

Completed acquisition by Bottomline Technologies (DE), Inc. of certain assets of Experian Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6830/19

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. On 6 March 2019, Bottomline Technologies (DE), Inc. (**Bottomline**) acquired Experian Limited's (**Experian**) Experian Payments Gateway business (**EPG**) (the **Merger**). Bottomline and EPG are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Bottomline and EPG is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger within the statutory four-month period (as extended); and that the share of supply test is met. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply of payments software for (i) Bankers' Automated Clearance Systemⁱ (**Bacs**) submissions via Bacstel-IP in the UK; and (ii) Faster Payments Service (**FPS**) Direct Corporate Access (**DCA**) submissions via Secure-IP in the UK. The CMA has not received sufficient evidence that would merit widening the relevant frames of reference to include other payment channels and/or payment types. The CMA therefore has assessed the impact of the Merger on these two frames of reference.
4. Evidence obtained during the CMA's investigation indicates that the Merger will strengthen Bottomline's position as the largest supplier on both frames of reference and that the competitive constraint from alternative providers will be limited. The CMA considers that the Merger will affect customers of all sizes;

however, it believes that larger customers and bureaux will be particularly impacted.

5. The CMA notes that the competitive interaction between the Parties has lessened in recent years. However, the CMA believes there is a realistic prospect of a more competitive counterfactual situation than either the pre-merger conditions or the sale of EPG to Bottomline. Under this counterfactual the CMA considers that EPG could have been sold to an alternate purchaser that does not give rise to competition concerns and that could compete for new business and develop the EPG product going forward. The CMA considers that the sale to this alternate purchaser could have made the EPG business more competitive than under Experian's previous ownership and result in a more competitive situation than the sale to Bottomline.
6. The CMA has not found any evidence of entry or expansion from alternative providers that may sufficiently constrain Bottomline post-Merger.
7. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in: (i) the supply of payments software for Bacs submissions via Bacstel-IP in the UK; and (ii) the supply of payments software for FPS DCA submissions via Secure-IP in the UK.
8. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). Bottomline has until 14 October 2019 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

9. Bottomline, through Bottomline Technologies Limited, supplies software that allows UK customers to submit payments.¹ The supply of payments software (and related services) to customers in the UK is the only area of overlap with EPG. The payments software supplied by Bottomline includes approved software to allow UK customers to make submissions to (i) the Bacs

¹ Bottomline is organised into the following divisions in the UK: [redacted] Bottomline's payments software is supplied to UK customers via Bottomline UK's [redacted]. Bottomline UK's [redacted] also provides several other services, including Direct Debit management and automation, payment bureaux services and cloud-based payment solutions (hosted solutions), as well as additional value-add payment solutions such as error and potential fraud detection, bank account validation and identify verification.

payments system via Bacstel-IP and (ii) FPS via DCA.² Bottomline supplies both deployed (ie on-premises) and hosted (ie cloud-based) payments software. Approximately [the majority] of Bottomline's payments software customers use its hosted 'PT-X' solution. Bottomline's global revenue in its 2018 financial year was \$394m (approximately £353m). Bottomline's UK revenue from Bacs and FPS submissions was approximately £[~~3~~] in its 2018 financial year.

10. Experian acquired Eiger Systems, a company focussed on payments submissions and data validation, in 2006. Experian subsequently rebranded Eiger Systems to EPG in 2008 to focus on payment submissions. EPG is active in the supply of software that enables businesses to make direct submissions to Bacs via Bacstel-IP and/or FPS via DCA and related services. EPG currently provides payment submission software to approximately [~~3~~] customers – comprised mostly of customers submitting large volumes of transactions. EPG's software is deployed and the company does not offer hosted solutions to customers. EPG's revenues from Bacs and FPS submissions was approximately £[~~3~~] in its 2018 financial year.

Transaction

11. The Merger relates to the purchase by Bottomline of certain assets comprising the EPG business. The CMA understands that the assets comprising the EPG business are software products (Experian Payments Gateway (EPG) Software; EPG Licence Key Generator Tool; EPGv2 (payments submission software)³; and EPG Data Manager Application) and intellectual property; freehold property; commercial contracts; goodwill; know how; employees (comprising technical, operational and administrative staff) and customer lists.

Procedure

12. The CMA's mergers intelligence function identified this transaction as warranting an investigation.⁴
13. The Merger was considered at a Case Review Meeting.⁵

² The differences between Bacs and FPS DCA, as relevant to the CMA's assessment, are discussed below at paragraph 80.

³ The CMA understands that this is a legacy component of EPG's software suite and is used only by [~~3~~].

⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60 (the **Guidance**).

⁵ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

Jurisdiction

14. In the context of a completed transaction, a relevant merger situation is created where two or more enterprises have ceased to be distinct within the statutory period for reference and either the share of supply test or the turnover test set out in the Act is satisfied.⁶

Enterprises

15. The Act defines 'enterprise' as the 'activities, or part of the activities, of a business'. 'Business' 'includes 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'.⁷
16. The Guidance provides information on the factors that the CMA considers in determining whether an 'enterprise' has been transferred.⁸
17. The CMA believes that the transfer of assets that form EPG as set out in paragraph 11 above, including goodwill, customer lists and staff, constitute an 'enterprise' for these purposes, and that Bottomline is an enterprise.

Ceasing to be distinct

18. EPG is now under the sole control of Bottomline as a result of the Merger. Bottomline has therefore acquired a controlling interest in EPG under section 26 of the Act.
19. Accordingly, the CMA believes that, as a result of the Merger, the enterprises of Bottomline and EPG have ceased to be distinct.

Statutory period for reference

Legal framework

20. Under section 24 of the Act, a completed merger must have taken place not more than four months before the CMA takes its decision on reference, unless the merger took place without notice of material facts being given to the CMA or material facts being made public.

⁶ Section 23 of the Act.

⁷ Section 129(1) and (3) of the Act.

⁸ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraph 4.8.

Material facts

21. 'Material facts' comprise the necessary facts that are relevant to the determination of the CMA's jurisdiction. As per the Guidance, this includes information on the identity of the parties and whether the transaction remains anticipated (including the status of any conditions precedent to completion) or has completed.⁹
22. In *Lebedev v DCMS*,¹⁰ the CAT stated in relation to material facts that 'save in exceptional circumstances, the information should include facts which provide a reasonable basis for considering that there is or may be a 'merger' for the purpose of the Act, i.e. a situation where two enterprises cease to be distinct'.¹¹ The publication of a newspaper article in that case was not sufficient to constitute making public sufficient material facts to engage section 24 of the Act 'since it did not disclose the basic factual foundation for considering that, in these transactions, two enterprises might cease to be distinct'.¹²

Made public

23. The UK operates a voluntary merger regime and, consequently, there is no obligation on parties to notify a transaction to the CMA.¹³ However, where notice of material facts is not given to the CMA, the statutory four-month clock will only start running from the time material facts about a transaction are 'made public', such that they are generally known or readily ascertainable.¹⁴
24. The Explanatory Notes to the Act in relation to section 24 state, amongst other things, that '[t]he intention is that [the CMA] would reasonably be expected to have known or found out about the merger if it has not been notified about it'.¹⁵
25. As per the Guidance, where the parties do not notify the CMA, but 'make public' material facts about the transaction such that they are generally known

⁹ *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraph 4.44.

¹⁰ *Lebedev Holdings Limited and Independent Digital News and Media Limited v DCMS* [2019] CAT 21 (*Lebedev*).

¹¹ *Lebedev*, paragraph 64.

¹² *Lebedev*, paragraph 68.

¹³ However, the *Lebedev* case at paragraph 69 also makes clear that businesses can remove uncertainty in relation to when the statutory time period begins to run by voluntarily notifying the CMA. At paragraph 69 of *Lebedev*, the CAT noted that, in that case, having not notified the CMA and '[h]aving chosen not to disclose any facts, it should be no surprise to the Applicants that sufficient 'material facts' were not made public to start the statutory time period'.

¹⁴ Section 24 of the Act.

¹⁵ Paragraph 107 of the *Explanatory Notes* to the Act, which refers to the OFT (one of the predecessor organisations to the CMA).

or reasonably ascertainable, the CMA interprets this as meaning that such information could readily be ascertained by the CMA acting reasonably and diligently in accordance with its statutory functions.¹⁶ In practical terms, the CMA would consider that an acquiring party would normally be said to have ‘made public’ material facts where those facts had been publicised in the national or relevant trade press in the UK and where the acquiring party had itself taken steps to ‘publicise the transaction at large, normally by publishing and prominently displaying on its own website a press release about the transaction’.¹⁷

26. Previous decisions by the CMA and its predecessor the OFT have considered that:
 - (a) publication in a newspaper with regional circulation is insufficient for a merger to have been ‘so publicised as to be generally known or readily ascertainable’;¹⁸ and
 - (b) informing a target company’s customers about a merger is insufficient for a merger to be necessarily regarded as having been ‘so publicised as to be generally known or readily ascertainable’.¹⁹

Factual background

27. The Parties completed the Merger on 6 March 2019.
28. On 7 and 8 March 2019, EPG customers were contacted by Experian and Bottomline about the Merger.
29. On 8 March 2019, Bottomline submitted a public filing to the United States Securities and Exchange Commission regarding the Merger (the **8-k Filing**).
30. Between 8 and 11 March 2019, specialist newswire services MarketScreener.com, S&P Global Market Intelligence and Streetinsider.com reported on the Merger.
31. Between 7 March 2019 and 15 May 2019, Bottomline introduced an additional page to its website with information regarding the EPG business and Experian

¹⁶ *Mergers: Guidance on the CMA’s jurisdiction and procedure* (CMA2), January 2014, paragraph 4.44.

¹⁷ *Mergers: Guidance on the CMA’s jurisdiction and procedure* (CMA2), January 2014, paragraph 4.44.

¹⁸ Completed acquisition by Genus plc of Local Breeders Limited (ME/3608/08), OFT decision of 14 May 2008, paragraph 9 (**Genus/Local Breeders**). The OFT also noted at paragraph 4 in *Genus/Local Breeders* that no mention was made of the transaction on the acquirer’s corporate website.

¹⁹ See *Genus/Local Breeders* and also Completed acquisition by Noble Egg Innovations Unlimited of certain assets of Manton and Manton (2) Limited (ME/6438-14), CMA decision of 19 August 2014.

updated the EPG page of its website stating that the business had been sold to Bottomline.²⁰

32. On 14 March 2019, the Bacs approved software suppliers page on Bacs' website was updated.
33. On 15 May 2019, the CMA was made aware of the Merger by a third party. The CMA subsequently wrote to Bottomline requesting details of the Merger on 17 May 2019.

Bottomline's submissions

34. Bottomline submitted that the Act does not require facts to be known by the CMA or readily ascertainable by the CMA, and that material facts being made available to persons active in the market should be sufficient to make material facts public.
35. Bottomline further submitted that material facts can be made public other than via issuing a press release and/or through publication in the national or relevant trade press. In this regard, Bottomline submitted that: (i) the Guidance does not override statute; (ii) there is no reference to 'press release' in the relevant sections of the Act, its Explanatory Notes, or Hansard as the Enterprise Bill passed through Parliament; and (iii) the Act does not require an acquiring party to publicise a transaction in the national or relevant trade press in order for the four-month statutory period to start running.
36. Finally, Bottomline submitted that the announcements listed in paragraphs 28 to 33 above, assessed in the round, mean that material facts about the Merger were made public by 15 March 2019 at the latest.

