

13. Bottomline, Bottomline UK, their affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:

- a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Bottomline business and the Experian Payments Gateway business as the MT may reasonably require; and
 - b. the provision of such office and supporting facilities as the MT may reasonably require.
14. If the Bottomline business or the Experian Payments Gateway business are in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification.
15. If Bottomline and/or Bottomline UK has any reason to suspect that the Order may have been breached, it must notify the MT and the CMA immediately.

Reporting functions

16. The MT is required to provide an initial report to the CMA no later than on **8 July 2019**, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:
- a. details of the current extent of compliance with the Order;
 - b. a description of the current arrangements made for the operation of the Experian Payments Gateway business and for the preservation of the assets required to operate the Experian Payments Gateway business; and
 - c. recommendations as to what changes to those arrangements, if any, are necessary, particularly whether a hold separate manager should be hired to manage the Experian Payments Gateway business.
17. In addition to providing the initial report referred to in paragraph 16 above, the MT must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in his or her view, Bottomline and Bottomline UK and their subsidiaries have complied with the Order. At the same time, the MT must provide the CMA with a report setting out the following:
- a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:
 - i. anything has caused him or her to be concerned as to whether Bottomline and Bottomline UK and their subsidiaries have complied with the Order, and if it has, whether those concerns have been resolved and why;
 - ii. he or she has any remaining doubts or uncertainties as to whether Bottomline and Bottomline UK and their subsidiaries have complied with the Order; and

- iii. anything that causes him or her to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
 - b. details of the performance of the Experian Payments Gateway business, including any factors that might indicate asset deterioration;
 - c. whether appropriate steps are being taken to maintain the Experian Payments Gateway business as a going concern;
 - d. the extent to which Bottomline and Bottomline UK and their subsidiaries have cooperated with the MT in his or her task of monitoring its compliance with the Order and details of any aspects of the cooperation of Bottomline and Bottomline UK that he or she considers could be improved;
 - e. the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of Bottomline and Bottomline UK and their subsidiaries with the Order and if there is anything that the MT considers would assist him or her in monitoring compliance;
 - f. any current or anticipated requests for consent to vary the Order; and
 - g. the information he or she used to compile the report.
- 18. When providing reports to the CMA, the MT must ensure that he or she does not disclose any information or documents to the CMA which Bottomline and Bottomline UK would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Bottomline and Bottomline UK to produce any information or documents to the MT which are privileged.
- 19. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Order has been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 18 above).
- 20. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 16 and 17) are confidential and should not be disclosed to Bottomline, Bottomline UK or to Experian Payments Gateway business, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.