CMA assessment on statutory period for reference

37. The CMA considers that the announcements set out in paragraphs 28 to 33 above were, neither individually or collectively, sufficient for material facts about the Merger to have been made public (that is, 'so publicised as to be generally known or readily ascertainable') prior to 15 May 2019. In making this assessment, the CMA considers that:
 - (a) as set out in the Explanatory Notes to the Act and the Guidance, whether material facts have been made public should be assessed from the perspective of the CMA, acting reasonably and diligently in the context of

²⁰ Bottomline submitted that these changes were made on Bottomline's and Experian's websites from 7 March 2019. However, it said that screenshot evidence showing the precise date of the changes could not be provided.

its duties under the Act. Therefore, it is not sufficient that material facts are made available to persons active in the market for material facts to be made public;

- (b) the Guidance is consistent with the Act and the Explanatory Notes and is intended to assist companies and their advisers on the procedures used by the CMA in operating the merger control regime set out in the Act.²¹ In particular, the Guidance sets out the circumstances when the CMA would consider that an acquiring party would normally be said to have made public material facts;
- (c) the fact that a target company's customers have been informed about the Merger is insufficient for material facts to necessarily be regarded as having been made public;²²
- (d) in relation to the 8-k Filing, the CMA cannot reasonably be expected to monitor company reports within foreign securities market regulators' websites;
- (e) the newswires which reported the Merger were websites specialised in providing market intelligence aimed at a professional audience and not primarily aimed at the UK market. The CMA therefore believes that these newswires are not national or relevant trade press in the UK as contemplated by the Guidance,²³ and that the CMA cannot reasonably be expected to monitor these newswires;
- (f) neither Bottomline nor Experian published press releases or prominently displayed information about the Merger on the homepages of their websites which may have attracted the attention of the national or trade press in the UK. The CMA cannot reasonably be expected to monitor pages within a business's websites for evidence of transactions; and
- (g) the Bacs webpage is a specialised website which it cannot be reasonable to expect the CMA to monitor for evidence of transactions.

38. Whilst the CMA accepts Bottomline's submission that it was under no obligation to publicise the transaction (including by issuing a press release), the Act is clear that – in choosing not to publicise a merger – acquirers may effectively be delaying the start of the four-month period until the time at which the transaction is subsequently made public or notified to the CMA.²⁴

²¹ *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 1.1 and 4.44.

²² See further the OFT's assessment of informing customers in *Genus/Local Breeders*.

²³ *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraph 4.44.

²⁴ See also *Lebedev*, paragraph 69.

39. In relation to Bottomline's submission regarding the meaning of press release, the CMA refers to its Guidance, which clarifies that the CMA will normally consider an acquiring party to have publicised material facts by 'publishing and prominently displaying on its own website a press release about the transaction'.²⁵ As discussed in paragraph 37 above, this was not done by Bottomline in the present case.
40. On the basis of the considerations outlined above, the CMA believes that, for the purposes of section 24 of the Act, the Merger had not been made public until receipt by the CMA of information from a third party on 15 May 2019. The CMA therefore believes that the four-month deadline for a decision under section 24 of the Act is 15 October 2019, following extension under section 25(2) of the Act.²⁶

Share of supply test

41. The Parties overlap in the supply of the following products to customers in the UK: (i) payments software for Bacs submissions via Bacstel-IP; and (ii) payments software for FPS submissions via DCA.
42. The Parties have a combined share of supply in the UK of:
- (a) payments software for Bacs submissions via Bacstel-IP of [70-80]% by volume of transactions;²⁷ and
 - (b) payments software for FPS DCA submissions via Secure-IP of [50-60]% by volume of transactions.²⁸
43. The CMA therefore believes that the share of supply test in section 23 of the Act is met.²⁹

Conclusion on jurisdiction

44. The CMA believes that it is or may be the case that a relevant merger situation has been created.

²⁵ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraph 4.44.

²⁶ On 17 May 2019, the CMA issued a notice under section 109 of the Act to Bottomline with a deadline to respond to certain questions by 3 June 2019. Bottomline failed to provide the required information and documents by 3 June 2019. Therefore the CMA extended the four-month time period under section 25(2) of the Act on 3 June 2019. Following the CMA being later satisfied that the information and documents were provided, the extension was terminated on 3 July 2019.

²⁷ See further paragraph 121.

²⁸ See further paragraph 204.

²⁹ The CMA notes that the share of supply test also is met using share of Service User Numbers (**SUNs**) or revenues for both Bacs submissions via Bacstel-IP and FPS DCA submissions via Secure-IP.

45. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 12 August 2019 and the statutory 40 working day deadline for a decision is therefore 7 October 2019.

Counterfactual

46. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.³⁰
47. Bottomline submitted to the CMA that the relevant counterfactual is that, absent the sale to Bottomline, Experian either would have: (i) maintained EPG as a declining business with a small number of staff; or (ii) sold EPG to an alternate purchaser that had existing Bacs and/or FPS DCA software expertise.³¹ The CMA has explored both of these counterfactual situations during the course of its investigation.
48. The evidence available to the CMA during the course of its investigation indicates that there is a realistic prospect that, in the counterfactual situation, EPG would have been sold to an alternate purchaser that is not already active in Bacs or FPS software and that this purchaser would have invested in developing the EPG software and competed for new business.
49. In relation to the counterfactual, Bottomline made the following submissions:³²
- (a) Bottomline noted that the UK payments sector is currently subject to a number of regulatory developments which may result in future changes to the Bacs and FPS systems (as described below).³³ Bottomline therefore

³⁰ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

³¹ Bottomline's consolidated response to the CMA's Section 109 Notice dated 17 May 2019 (**Bottomline's Consolidated Response to the First s.109 Notice**), paragraph 54 and Bottomline's subsequent written response to the Issues Paper dated 16 September 2019 (**Bottomline's response to the Issues Paper**). Bottomline's Consolidated Response to the First s.109 Notice initially expressed part (ii) as 'a sale to an alternate purchaser' without reference to existing Bacs and/or FPS DCA software expertise; but at the Issues Meeting and in its response to the Issues Paper it further submitted that in the event that EPG was sold to an alternate purchaser this purchaser would already have "existing Bacs and/or FPS DCA software expertise".

³² Issues Paper dated 10 September 2019; Bottomline's response to the Issues Paper.

³³ Bottomline's response to the Issues Paper, paragraph 22.

considers that the deployed technology used by the EPG business will be obsolete in just over two years and therefore needs further investment to future proof the business.

- (b) Bottomline confirmed that it acquired EPG in order to [REDACTED]. Bottomline considers that any current suppliers of Bacs or FPS software would have pursued a similar strategy and that this is not reflected in the CMA's proposed counterfactual.³⁴
- (c) Bottomline submitted that any acquirer of the EPG business would have faced a number of challenges owing to the nature of the EPG business and Experian's sale process.³⁵ These include:
 - (i) Experian's desire to find an acquirer that would not undermine its wider relationships with EPG's customer base;
 - (ii) the terms of the transitional services agreement with Experian, which Bottomline considers would not have provided sufficient support to an alternate purchaser;
 - (iii) the standalone nature of the EPG assets which, Bottomline submitted, requires expertise to allow successful integration; and
 - (iv) the requirement of EPG's customer base to have an experienced supplier of Bacs and FPS software.
- (d) Bottomline submitted that it is not realistic to contend that a purchaser with no background in Bacs or FPS software would have had a viable strategy of gaining new customers or transferring customers from Experian (including renewing existing contracts). Bottomline considers this to be relevant in light of the current context where: (i) Experian had not invested in EPG's product offering; (ii) alternative current Bacs and FPS suppliers have made investments in technology and are competing for new customers; and (iii) the EPG assets include minimal development engineering personnel or infrastructure support.

50. Bottomline therefore submitted that there is no realistic prospect of a counterfactual that is more competitive than the Merger.³⁶

³⁴ Bottomline's response to the Issues Paper, paragraph 23.

³⁵ Bottomline's response to the Issues Paper, paragraph 25.

³⁶ Bottomline's response to the Issues Paper, paragraph 27.

Experian's decision to sell EPG

51. The CMA has reviewed a number of internal documents provided by Experian. These documents indicate that Experian [REDACTED].³⁷ Bottomline submitted that EPG operates legacy deployed software whereas the increasing trend in the industry is for software providers to offer hosted solutions.³⁸ Bottomline submitted that EPG operates legacy deployed software whereas the increasing trend in the industry is for software providers to offer hosted solutions. [REDACTED].³⁹
52. Experian therefore considered a number of strategic options for the EPG business, including: [REDACTED] divesting EPG.⁴⁰ [REDACTED].⁴¹ [REDACTED].⁴² The CMA understands that a decision was therefore taken to divest EPG. This reflected Experian's wider strategy at the time to divest non-core assets.⁴³
53. A third party report prepared for Experian identified [REDACTED] potential acquirers of the EPG business.⁴⁴ These potential acquirers were categorised on the basis of: payment systems providers; existing Bacs/direct debit providers; and other software/business processing providers.⁴⁵ Experian subsequently used this list to identify a priority list of potential bidders. Potential bidders were then divided into two groups: (i) bidders with equivalent software; and (ii) bidders without equivalent software.⁴⁶ Experian's internal documents indicate that the latter group of bidders would need to understand the investments required to modernise the EPG business.⁴⁷ Experian subsequently submitted to the CMA that existing payments capability, such as Bacs and/or FPS, was a consideration when selecting bidders but was not a determining factor.⁴⁸
54. Experian then approached [REDACTED] potential bidders from this priority list.⁴⁹ [REDACTED] of these potentially bidders expressed an interest in acquiring the business before Bottomline ultimately was selected as the winning bidder. Experian has confirmed that Bottomline was selected as the winning bidder on the basis of: (i) headline price offered; (ii) [REDACTED]; and (iii) the fact that Bottomline employees

³⁷ Annex 1.1 of Experian's Response to the CMA's s.109 Notice dated 16 September 2019 (**Experian's s109 Response**), page 4.

³⁸ Bottomline's Consolidated Response to the First s.109 Notice, paragraph 24. This is consistent with the views of third parties contacted during the CMA's market testing.

³⁹ Annex 1.1 of Experian's s109 Response, page 5 and Annex 1.2 of Experian's s109 Response, page 1.

⁴⁰ Annex 1.4 of Experian's s109 Response, pp 4-5.

⁴¹ See for example Annex 1.4 of Experian's s109 Response.

⁴² Annex 1.4 of Experian's s109 Response, page 5.

⁴³ See for example Annex 1.2 of Experian's s109 Response.

⁴⁴ [REDACTED].

⁴⁵ *Ibid.*

⁴⁶ Annex 3.1 of Experian's s109 Response.

⁴⁷ *Ibid.*

⁴⁸ Experian's s109 Response, Question 1.

⁴⁹ Annex 3.1 of Experian's s109 Response, slide 2.

had previous experience of working at EPG and therefore ‘may have the knowledge and skills to offer a seamless service’.⁵⁰

55. Whilst Experian ultimately selected Bottomline as the winning bidder, the evidence available to the CMA indicates that there is a realistic prospect that the EPG business would have been sold to an alternate purchaser, absent the sale to Bottomline.

Alternate purchaser

56. The CMA received evidence from a prospective alternate purchaser of the EPG business that participated in the sales process. This evidence indicates that there is a realistic prospect that: (i) there would be an alternate purchaser which does not give rise to competition concerns; and (ii) that an alternate purchaser would compete for new business and develop the EPG product going forward.
57. The alternate purchaser told the CMA that it does not have any activities that overlap with EPG in relation to Bacs via Bacstel-IP or FPS via DCA submissions.⁵¹ However, the alternate purchaser has confirmed that it has activities in the payments software sector more generally, confirming that it currently supplies software to banks, large financial institutions and large corporates in the UK.⁵² This established presence in the payments sector indicates its credibility as an alternate purchaser and suggests that it may have reputational advantages when seeking to compete for new customers.
58. The CMA also received evidence of this alternate purchaser’s plans to compete for new business and to develop the EPG product going forward. In addition to confirming its intention to compete for new business the alternate purchaser provided an internal document prepared contemporaneously to the bid confirming its plans to develop the EPG business.⁵³ These plans included:
- (a) the continued operation of the EPG business including support for its deployed software product;
 - (b) the intention to develop EPG’s products by offering a hosted solution to customers;

⁵⁰ Experian’s s109 Response, Question 1.

⁵¹ Call with [REDACTED], 11 September 2019.

⁵² *Ibid.*

⁵³ [REDACTED].

- (c) using EPG to compete for new business and increase customer penetration;
- (d) cross-selling activities - including both cross-selling its existing product suite to EPG customers and selling EPG products to its existing customers; and
- (e) investments in EPG products to future-proof for developments such as the NPA.

59. Based on the available evidence, the CMA considers that it is reasonable to conclude that there is a realistic prospect that the EPG business would have been more competitive under the ownership of an alternate purchaser than under Experian's previous ownership (ie the pre-Merger conditions).⁵⁴

Conclusion on the relevant counterfactual

60. The evidence available to the CMA demonstrates Experian's intention to divest the EPG business and, absent the sale to Bottomline, that there is a realistic prospect that EPG would have been sold to an alternate purchaser. Evidence obtained from a potential alternate purchaser involved in the sales process indicates that there is a realistic prospect of a sale to an alternate purchaser that did not raise competition concerns and that this alternate purchaser had plans to make EPG more competitive than under Experian's ownership. This available evidence indicates that an alternate purchaser would not be precluded from competing for new business or developing the EPG product through any lack of existing Bacs and/or FPS expertise. The CMA therefore considers the most relevant counterfactual against which to assess the competitive effects of the Merger is the sale of EPG to an alternate purchaser that does not give rise to competition concerns and would compete for new business and develop the EPG product going forward.

Regulatory developments

61. The CMA also has considered Bottomline's submissions that regulatory developments and market changes are relevant to the counterfactual.

⁵⁴ Whilst the CMA acknowledges that customers may be reluctant to switch to less-established providers (see paragraph 230), given an alternative purchaser would be acquiring a well-established provider of Bacs and FPS and given the evidence the CMA has reviewed regarding the alternate purchaser's plans to compete for new business and develop the EPG product going forward, the CMA considers that an alternate purchaser would not be in the same position as a *de novo* new entrant.

62. The UK payments sector currently is subject to a number of regulatory developments which may result in future changes to the Bacs and FPS systems.⁵⁵ These include the EU's Second Payment Services Directive (**PSD2**), Open Banking, and the New Payments Architecture (**NPA**).⁵⁶ The purpose of such developments is to promote modernisation and transparency within the payments sector which may lead to increased competition from competitors active in alternative payment methods.⁵⁷
63. However, whilst the CMA does not dispute that these developments are taking place, their competitive effect is uncertain and unlikely to be felt in the short-term (as discussed below). The CMA further notes that these developments are taking place independently of the Merger and the purpose of the counterfactual is to establish the situation that would prevail absent the Merger.⁵⁸ The future regulatory and market developments in the payments sector accordingly are considered in the CMA's competitive assessment (where relevant).⁵⁹

Background

Submitting to the Bacs and FPS payments systems

64. Businesses seeking to submit Bacs or FPS payments can do so either by directly submitting to Bacs or FPS using Bacs or FPS approved software (such as that provided by the Parties, so-called 'direct submissions'), by using a payments bureau (so-called 'indirect submissions'), or by using a bank.
65. Businesses seeking to make direct submissions to the Bacs payment system must obtain a Bacs Service User Number (**SUN**) from their bank. Businesses need to meet the bank's criteria to obtain a SUN which typically include, *inter alia*, satisfying requirements around management expertise, financial

⁵⁵ See: <https://www.openbanking.org.uk/wp-content/uploads/OBIE-Regulatory-sandbox-QA-29-04-2019.pdf>.

⁵⁶ Open Banking is a set of requirements imposed on the UK's 9 largest banks by the CMA following its investigation into retail banking which creates software standards and industry guidelines that enable customers and small and medium-sized businesses to share their current account information securely with other third party providers from January 2018. The NPA flows from Open Banking and is intended to introduce new features to UK payments. These include, *inter alia*: faster payment cycles, new file formats for payment processing; and the introduction of a new accredited role for third party service providers into the payments landscape.

⁵⁷ Such alternative payment methods include request to pay (**RTP**) and variable recurring payments (**VRP**). RTP is proposed as an alternative to direct debits that may be introduced alongside the NPA. However, the key difference with direct debit is that, for each payment, the individual payer receives a message from their bank asking them to approve, decline, or defer the payment in near real-time. VRP is another proposed alternative to direct debit that is made possible by the introduction of Open Banking. The key difference between VRP and direct debit is that VRP leverages existing technologies (eg APIs, payment methods, FPS) to make regular payments in a manner analogous to direct debit. It is proposed that this will benefit consumers by providing them with more transparency than current services such as a Continuous Payment Authority or Card on file.

⁵⁸ *Merger Assessment Guidelines*, paragraph 4.3.1.

⁵⁹ *Merger Assessment Guidelines*, paragraph 4.3.2.

reserves, and ability to indemnify a sponsor bank against any payments charged back under the Direct Debit Guarantee.⁶⁰ Third parties explained to the CMA that the relevant criteria required to be issued with a SUN are more likely to be met by larger and more established organisations.⁶¹

66. Businesses making direct submissions may also obtain a Hardware Security Module (**HSM**) certificate from their bank. This allows them to automatically authenticate and validate their payments on an automated basis. Third parties have indicated to the CMA that HSMs are more likely to be required and issued to larger organisations that submit large volumes of Bacs payments because of the additional costs associated.⁶²
67. Businesses wishing to make direct submissions can do so by purchasing the software directly from a Bacs-approved provider or by purchasing the software on a white-label basis from a bank. Banks may offer a software provider's payments software for customers on a 'white-label' basis (rather than offer their own direct submission software). Whilst this software may have the bank's brand it largely mirrors the functionality of an external software provider. The CMA understands that Bottomline currently supplies white-label payments submission software to banks but that EPG does not. The CMA notes that customers electing to purchase payments submission software typically process larger volumes of transactions than users through alternative channels.
68. The process for businesses seeking to make direct submissions to the FPS payment system is the same as that for Bacs. However, the main differences are:
 - (a) only HSBC and Barclays grant SUNs to their business banking customers to allow them to directly submit payments to FPS.
 - (b) There are fewer providers of direct-submitting FPS software. Only six of the eighteen Bacs-approved software suppliers offer FPS functionality with their software.⁶³

⁶⁰ See for example: <https://www.accesspay.com/knowledge-hub/payments/guide-to-bacs-service-user-numbers/>.

⁶¹ Call with [REDACTED], 15 July 2019.

⁶² Call with [REDACTED], 17 July 2019.

⁶³ These six are: Bottomline, EPG, Finastra, AccessPay, CORVID, and Elseware. See: <https://www.bacs.co.uk/Services/Bacsapprovedservices/Pages/ApprovedSoftware.aspx>

69. As with Bacs, businesses can also acquire white-label FPS software from banks; however, we understand that HSBC are the only bank which currently offer this.⁶⁴
70. End-customers can also submit to Bacs and FPS indirectly using a payments bureau.⁶⁵ Payments bureaux use Bacs-approved software to submit payments on behalf of other companies. Bureaux may also provide a broader range of services than simply Bacs payments. For example, some bureaux also provide additional services such as payroll, accounting, or tax services.
71. Indirect submissions using a bureau are particularly likely to be an option for end-customers who cannot obtain a SUN.ⁱⁱ This is because some bureaux, namely FMDD providers, allow businesses to submit Bacs payments without the need to obtain a SUN. Such end-customers typically are smaller in size and accordingly submit lower volumes of transactions to Bacs.
72. Bottomline supplies software both to end-customers (either directly or on a white-label basis via a bank) and also to payments bureaux. Bottomline also operates its own payments bureau. EPG's software is supplied directly to end-customers (although not on a white-label basis via a bank) and also to payments bureaux.
73. The Parties employ different pricing methodologies for their products. For example, for Bottomline's hosted product, the price [REDACTED].⁶⁶
74. EPG provides quotations based on [REDACTED].⁶⁷ [REDACTED].⁶⁸ ⁱⁱⁱ
75. [REDACTED]. Therefore, if the Merger reduces the options available to a group of customers, Bottomline is likely to have the ability to increase prices selectively for those customers without increasing prices for others, and can consequently avoid the risk that those other customers switch away as a result of the price increase. Where such a group of customers exists, an SLC is more likely to arise.
76. Customers can also make submissions to Bacs and FPS via banks. These can be made either using a bank's own online banking platforms or white-label software.

⁶⁴ See Annex 1 of Bottomline's Response to the CMA's follow-up questions of 17 September.

⁶⁵ For the purposes of this Decision, the CMA treats facilities managed direct debit (**FMDD**) providers as a sub-set of bureaux. This is consistent with Bottomline's view of bureaux providers (see Slide 20 of Bottomline's Teach-in presentation dated 12 July 2019).

⁶⁶ Question 12 of Bottomline's Response to the Second s.109 Notice. [REDACTED].

⁶⁷ *Ibid.*

⁶⁸ Question 13 of Bottomline's Response to the Second s.109 Notice.

77. The CMA's market testing and Bottomline's marketing materials indicate that online banking does not offer the same functionality as direct submitting software.⁶⁹ For example, two banks ([X] and [X]) told the CMA that customers can only make direct credit submissions through their online banking platform and it cannot be used to set-up direct debits.

Frame of reference

78. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁷⁰
79. The Parties overlap in the supply of software for submissions to (i) Bacs via Bacstel-IP and (ii) FPS DCA via Secure-IP (and related services) in the UK. The primary function of this software is to enable users to submit bulk submissions to the Bacs or FPS payment systems. Software providers must be approved by Bacs or FPS.

Product scope

Distinction between Bacs and FPS

80. The CMA considers it appropriate to define two separate product frames of reference for (i) Bacs via Bacstel-IP and (ii) FPS DCA via Secure-IP payments software.⁷¹ This is because these two payments systems have inherently different characteristics and distinct software is required for each.^{iv} Bacs payments can take up to three days to clear and payments can only be submitted between 7am and 10.30pm from Monday to Friday. FPS payments via DCA, in contrast, have a shorter processing and confirmation times of 1 hour and the system operates 24 hours a day, 7 days a week. FPS

⁶⁹ See for example PT-X Battlecard included as Annex A.1.3 and document 'BOT00451822.pdf' (submitted in response to Question 6) as part of Bottomline's response to the CMA's Section 109 Notice dated 16 July 2019 (**Bottomline's Response to the Second s.109 Notice**).

⁷⁰ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁷¹ As also reflected in the decision of the Office of Fair Trading (**OFT**) in the [OFT's decision in Anticipated acquisition by Bottomline Technologies \(DE\), Inc of Albany Software Limited Bottomline / Albany \(2012\)](#) (**Bottomline/Albany**), paragraph 23.

transactions are also more costly for businesses to submit compared to Bacs transactions.⁷²

81. Bottomline submitted that FPS DCA currently is only provided by Barclays Bank and, to a lesser extent, HSBC via Secure-IP.⁷³ Bottomline also submitted that customers generally use FPS for different purposes compared to Bacs and that bulk FPS submissions is a very small and niche requirement.⁷⁴ Bottomline considered that the use of FPS DCA via Secure-IP typically has been limited to those organisations (mostly larger corporates) that need a bulk submission capability for Faster Payments where transaction timeliness is important (eg loan disbursement, refunds, exception payments). Bottomline however considers that users of this technology have migrated away to other platforms and that the majority of FPS payments made by businesses are submitted through online banking platforms (ie not FPS DCA).⁷⁵
82. The CMA notes that the Bacs and FPS payment systems are used for different purposes. The majority (68%) of Bacs payments are used for direct debits (eg bill payments) while the remaining 32% are used for direct credits (eg salary payments), while the majority (68%) of all FPS payments are single immediate payments which are one time payments requested by the customer for bill payments, money movement, and other purposes.⁷⁶ This is consistent with the 2012 OFT inquiry into the *Bottomline/Albany* merger which found that FPS payments typically are used for more urgent payments.⁷⁷ Customers of Albany and Bottomline in that inquiry also indicated that FPS is a complement to Bacs rather than a substitute. The CMA has not received any evidence in the current inquiry to indicate otherwise.
83. The CMA has considered whether to segment and/or widen the product frames of reference for (i) supply of payments software for Bacs submissions and (ii) supply of payments software for FPS submissions, as discussed further below.

⁷² Bottomline's Consolidated Response to the First s.109 Notice, paragraph 114.

⁷³ Bottomline's presentation at the Issues Meeting (**Bottomline's Issues Meeting Presentation**). The CMA notes that FPS DCA was developed as the FPS variant of the Bacstel-IP. Corporates and bureaux that wish to submit payments to FPS DCA via Secure-IP must have bank accounts with either HSBC or Barclays.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Bottomline's Consolidated Response to the First s.109 Notice, paragraph 113 and Pay UK's Annual Summary of Payment Statistics 2018: <https://www.wearepay.uk/wp-content/uploads/2019/09/Annual-Summary-of-Payment-Statistics-2018.pdf>.

⁷⁷ *Bottomline/Albany*, paragraph 13.

Supply of payments software for Bacs submissions

84. The OFT previously has considered these product activities in its review of Bottomline's acquisition of Albany in 2012.⁷⁸ In that case, the OFT concluded that there were separate markets for: Bacs software to businesses; Bacs software to bureaux; FPS software to businesses; and FPS software to bureaux.⁷⁹
85. Bottomline submitted that, with respect to Bacs, the Parties overlap in the following areas:⁸⁰
- (a) The supply of software to businesses for direct submissions to Bacs.
 - (b) The supply of software to bureaux to make direct submissions on behalf of their customers.

The supply of Bacs software to businesses and bureaux

86. As described above, businesses seeking to make submissions to Bacs can do so either directly using software (either purchased directly from the supplier or via a 'white-label' product supplied by a bank⁸¹), or indirectly using a payments bureau. The necessary criteria to obtain a SUN mean that it is more likely that large businesses, making a significant number of submissions, will purchase software directly from a software provider. Smaller businesses meanwhile are more likely to use a payments bureau. Given the different ways in which different types of business access Bacs payments software, the CMA has considered the appropriateness of segmenting the frame of reference between the supply of Bacs software to: (i) businesses; and (ii) bureaux.
87. In identifying the relevant product frame of reference, the CMA has particular regard to demand-side factors and therefore to the alternatives available to customers.⁸² The CMA will then define distinct customer frames of reference (in this case, potentially for businesses and bureaux) if the effects of a merger may differ across groups of customers, for example because customers have different preferences or have access to different sets of providers.⁸³

⁷⁸ *Bottomline/Albany*, paragraph 10.

⁷⁹ The CMA has not considered the possibility of distinct frames of reference for white-label software or the operation of payment bureaux due to the lack of overlap between the Parties in these activities.

⁸⁰ Bottomline's Consolidated Response to the First s.109 Notice, paragraph 16.

⁸¹ 'White-label' software is considered further below.

⁸² *Merger Assessment Guidelines*, paragraph 5.2.6.

⁸³ *Merger Assessment Guidelines*, paragraph 5.2.28-5.2.30.

88. The CMA notes that businesses using a bureau do not directly purchase software from a Bacs-approved software provider but that all bureaux themselves must use a Bacs-approved software product, so that bureaux are customers of Bacs-approved software providers.
89. The evidence received by the CMA indicates that:
- (a) Software providers typically supply the same core software to bureaux and direct customers and all customers typically receive the same core offering. Bureaux only require additional code in the software they purchase (ie they purchase an additional module).
 - (b) The CMA notes that the majority of software providers compete for both direct submission customers and bureaux customers. The results of the CMA's market testing indicate that the software providers processing a material volume of Bacs transactions do not specialise in supplying either customer group.
 - (c) Some internal documents submitted by the Parties suggest that they do not segment their customers to a meaningful extent.⁸⁴
 - (d) The CMA's market testing indicates that the Parties and their competitors supply payments software to businesses across a wide spectrum in terms of size and industry.
 - (e) As discussed in the competitive assessment and below, the majority of third party respondents to the CMA's market testing did not view bureaux as a competitive constraint on software providers (such as the Parties). This indicates that direct submission software customers do not generally see bureaux as a demand-side substitute.
90. The evidence therefore indicates that the options available to the businesses and bureaux purchasing Bacs-approved software are substantially the same, as is the software supplied to businesses and bureaux, and both customer groups have broadly the same types of demands from the product.⁸⁵ Further, as discussed below, the evidence does not indicate that the Merger could be expected to have substantially different effects on competition to supply these two groups as the Merger will result in Bottomline strengthening its

⁸⁴ The CMA notes however an internal Bottomline document in which [REDACTED]. This suggests there may be some degree of segmentation based on size of customer. [REDACTED].

⁸⁵ [Merger Assessment Guidelines](#) (paragraph 5.2.28-5.2.30) explain how the CMA will consider defining customer markets where the effects of a merger may differ across customer groups in a way which requires separate analysis, for example because customers have different preferences or have access to different groups of providers.

competitive position in the supply of software to both direct Bacs submissions and bureaux customers.⁸⁶ The CMA consequently considers it appropriate to define a single frame of reference including the supply of software for Bacs submissions to both businesses and bureaux.

Constraint of bureaux on direct submission software

91. Bottomline also submitted that bureaux themselves are a significant competitive constraint on direct submission software for businesses looking to make Bacs submissions. It noted that bureaux account for more than 25% of total Bacs submissions and that approximately 60% of SUNs submit Bacs submissions indirectly via a bureau.⁸⁷ Bottomline therefore submitted that the relevant frame of reference should be widened from direct submission software to incorporate the constraint of bureaux for businesses making Bacs submissions. The CMA notes that certain of Bottomline's internal documents discuss the competitive constraint from bureaux⁸⁸ and this also is reflected in Bottomline's cancellation data (discussed below) which indicates some, albeit low, levels of switching from Bottomline's submission software to bureaux.⁸⁹ However, the CMA also notes the discussion of bureaux in Bottomline's marketing materials which draw clear distinctions between the functionality of bureaux and direct submission software, including: (i) the fact that bureaux support only indirect submissions; (ii) lack of scalability; (iii) often single-user sign on and submission; and (iv) limited audit capabilities and user profile and approval management.⁹⁰ The CMA also notes that bureaux are customers of software suppliers, such as the Parties, and, as such, primarily are an alternative route to market for software suppliers.
92. Therefore, whilst the CMA acknowledges that bureaux do provide a competitive option for certain customers looking to make Bacs submissions, the available evidence indicates that they provide only a limited constraint on direct submission software. This reflects the fact that bureaux ultimately are customers of direct submission software providers (as outlined above) and also offer different functionality to direct submission software. The CMA therefore has not widened the relevant frame of reference for direct submission software to include bureaux.

⁸⁶ For this reason, the CMA does not consider that the assessment of the competitive effects of the Merger would be any different were two separate product frames of references to be considered. The CMA has in any case considered the possibility of different impacts across different customer groups in its competitive assessment.

⁸⁷ Bottomline's Issues Meeting Presentation, slide 25.

⁸⁸ See PT-X Battlecard included Annex A.1.3 to Bottomline's Response to the Second s.109 Notice.

⁸⁹ For example, Bottomline's cancellation data show that Bottomline lost [X] customers to bureaux over a five year period from 2014-2018.

⁹⁰ *Ibid.*

White-label software

93. White-label software is another method through which businesses are able to make Bacs submissions via Bacstel-IP.
94. The software is licensed by software providers to banks and Bottomline submits that there are no material differences in terms of functionality between the white-label software it supplies to banks and the software sold to direct submission customers.⁹¹ The CMA agrees with Bottomline's views on the similarity of the product offering. However, the CMA considers that this provides evidence that the two products should be included in the same frame of reference as it illustrates that white-label software provision is a specific means by which software suppliers (such as Bottomline) can distribute their product to end-customers.⁹²
95. Bottomline further submitted that white-label customers are customers of the bank and that banks determine the pricing and other terms of supply to their customers. Bottomline also submitted that banks are sophisticated purchasers and act as gatekeepers to these customers.⁹³ However, banks contacted as part of the CMA's market testing indicated that they act as a distribution partner for the software suppliers and that they do not consider themselves to be in competition with software suppliers.
96. The CMA also notes that transactions made through white-label software are attributed to the underlying software supplier in the share data provided to the CMA by Pay UK. Therefore, to the extent that white-label software constrains direct submission software suppliers, this constraint is reflected in the relevant share of supply data and is attributed to the underlying software provider.
97. For these reasons, the CMA considers that white-label software should be considered a form of direct submission software (and should therefore be included in the same frame of reference).

Online banking

98. Bottomline further submitted that the relevant frame of reference should be widened to reflect the growth of online banking since the OFT's review in *Bottomline/Albany*.⁹⁴ Bottomline submitted that online banking covers a

⁹¹ Bottomline's Issues Meeting Presentation, slide 95.

⁹² As described further below, the CMA does not, however, consider that white-label software provides an independent competitive constraint on the Parties beyond the competitive constraint provided by other software providers.

⁹³ *Ibid.*

⁹⁴ Bottomline's Consolidated Response to the First s.109 Notice, paragraph 25.

number of channels (business banking, corporate banking, Host-to-Host and Swift) and that the wider industry trend towards online solutions blurs the line between Bacs software providers/bureaux and online banking solutions.⁹⁵ Bottomline also submitted that online banking solutions have grown in functionality in recent years.⁹⁶

99. The CMA notes that certain of Bottomline's internal documents reference online banking as a competitive threat. One document in particular notes that [redacted].⁹⁷ Further, in the cancellation data provided by Bottomline (discussed in further detail below), online banking appears to be the largest known competitor to whom customers have switched. The data indicate that online banking accounted for approximately [redacted] of customer losses in the period 2014 to 2018. Bottomline's cancellation data show that Bottomline lost [redacted] customers to online banking platforms between 2014-2018 representing approximately [redacted] of revenue.⁹⁸
100. There are however a number of factors that indicate that the relevant product frame of reference should not be widened to incorporate online banking solutions:
- (a) The CMA has not received evidence that these platforms replicate the functionality of direct submission software. In particular, whilst online platforms may have improved in their ability to process bulk transactions, evidence from third parties indicates that online platforms may be unsuitable for business users given that they are impractical and time-consuming to use.⁹⁹ The CMA further understands that not all online banking facilities offer the same range of direct credit and debit facilities as direct submission software.¹⁰⁰ This indicates that online banking platforms will not be an alternative for a substantial number of customers.
 - (b) The vast majority of customers and all software providers responding to the CMA's market testing stated that online banking and direct software are not competitive constraints on each other.
 - (c) The CMA also notes that it has not received any evidence to indicate that online banking portals also support full systems integration or automated workflows, which third parties recognise as key features of direct

⁹⁵ Bottomline's Issues Meeting Presentation, slides 23 and 26.

⁹⁶ Bottomline's Consolidated Response to the First s.109 Notice, paragraph 27.

⁹⁷ Bottomline's Consolidated Response to the First s.109 Notice, Annex 24.03 – PT-X Payments, slide 10.

⁹⁸ Bottomline's Issues Meeting Presentation, slides 30-32.

⁹⁹ See questionnaire responses from [redacted], [redacted], and [redacted].

¹⁰⁰ Call with [redacted], 7 August 2019.

submission software.¹⁰¹ One competitor in particular noted that the lack of automation through online banking portals means that they are only a viable option for small businesses.

- (d) An internal Bottomline marketing document notes [REDACTED].¹⁰² These include the fact that it is [REDACTED]. A further marketing document [REDACTED].¹⁰³
- (e) Bottomline's submission that direct submission software and online banking are close substitutes is inconsistent with the decision of a number of banks to offer white-label software to their customers.
- (f) Finally, the CMA notes that the number of transactions submitted to Bacs via banks appears to have decreased slightly over time, by 1.4 percentage points since 2016. This is inconsistent with Bottomline's submission that this channel has been growing in importance.

101. The CMA therefore considers that online banking may be a competitive option for smaller customers with less complex requirements. However, the CMA does not consider that online banking provides a sufficient competitive constraint on direct submission software to merit widening the relevant frame of reference. This is particularly so given that, [REDACTED] and as a result the fact that online banking may be an alternative for some smaller customers with less complex requirements does not prevent Bottomline from raising prices selectively for customers for whom online banking is not an alternative.

The constraint from alternative payment methods following future industry developments

102. Bottomline submitted that PSD2, Open Banking, and the NPA will open up competition in the payments industry and lead to entry from an alternative competitor set. It considers that NPA will introduce a new payment type known as RTP and Open Banking will introduce the VRP function. Bottomline submitted that anticipated regulatory changes and initiatives warrant including in the relevant frame of reference.¹⁰⁴ However, for the reasons discussed below in relation to entry/expansion, the CMA does not consider it appropriate to widen its frame of reference to include new payment types and alternatives to direct debit/credit payments that may result from emerging industry and regulatory developments.

¹⁰¹ Eg Call with [REDACTED], 25 June 2019; Call with [REDACTED] dated 24 July 2019.

¹⁰² PT-X Battlecard included as Annex A.1.3 to Bottomline's Response to the Second s.109 Notice.

¹⁰³ 'BOT00451822.pdf' (submitted in response to Question 6) - Bottomline's Response to the Second s.109 Notice.

¹⁰⁴ Bottomline's Consolidated Response to the First s.109 Notice, paragraph 25.

Conclusion on the frame of reference for the supply of Bacs payments software

103. Based on the evidence outlined above, the CMA concludes that there is a single frame of reference for the supply of software for the submission of Bacs payments via Bacstel-IP.

Supply of payments software for FPS DCA submissions via Secure-IP

104. The Parties overlap in the supply of software for direct submissions to FPS DCA via Secure-IP. FPS DCA originated as an alternative payment channel for businesses. The original benefit to businesses of FPS DCA, as compared to other payment methods (such as Bacs or the use of cheques), was the ability to have access to FPS and increase the speed of payments. The benefit of making FPS DCA submissions is that businesses have all the benefits of software functionality (eg systems integration and automation) together with increased FPS payment speeds. This service is offered only by Barclays and HSBC. Other banks and financial institutions are directly connected to the FPS service; however, access typically occurs through their own online platforms. The OFT in its review of *Bottomline/Albany* identified two distinct product frames of reference for the supply of FPS software for direct submissions to FPS DCA via Secure-IP: (i) FPS software to businesses; and (ii) FPS software to bureaux.¹⁰⁵
105. Bottomline submitted that FPS DCA submissions via Secure-IP is not a relevant frame of reference for the following reasons:¹⁰⁶
- (a) Online banking solutions are a 'clear and strong' constraint on FPS DCA software. It submitted that this is reflected in the fact that FPS DCA transactions comprise less than 1% of all transactions submitted to FPS. Bottomline therefore submitted that this is evidence of businesses using other channels to submit to FPS.
 - (b) Bottomline submitted that, in practice, FPS DCA is used only by Barclays customers and that transactions submitted to HSBC are not significant. Bottomline therefore stated that the relevant 'market' is not large in terms of either value or volume.
 - (c) The need to submit bulk FPS transactions is very niche and therefore users have been moving to other channels.

¹⁰⁵ *Bottomline/Albany*, paragraph 29.

¹⁰⁶ Bottomline's Issues Meeting Presentation, slide 9.

106. The CMA has not received any evidence indicating that software used for FPS DCA transactions submitted via Secure-IP and other forms of FPS transactions are economic substitutes such that the different transaction types merit being included in the same frame of reference. For example, the CMA has not received evidence that it is practical to complete the bulk FPS submissions which are enabled by the Parties' software using other types of FPS services, or that online banking platforms offer the same systems integration and automation.
107. The CMA therefore considers a single frame of reference for the supply of payments software for FPS DCA submissions via Secure-IP (analogous to that for Bacs).
108. For the same reasons set out above in relation to Bacs software the CMA does not consider it necessary to determine separate frames of reference for direct submission customers and bureaux with respect to FPS DCA.

Conclusion on product scope

109. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
- the supply of payments software for Bacs submissions via Bacstel-IP; and
 - the supply of payments software for FPS DCA submissions via Secure-IP.

Geographic scope

110. The Parties supply their Bacs and FPS software only to businesses, banks and payments bureaux based within the UK and the Bacs and FPS payments systems also are specific to the UK. Bottomline also submitted that there are no regional or local providers of payments software in the UK and the CMA has not received evidence of any such regional providers.¹⁰⁷ The OFT also considered the relevant geographic scope to be UK-wide in its review of *Bottomline/Albany*.¹⁰⁸
111. The CMA therefore considers that the relevant geographic frame of reference is national (ie UK-wide) for both product frames of reference identified above.

¹⁰⁷ Bottomline's Consolidated Response to the First s.109 Notice, paragraph 42.

¹⁰⁸ *Bottomline/Albany*, paragraph 30.

Conclusion on frame of reference

112. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- the supply of payments software for Bacs submissions via Bacstel-IP in the UK; and
 - the supply of payments software for FPS DCA submissions via Secure-IP in the UK.

Competitive assessment

113. The CMA has considered two theories of harm related to:
- (a) horizontal unilateral effects in the supply of payments software for Bacs submissions via Bacstel-IP in the UK; and
 - (b) horizontal unilateral effects in the supply of payments software for FPS DCA submissions via Secure-IP in the UK.
114. The concern under these theories of harm is that the removal of EPG as a competitor could allow Bottomline to increase licence fees, increase maintenance charges, reduce product availability and/or reduce investment in product development.

Horizontal unilateral effects in the supply of payments software for Bacs submissions via Bacstel-IP in the UK

Shares of supply

115. Shares of supply can be measured using (i) SUNs; (ii) volume of transactions; and (iii) revenue. The CMA notes however that shares of supply for differentiated product markets may be of less importance as they do not fully reflect the competitive constraint that products may place upon each other.¹⁰⁹
116. Bottomline submitted that SUNs is the most appropriate measure of share, in particular:¹¹⁰
- (a) Bottomline considers that share of SUNs most accurately reflects volumes of software sales to users. Bottomline further submitted that volume of transactions reflects the customer's usage of the software product which

¹⁰⁹ *Merger Assessment Guidelines*, paragraph 5.3.2.

¹¹⁰ See paragraph 90 of Bottomline's Consolidated Response to the First s.109 Notice, slide 35 of Bottomline's Issues Meeting Presentation and paragraph 11 of Bottomline's response to the Issues Paper.

is of limited competitive significance as this is not monitored by Bottomline to a meaningful extent.

- (b) Bottomline's PT-X pricing model is based on bands of transactions as well as on the number of submitting SUNs. In addition, the volume-related portion of PT-X pricing applies only up to a certain limit, after which the volume element will be overwritten by other pricing rules (similar to an 'all you can eat' mobile data subscription). This implies that even for PT-X the link between volume and prices is not clear.
- (c) Bottomline similarly submitted the EPG pricing model does not rely on the number of transactions in order to produce a quote but does require assessment of the number of SUNs as a mandatory component that directly affects price.
- (d) Alternative suppliers (including [X]) have pricing models based on number of SUNs rather than number of transactions.
- (e) There is no clear relationship between the volume of transactions and the revenue associated with a specific customer, either for EPG or for Bottomline. Bottomline provided examples of customers who, despite being the Parties' largest customers by volume of submissions, were not the largest customers by revenue.

117. In *Bottomline/Albany* merger inquiry, the OFT noted that Bottomline was unable to provide revenue shares for individual suppliers. Bottomline submitted that the best available proxy for shares of supply was the share of direct payment transactions (submissions) made to the Bacs network using each supplier's software.¹¹¹

118. The CMA has assessed shares of supply in the supply of payments software for Bacs submissions via Bacstel-IP in the UK using three separate measures: (i) SUNs; (ii) volume of transactions; and (iii) revenue.

SUNs shares of supply

119. Shares of supply based on SUNs, and relying on Bottomline's estimates, are presented below in Table 1.¹¹²

¹¹¹ *Bottomline/Albany*, paragraph 33.

¹¹² These shares are based upon direct submissions to Bacs and therefore exclude indirect submissions via external bureaux.

Table 1: Market shares based upon number of SUNs (2018)

Supplier	SUNs market share	Revenue (from questionnaires)
Bottomline	[40-50]%	[REDACTED]
EPG	[0-5]%	[REDACTED]
<i>Parties combined</i>	<i>[40-50]%</i>	[REDACTED]
Finastra	[10-20]%	[REDACTED]
CORVID	[10-20]%	[REDACTED]
AccessPay	[5-10]%	[REDACTED]
Others	[10-20]%	-

Source: CMA and Bottomline estimates

120. The CMA observes the following in relation to measuring shares of supply by SUNs:

- (a) Bottomline will be the largest supplier post-Merger with a share of supply by SUNs that is more than double that of Finastra or AccessPay. However, as noted by Bottomline, the increment represented by EPG is small and EPG’s share of supply by SUNs is smaller than the other three leading suppliers (Finastra, CORVID, AccessPay). Although the tail of smaller suppliers collectively account for the third largest share there is no indication that any one provider is of meaningful scale.
- (b) The CMA considers that any relationship between SUNs and revenue is not apparent from the data. For example, EPG earns a similar [REDACTED] revenue as [REDACTED], however [REDACTED] share of supply by SUNs is around [REDACTED] times higher than EPG’s.

Volume of transactions

121. The CMA also has assessed share of supply by volume of transactions (as was used in *Bottomline/Albany*). These shares of supply based upon volume of transactions are presented below in Table 2.¹¹³

¹¹³ Note: these share figures combine direct and indirect submissions.

Table 2: Market shares based upon volume of transactions (2016-2018)

Supplier	2016	2017	2018	2018 Revenue
Bottomline	[40-50%]	[40-50%]	[40-50%]	[✂]
EPG	[40-50%]	[30-40%]	[30-40%]	[✂]
<i>Combined</i>	[80-90%]	[80-90%]	[70-80%]	[✂]
Finastra	[10-20%]	[10-20%]	[10-20%]	[✂]
CORVID	[0-5%]	[0-5%]	[0-5%]	[✂]
AccessPay	[0-5%]	[0-5%]	[0-5%]	[✂]
Others	[0-5%]	[0-5%]	[0-5%]	-

Source: Pay UK

122. The CMA observes the following when measuring shares of supply by volume of transactions:

- (a) Bottomline and EPG each have a significant share of supply and Bottomline will account for the vast majority of all transactions submitted post-Merger. Finastra will be the second largest supplier to the combined entity; however, it will be approximately [✂] times smaller than the combined entity. CORVID and AccessPay are the only other competitors of any scale; however, their individual shares remain minimal. Further, the tail of smaller suppliers collectively account for a share of only [0-5]% of which no one provider is of meaningful scale.
- (b) This measure of share clearly indicates that Bottomline and EPG are the two suppliers submitting the largest volumes of transactions. Given the comparatively low number of EPG customers, this indicates that its customer base is comprised of a relatively small number of customers each making a large number of submissions. This is consistent with the third party views discussed below in which EPG is seen as a leading supplier for larger customers and bureaux.
- (c) Volume of transactions seemingly does not correlate well with revenues. For example, EPG has [✂] times as many transactions as [✂] but the same revenue.

- (d) [REDACTED].¹¹⁴ This suggests that having a customer base comprised of large businesses and having a large share in terms of volume of transactions is an indicator that EPG is a significant competitor for Bacs payments software.

Revenues

123. The CMA has calculated estimates based on share of revenues using responses to its merger investigation. The CMA has also compared this to revenue estimates provided by Bottomline. These figures are presented below in Table 3.¹¹⁵

Table 3: Market shares based upon revenue (2018)

Supplier	Revenue (CMA estimates)	Revenue (Bottomline estimates)
Bottomline	[REDACTED] [60-70]%	[REDACTED] ([40-50]%)
EPG	[REDACTED] [10-20]%	[REDACTED] ([5-10]%)
<i>Parties' combined</i>	[REDACTED] [70-90]%	[REDACTED] ([40-50]%)
Finastra	[REDACTED] [10-20]%	[REDACTED] ([10-20]%)
CORVID	[REDACTED] [5-10]%	[REDACTED] ([5-10]%)
AccessPay	[REDACTED] [5-10]%	[REDACTED] ([5-10]%)
Mosaic	[REDACTED] [0-5]%	[REDACTED] ([0-5]%)
Total Market	[REDACTED]	[REDACTED]
Note: CMA estimate of market size for revenue is based on only the 6 suppliers in this table and so will overestimate shares of supply.		

Source: CMA and Bottomline estimates

124. The CMA observes the following in relation to the revenue shares of supply estimates:
- (a) Bottomline will be the largest supplier post-Merger with a share of supply that is significantly larger than all other suppliers – notably Finastra, AccessPay and CORVID. The information received from Mosaic is consistent with smaller software suppliers having only minimal revenues. The CMA also notes that the increment represented by EPG is comparable to that of Finastra and larger than AccessPay and CORVID.
 - (b) Bottomline over-estimated the revenues for a number of suppliers. This suggests (i) the constraint from these suppliers is weaker than indicated by Bottomline (when using revenue as a measure); and (ii) Bottomline's post-Merger share is likely to be higher than it estimates.

¹¹⁴ [REDACTED].

¹¹⁵ Note: these revenues represent the revenues that software providers receive for software sold to businesses and bureaux to make direct submissions to Bacs. A separation of revenues based upon supply of software to businesses and supply of software to bureaux is not available.

(c) The CMA notes that revenue does not reflect different business models. In particular, EPG is the only larger provider supplying solely on-premises based software (whereas the others focus primarily on hosted software). Hosted software providers typically supply more services to their customers than on-premises based suppliers, eg server hosting and maintenance. Therefore, comparing shares of revenue between EPG (which provides only a deployed solution) and other suppliers offering a hosted solution may not involve a like-for-like comparison given the differences in the services offered by these different suppliers.

125. The CMA notes that a supplier's overall revenues (and ultimately their profitability) is likely to be particularly informative of the competitive strength of a supplier in light of the investments which are likely to be needed in response to the NPA.

Conclusions on shares of supply figures

126. The CMA notes that the following consistent conclusions can be drawn regardless of the measure used:

(a) Each measure of share indicates that Bottomline is the clear market leader by some distance. Regardless of the measure of share, Bottomline's share remains above 40%.

(b) Bottomline's share has remained relatively stable over time. The same is true for EPG, Finastra, AccessPay and CORVID.

(c) Alternative suppliers will hold a much smaller share than Bottomline post-Merger. Aside from Bottomline, there are at most four providers with any significant presence in the market: EPG, Finastra, CORVID, and AccessPay. By all metrics, Finastra, CORVID and AccessPay are significantly smaller than Bottomline.

(d) A comparison of EPG's shares of supply by SUNs and transactions is consistent with it supplying a relatively small number of customers who each make a large number of submissions. EPG is the second or third largest supplier by number of transactions and by revenue.

127. These conclusions are indicative of Bottomline's pre-Merger market strength as compared to its rivals and the limited number of alternative suppliers of any scale. Therefore, there is a realistic prospect that the acquisition by Bottomline of one of its few rivals of any scale, such as EPG, will further consolidate this strength.

Closeness of competition

128. In considering the closeness of competition between the Parties, the CMA has considered:
- (a) differences in the Parties' product offerings;
 - (b) third party views on closeness of competition;
 - (c) evidence from internal documents; and
 - (d) evidence relating to customer switching.
129. In reviewing evidence regarding EPG's historic performance (eg from third party views, internal documents and evidence regarding customer switching) the CMA has considered the implications of the recent lack of investment in or marketing of EPG.¹¹⁶ Specifically, this means that evidence regarding EPG's recent performance is unlikely to accurately reflect the competitive constraint EPG would impose on Bottomline were EPG to be acquired by an alternate purchaser who would compete for new business and develop the EPG product going forward, which is the counterfactual against which the CMA has assessed the Merger (see paragraph 60 above).

Bottomline's submissions

130. Bottomline submitted that the Parties are not close competitors:¹¹⁷
- (a) Bottomline submitted that the Parties have different focusses. Approximately [the majority] of Bottomline's payment software customers use its hosted PT-X solution which offers additional value-add services. EPG software on the other hand is legacy deployed software for Bacs and FPS DCA submission only.
 - (b) The cancellation data provided by Bottomline indicates that the diversion ratios between the Parties are low.
 - (c) Bottomline's internal documents do not indicate that the Parties are close competitors.
 - (d) Bottomline also submitted that EPG is a small business whose role should not be overstated. Bottomline submitted that this is reflected in EPG's

¹¹⁶ The CMA notes that in *Bottomline/Albany* (paragraph 73) the Parties were considered to be close competitors – in particular in respect of larger customers.

¹¹⁷ See slide 50 of Bottomline's Issues Meeting Presentation and paragraph 4 of Bottomline's response to the Issues Paper.

revenues, number of customers, number of employees and new customer wins.

Differences in the Parties' product offering

131. The CMA notes that Bottomline's core PT-X product is hosted whilst EPG is a deployed solution. The CMA therefore has considered this difference in the Parties' product offering and agrees that the Parties largely have a different product proposition.
132. However, the CMA considers that this distinction is of limited relevance to its competitive assessment. This is reflected in the mixed views received in response to the CMA's market testing. A number of customers acknowledged that investment in future technology and the availability of hosted solutions influences their choice of software provider. However, whilst certain customers value the availability of hosted solutions, several 'larger' customers and bureaux continue to prefer deployed solutions, noting the cost-effectiveness and reliability of deployed software. A survey of EPG customers prepared in January 2019 also indicates that certain customers continue to value deployed solutions.¹¹⁸
133. Further, the CMA notes that Bottomline itself offers a deployed solution and has [REDACTED].¹¹⁹ Evidence supporting the CMA's alternate purchaser counterfactual indicates that it is possible that EPG's deployed products may be retained.¹²⁰ This suggests that the hosted/deployed distinction is not a consideration for all customer groups.
134. Moreover, evidence supporting the CMA's counterfactual indicates that under the ownership of an alternate purchaser, there is a realistic prospect that investment would have been undertaken to upgrade EPG's product suite to include hosted technology.¹²¹

Third party views

135. The CMA market tested the extent to which customers and competitors consider the Parties to be close competitors.
136. Approximately two thirds of the customers responding to the CMA's market testing did not express a view on the closeness of competition between the Parties and/or did not raise any concerns about the Merger more generally.

¹¹⁸ Annex 24.04 to Bottomline's Consolidated Response to the First s.109 Notice, page 12.

¹¹⁹ Bottomline's response to the Issues Paper, paragraph 44.

¹²⁰ [REDACTED].

¹²¹ *Ibid.*

However, several customers noted that the Parties' ability to process a large number of transactions distinguishes them from other providers.

- (a) One Bottomline customer highlighted that its key requirement is for the provider to be able to process high volumes efficiently and its main concern is to have a provider with the service capabilities it needs to make all the necessary payments.¹²²
- (b) One EPG customer submitted that there is no known software product that has the flexibility and functionality that EPG has and that supports this customer's volume and complexity. This customer also said that Bottomline's C-Series software was the only alternative software it would consider using but it considered this to be functionally inferior to EPG. It also said that its complex requirements were unlikely to be met by other software providers.¹²³ Another customer submitted that EPG realistically is the only product that can really handle all of this customer's requirements and that it has no like-for-like alternative on its volumes.¹²⁴
- (c) Another EPG customer submitted that most of the other providers cannot handle high volumes.¹²⁵ The same customer also identified Bottomline, Albany (now Bottomline) and Experian (ie EPG) as the three largest software providers capable of servicing its requirements.

137. In addition, approximately a third of customer respondents raised concerns about the Merger:

- (a) One customer expressed 'huge concerns' relating to Bottomline's 'unacceptably high' market share which would be a 'disaster' for the UK payments industry as they view the Merger as removing all residual competition between software providers.
- (b) Several other customers expressed concern that the Merger will result in an adverse impact on pricing and service quality. Customers have highlighted Bottomline's previous (in their view) conduct of raising pricing and/or reducing product support for deployed solutions.¹²⁶

138. In addition, the majority of competitors responding to the CMA's market testing identified Bottomline as the strongest competitor. One provider described Bottomline as already dominant and expressed concerns about the

¹²² [redacted] response to the Questionnaire, questions 4 and 8.

¹²³ [redacted] response to the Questionnaire, question 7.

¹²⁴ [redacted] response to the Questionnaire, questions 5 and 7.

¹²⁵ [redacted] response to the Questionnaire, question 5. As noted below, another customer also raised concerns about the ability of a number of other providers to handle large volumes of transactions.

¹²⁶ The CMA notes [redacted].

Merger because the market is already uncompetitive. Another provider submitted that Bottomline has by far and away the bulk of customers – an estimated 50-70% of the installed base.

139. These views about Bottomline’s pre-existing strength were consistent with the submissions of other providers who expressed concerns about the Merger:
- (a) One provider expressed concerns that the Merger will result in the ‘monopolisation’ of the industry and another stated that it would extend Bottomline’s dominance. Another provider stated that EPG customers have very limited options and the removal of one option from the market would have a significant impact on competition.
 - (b) Other providers have expressed concerns that the Merger will allow Bottomline to leverage its brand to attract customers who are otherwise unaware of alternative competitive options. One competitor in particular noted that the Merger will leave customers at the ‘mercy of a single provider’.
 - (c) Another provider (who did not express overall concerns about the Merger) noted that [REDACTED]. This suggests some level of customer dissatisfaction with elements of Bottomline’s service that may lead to customer attrition. The same provider also identified Bottomline as a strong competitor.
140. EPG was identified as a strong competitor by only one provider (which may reflect the recent lack of marketing or investment in EPG). Another provider noted that, whilst EPG has a small number of customers, they are very high value – ie EPG has a small percentage of the overall market by customers but a disproportionate share of the market by value.¹²⁷
141. The results of the CMA’s market testing therefore indicate that the Merger reflects the consolidation of two providers of payments software to customers processing large volumes of transactions. Both customers and competitors are also consistent in raising concerns about the strengthening of Bottomline’s existing market position. Further, whilst some customers currently do not see the Parties as direct competitors, the CMA has received several strong concerns from EPG’s customers. This again suggests that the Merger will more acutely impact larger customers and bureaux.

¹²⁷ Call with [REDACTED], 19 July 2019.

Internal documents

142. The CMA has reviewed internal documents provided by Bottomline and Experian.
143. [REDACTED].¹²⁸ [REDACTED].¹²⁹
144. Internal documents provided by Experian, however, indicate that EPG considered Bottomline to be a leading competitor.
- (a) For example, one Experian internal document considered Bottomline to be [REDACTED].¹³⁰
- (b) In an assessment of potential divestment options Experian described Bottomline as being its 'main competitor' [REDACTED].¹³¹
- (c) [REDACTED].¹³² [REDACTED].¹³³
145. The CMA therefore considers that, whilst the Parties' internal documents do not indicate that EPG constrained Bottomline to a significant extent, there is evidence to suggest that Bottomline acted as a constraint upon EPG. Further, as discussed in relation to the counterfactual identified in paragraphs 46 to 61 above, there is a realistic prospect that under the alternate purchaser EPG would exert more of a competitive constraint on Bottomline than it currently does.

Customer switching

146. Bottomline provided two sets of cancellation data and submitted that the data shows the following:¹³⁴
- (a) banking services and bureaux provide a strong and active competitive constraint on Bottomline;
- (b) AccessPay is a strong and growing competitor while other software providers, notably Finastra, also account for a significant proportion of customer and revenue losses; and

¹²⁸ Bottomline's Consolidated Response to the First s.109 Notice, Annex 24.03 – GBS Competitors, slide 5.

¹²⁹ Bottomline's Consolidated Response to the First s.109 Notice, Annex 24.03 – GBS Competitors, slide 10.

¹³⁰ [REDACTED]

¹³¹ Annex 1.8 to Experian's s109 Response.

¹³² See Annexes 1.6 and 1.8 to Experian's s109 Response.

¹³³ Annex 1.6 to Experian's s109 Response.

¹³⁴ See Annex 24.05 Bottomline's Consolidated Response to the First s.109 Notice and Annex B.4.1 to Bottomline's Response to the Second s.109 Notice.

(c) very few customers were lost to EPG over the period 2014-2018, indicating that the Parties are not close competitors.

147. Table 4 below presents the competitors to whom Bottomline’s customers have switched between 2014 and 2018.^v

Table 4: Summary of Bottomline switching data (2014-2018)¹³⁵

Competitor	2014-2018 losses
EPG	[REDACTED]
AccessPay	[REDACTED]
Finastra	[REDACTED]
CORVID	[REDACTED]
Other software providers	[REDACTED]
Banks	[REDACTED]
Bureaux	[REDACTED]
Other (known)	[REDACTED]
Total	[REDACTED]

Source: Bottomline

148. The CMA observes the following in relation to Bottomline’s cancellation data:

(a) The CMA considers that the cancellation data is consistent with there being relatively little switching between all providers.¹³⁶ For example, the cancellation datasets show that in 2018, Bottomline lost [REDACTED] customers with associated revenue of [REDACTED] to known competitors ([REDACTED]).¹³⁷ For context, in 2018 Bottomline had [REDACTED] customers and generated [REDACTED] from Bacs software.¹³⁸ Therefore, customer losses to known competitors accounted for around [0-10]% of Bottomline’s customer base and around [0-10]% of Bottomline’s Bacs software revenues. Bottomline’s cancellation data also recorded [REDACTED] customers as being lost to unknown competitors in 2018 (roughly equivalent to [0-10]% of its customer base and [0-10]% of its revenue). However, the CMA considers that it is not clear what proportion of losses recorded as being to unknown competitors should actually be considered as competitive losses and the CMA therefore treats the losses to unknown customers as an upper bound estimate of the actual number of customers that switched to a competitor.¹³⁹

¹³⁵ Source: Bottomline Additional Submissions following Issues Meeting, Annex 1, Table 1.

¹³⁶ Views from third parties and the Parties’ internal documents further indicate that there are high barriers to switching which may result in low levels of switching between suppliers.

¹³⁷ These figures have been calculated by adding the losses from Annex 24.05 and Annex B.4.1.

¹³⁸ Bottomline’s Consolidated Response to the First s.109 Notice, paragraph 96 and Table 1.

¹³⁹ In Annex 1 of Bottomline’s response to the Issues Paper, Bottomline submitted that it is a reasonable assumption that businesses that switch away and do not provide a reason for doing so will still need to make and receive payments so long as they are active, thus why they are recorded as switching to an unknown competitor.

- (b) Bottomline lost only [REDACTED] customers to EPG over the five year period, suggesting that the constraint from EPG on Bottomline has been limited.
- (c) Very few customers switched from Bottomline to using an external bureau. The two datasets combined show that in 2018, [REDACTED] customers switched to using an external bureau.
- (d) Bottomline's cancellation data show that only [REDACTED] customers switched to using banks over the five year period from 2014-2018. This is small in the context of Bottomline's overall customer base.
149. The CMA has considered this cancellation data alongside views from third parties and the Parties' internal documents which indicate that there are high barriers to switching which may result in low levels of switching between suppliers.
150. Experian provided a third-party report to the CMA which suggests that [REDACTED].¹⁴⁰ [REDACTED] the CMA's investigation [REDACTED] indicate that the costs of switching provider can be expensive and involve a significant amount of business time.
151. One large customer with more complex requirements indicated to the CMA that the financial cost to the business (excluding the software purchase) can be up to £1 million.¹⁴¹ This may also involve a significant amount of work for many customers, from running an RFP process, evaluating and selecting bidders, integrating systems and ensuring continuity. This reflects the importance of payments software to some customers, for example those submitting large volumes of transactions or for which their business model depends on the reliability of making payments, eg payroll businesses.
152. A significant number of customers and competitors have indicated to the CMA that the process of switching can take 9 months to 1 year – depending on the complexity of switching. Given the importance of payments processing within a customer's business it is important to avoid any disruption in service given the impact on business continuity and potential reputational damage. Customers therefore may be required to operate parallel systems until they are confident that the new system is fully functional – this comes at the cost of

Therefore, they believe that customers that leave due to [REDACTED]. The CMA believes that the assumptions made in Bottomline's analysis are quite strong and it should not be automatically assumed that the customer switched to a competitor. The CMA also notes that the cancellation data is partial in that it does not provide direct evidence of the alternatives considered by existing customers who decided not to switch or the alternatives considered by new Bottomline customers.

¹⁴⁰ [REDACTED] as submitted by Experian in response to RFI dated 04/06/2019.

¹⁴¹ See [REDACTED].

increased money and time. The costs and risks of switching may therefore outweigh any risk and perceived benefits.

153. The CMA therefore believes that, on balance, the cancellation data is consistent with its views that: (i) there are low levels of switching between suppliers; (ii) that Bottomline faces a limited amount of competitive constraint from rival software providers, internet banking services, and bureaux; (iii) Bottomline faces limited competitive constraint from EPG - however this may reflect in part the recent lack of investment in or marketing of the EPG product and thus should be viewed in the context of the counterfactual identified above.

Conclusion on closeness of competition between the Parties

154. The CMA notes that a number of customers identified the Parties as two of a limited number of alternative providers that both provide software which is valued by customers processing large volumes of transaction. This is consistent with concerns received in relation to, both the removal of EPG as an independent provider and concerns about the Merger strengthening further Bottomline's pre-existing strong market position.
155. The CMA also notes the evidence assessing closeness of competition is consistent with Bottomline's submission that EPG has not been marketed in recent years. However, as noted in paragraph 129 above, the CMA considers that evidence regarding EPG's recent performance is unlikely to accurately reflect the competitive constraint EPG would impose on Bottomline were EPG to be acquired by an alternate purchaser who would compete for new business and develop the EPG product going forward. As discussed in relation to the counterfactual identified in paragraphs 46 to 61 above, there is a realistic prospect that under the alternate purchaser EPG would exert more of a competitive constraint on Bottomline than it did previously.

Competitive constraints from other suppliers

156. The CMA has considered the extent to which, post-Merger, Bottomline will be constrained by alternative software providers and alternative payment channels.
157. With respect to alternative software providers, the CMA notes that there are 18 approved providers of Bacs payments software, all of whom provide the same basic functionality for directly submitting payments to Bacs. However, the CMA's share of supply estimates and market testing have identified a limited group of competitors with a material presence, comprising Finastra, AccessPay and CORVID whose shares of supply (by number of transactions,

see Table 2) have remained relatively stable.¹⁴² Outside of this group, there is a tail of alternative providers holding only a minimal share of supply by any measure. The CMA has considered the competitive constraint from other software providers below.

Finastra

158. Finastra is a provider of payments software and supplies a hosted solution for the submission of Bacs payments. The CMA notes that Finastra's share of supply for Bacs submissions via Bacstel-IP indicate that it is the largest competitor to Bottomline post-Merger – [10-20]% by SUNs, [10-20]% based on the volume of transactions and an estimated [10-20]% by revenues.
159. Bottomline submitted that these shares of supply indicate that Finastra is a competitor of scale and that this is reflected in its customer base of over 6,000 clients.¹⁴³ It submitted that Finastra's share of SUNs and revenues is greater than EPG's shares of SUNs/revenues. Bottomline further noted that an internal Bottomline document referred to Finastra as Bottomline's leading competitor in the UK and referred to its marketing materials in which Bottomline specifically targets Finastra as a competitor.¹⁴⁴ Bottomline submitted that its cancellation data indicates that Finastra poses a greater competitive constraint than EPG with [redacted] customers lost to Finastra over the last five years (compared to [redacted] lost to EPG in the equivalent period).¹⁴⁵
160. The CMA has received evidence that Finastra competes most closely with Bottomline in the supply of white-label software to banks, suggesting that Finastra is less of a competitive constraint for other types of customers.¹⁴⁶
161. Whilst the majority of software providers identified Finastra as a competitor it was not considered as strong a competitor as Bottomline. Several customers also identified Finastra as a competitor to Bottomline. One bureau customer, however, expressed concerns about Finastra's ability to handle a large volume of transactions.
162. The CMA also notes that Bottomline's cancellation data records low levels of customer switching to Finastra. For example, the data for the period 2014-

¹⁴² The CMA notes that each of these competitors offer a hosted solution. However, for the reasons discussed above in relation to the Parties' own product offerings, the CMA places limited weight on the competitive significance of this technological distinction for the purposes of its competitive assessment.

¹⁴³ Bottomline's Issues Meeting Presentation, slide 43.

¹⁴⁴ See slide 10 of Annex 24.03 of Bottomline's response to first s109 and See PT-X Battlecard included Annex A.1.3 to Bottomline's Response to the Second s.109 Notice.

¹⁴⁵ Bottomline's response to the Issues Paper, paragraph 36.

¹⁴⁶ Call with [redacted], 2 July 2019.

2018 records a total of [REDACTED] customer losses and a total value of less than £[REDACTED].

163. The CMA therefore considers that the evidence indicates that Finastra may be the next largest competitor to the combined entity post-Merger. However, the CMA has not received evidence to indicate that Finastra will sufficiently constrain the combined entity post-Merger. This is reflected in the fact that its shares of supply remain significantly below Bottomline's as well as evidence from third parties who either did not recognise the constraint of Finastra or questioned its credentials for customers processing larger volumes of transactions who may have more complex customer needs. The fact that Finastra recently lost a significant customer to Bottomline that will materially impact its Bacs business is also indicative that it may have a limited ability to constrain the combined entity post-Merger.

AccessPay

164. AccessPay is a provider of payments software and offers a hosted solution for the submission of Bacs payments. The CMA notes that AccessPay's share of supply for Bacs submissions via Bacstel-IP remains significantly lower than the combined entity post-Merger, regardless of the measure used – [5-10]% by SUNs, [0-5]% based on the volume of transactions and an estimated [5-10]% by revenues.
165. Bottomline submitted that AccessPay 'is among the most aggressive competitors in the market'. Bottomline submitted that this is demonstrated through Bottomline's cancellation data, internal documents, AccessPay's own marketing as well as a number of developments related to the growth of AccessPay's business.¹⁴⁷ It submitted that AccessPay's share of SUNs is greater than EPG's and that AccessPay's share of revenue is greater than EPG's share of revenue.
166. With respect to Bottomline's cancellation data, the CMA notes that [REDACTED] customers lost in the period 2014 to 2018 appear to have been lost to AccessPay and that this is significantly more than the number of customers lost to EPG. However, these losses account for revenues of only approximately £[REDACTED] and therefore, this evidence does not indicate a significant level of switching from Bottomline to AccessPay.

¹⁴⁷ Bottomline's Issues Paper Response, paragraph 28.

167. Evidence from the Parties' internal documents acknowledges AccessPay as a competitor in the supply of Bacs software.
- (a) [REDACTED].¹⁴⁸
 - (b) Bottomline's internal marketing materials [REDACTED]. This is also reflected in AccessPay's marketing materials which appear to benchmark the company against Bottomline.¹⁴⁹
 - (c) A survey of EPG customers from January 2019 indicates that [REDACTED].¹⁵⁰
 - (d) An Experian internal document identified AccessPay as a competitor [REDACTED].¹⁵¹
168. The results of the CMA's market testing indicate that AccessPay is only of limited strength as a competitor. Most software providers did not identify AccessPay as a competitor and only one identified it as a stronger competitor than Bottomline. In addition, most customers responding to the CMA's market testing did not identify AccessPay as a credible alternative supplier. The EPG customer survey prepared in January 2019 [REDACTED].¹⁵²
169. Overall, given its low share of supply in comparison to the Parties, the mixed evidence from internal documents and views from third parties, the CMA does not consider AccessPay to be a significant competitive constraint on the combined entity post-Merger.

CORVID

170. CORVID is a provider of payments software and offers a hosted solution for the submission of Bacs payments. The CMA notes that CORVID's share of supply for Bacs submissions via Bacstel-IP indicate that it is of larger scale than AccessPay but smaller than Finastra – [10-20]% by SUNs, [0-5]% based on the volume of transactions and an estimated [0-5]% by revenues.
171. Bottomline referred to its [REDACTED].¹⁵³ Bottomline referred to its cancellation data as evidence of CORVID's competitive constraint; however, the CMA notes that

¹⁴⁸ Bottomline's Consolidated Response to the First s.109 Notice, Annex 24.03, slide 10.

¹⁴⁹ Bottomline's Issues Meeting Presentation, slide 40-42.

¹⁵⁰ Annex 24.04 to Bottomline's Consolidated Response to the First s.109 Notice, page 13.

¹⁵¹ [REDACTED].

¹⁵² Annex 24.04 to Bottomline's Consolidated Response to the First s.109 Notice, page 13

¹⁵³ PT-X Battlecard included as Annex A.1.3 to Bottomline's response to the CMA's Section 109 Notice dated 16 July 2019.

CORVID accounted [REDACTED] customer losses over a period of five years. Bottomline also provided evidence of [REDACTED].¹⁵⁴

172. Consistent with CORVID's low share of supply, the CMA's market testing did not provide any strong indication that CORVID is a significant competitor to the Parties. Few providers identified CORVID as a competitor and those that did identified CORVID as a weaker competitor than Bottomline and (in one case) EPG. The CMA also received concerns about CORVID's ability to handle significant volumes of transactions. This is reflected in [REDACTED].¹⁵⁵ [REDACTED].
173. The CMA therefore does not consider CORVID to be a significant competitive constraint on the combined entity post-Merger.

Other smaller software providers

174. The CMA has considered the competitive constraint from the tail of 13 smaller software providers. Bottomline submitted that this competitive constraint should not be understated and highlighted that it lost approximately [REDACTED] customers to such suppliers in the previous five years.¹⁵⁶
175. The evidence available to the CMA indicates that such smaller software providers will provide only a very limited constraint on the combined entity post-Merger.
- (a) These 13 providers collectively account only for a limited share of supply – less than [5-10]% by volume of transactions and [10-20]% by SUNs. These shares are widely dispersed and, further, no single supplier appears to have any meaningful share such that it can be expected to constrain the combined entity post-Merger.
- (b) The cancellation data provided by Bottomline indicates that losses to this smaller fringe are dispersed amongst the competitor set with no single competitor appearing as a strong constraint. Bottomline's cancellation data show that losses to these smaller software providers accounted for around [REDACTED] in lost revenue between 2014-2018.¹⁵⁷ The data show that Bottomline lost [REDACTED] customers to rival software providers other than EPG, Finastra, AccessPay, and CORVID over the period. As noted above, when considered within the context of Bottomline's overall customer base,

¹⁵⁴ Bottomline's Response to the Issues Paper, paragraph 34.

¹⁵⁵ Annex 24.04 to Bottomline's Consolidated Response to the First s.109 Notice, page 12.

¹⁵⁶ Bottomline's Response to the Issues Paper, paragraph 38.

¹⁵⁷ See Annex 1 of Bottomline's Response to the Issues Paper.

[REDACTED] appear to suggest that the competitive constraint from such suppliers is weak.

- (c) The results of the CMA's market testing indicate that other providers typically do not consider smaller providers to be a significant competitive constraint and these providers were rarely mentioned by third parties. This is further reflected in the Parties' internal documents; for example, Experian's documents where such smaller providers are [REDACTED].¹⁵⁸ A number of customers in the EPG customer survey indicated that they were not aware of smaller software providers.¹⁵⁹
- (d) Some competitors noted that smaller providers' software often is inferior to that of larger providers. For example, smaller providers often do not offer the use of an HSM with their product. This indicates that not all smaller competitors are capable of serving customers seeking to use an HSM.
- (e) Competitors have raised concerns about the strengthening of Bottomline's already strong market position and the potential dampening of innovation. One smaller competitor indicated to the CMA that the Merger will cause it to further consider its incentives to invest and innovate in this market. Therefore, to the extent that such smaller competitors currently pose a competitive constraint on the Parties, the Merger can reasonably be expected to impact this in the future.¹⁶⁰ This may have an adverse effect on those smaller providers whose activities are focussed solely on Bacs submissions.
- (f) One Bottomline document also suggests that future regulatory developments will require competitors to make investments in their products and which may be expected to result in market exits for those that do not have existing strengths in the payment sector more generally.¹⁶¹ The CMA considers that smaller suppliers are more likely to be disadvantaged in this regard.

CMA's view on the competitive constraint from other software providers

176. The CMA considers that alternative providers will provide only a limited constraint on the combined entity post-Merger for the reasons set out above. The CMA acknowledges that there is a group of competitors (comprising Finastra, AccessPay and CORVID) against whom the Parties may compete,

¹⁵⁸ [REDACTED].

¹⁵⁹ Annex 24.04 to Bottomline's Consolidated Response to the First s.109 Notice, pp 12-13.

¹⁶⁰ See also paragraph 125 above.

¹⁶¹ See Annex 22.1 of Bottomline's Consolidated Response to the First s109 Notice.

as reflected in Bottomline's internal documents and loss data. However, the available evidence suggests that they will provide only a limited competitive constraint post-Merger. This is because:

- (a) Third parties expressed concerns that these competitors do not have the ability to service complex customers or handle large volumes of transactions;
- (b) Some of these competitors are more focussed on particular segments, eg Finastra appears to focus on [X];
- (c) More generally, these competitors are not perceived as strong competitors by Bottomline's and EPG's customers.

177. The CMA also has received a number of concerns that Bottomline's share of supply relative to other providers in the market will make it difficult for providers to convince customers to switch and may deter competitors from making the investments necessary to compete. The CMA considers that such concerns are particularly pertinent for the 13 smaller providers whose shares of supply already are minimal compared to the larger software providers.

Alternative channels

178. Bottomline submitted that alternative channels for submitting payments provide a significant competitive constraint for payments software providers. Bottomline has highlighted bureaux and online banking as the greatest constraints in this regard. These alternative channels are considered in turn.

Competitive constraint on Bottomline and EPG from bureaux

179. Bottomline submitted that the competitive constraint on direct submission software from bureaux should not be understated.¹⁶² However, as discussed above in relation to the frame of reference, the evidence obtained during the CMA's investigation indicates that bureaux generally offer only a limited, if any, competitive constraint on direct submission software providers. In particular:

- (a) Bureaux responding to the CMA's market testing indicated that their services do not compete with direct submission software.
- (b) Direct submission software providers stated that bureaux services typically are used by smaller businesses who are unlikely to use direct

¹⁶² Bottomline's response to the Issues Paper, paragraph 4.

submission software. Direct submission software providers did not identify bureaux as their competitors.

(c) The Parties' customers also indicated to the CMA that bureaux are unlikely to be viable competitive alternatives to direct submission software – most respondents indicated that bureaux services do not meet their payment submission needs.

180. This is also reflected in the cancellation data provided by Bottomline which records only [REDACTED] customers switching from Bottomline to an external bureau between 2014-2018. When combining both cancellation datasets the data show that Bottomline lost [REDACTED] customers to external bureaux in 2018.¹⁶³ These [REDACTED] losses accounted for [REDACTED] in lost revenue – which is [REDACTED] in the context of Bottomline's annual revenue of £[REDACTED] for the supply of this software.
181. [REDACTED] in a Bottomline internal document [REDACTED].¹⁶⁴ Another internal Bottomline document indicates that [REDACTED].¹⁶⁵
182. The CMA notes that GoCardless operates as a bureau and does not supply its own software and is instead reliant on software provided by Bacs-approved providers.¹⁶⁶ GoCardless's share of supply therefore is reflected in the shares of supply of other software providers in the share of supply tables above, given its status as a bureau. As the limited share of supply of all other software providers indicates, GoCardless currently is a limited competitive constraint on the Parties. To the extent that GoCardless has increased as a competitive constraint this should be reflected in the growth of competitors' shares over time. However, as Table 2 above demonstrates, competitors' shares in terms of transactions have remained stable over the past three years. Further, the similarity in shares of supply in the current case and *Bottomline/Albany* indicates that GoCardless' expansion has, thus far, had at most a modest effect on the Parties' overall competitive position.¹⁶⁷ This also is reflected in Bottomline's cancellation data which indicates that [REDACTED] customers switched to GoCardless during the relevant period.
183. The CMA notes that bureaux are themselves customers of Bacs software providers (such as the Parties) and therefore must purchase approved software to make indirect submissions on behalf of their own customers. This relationship suggests that bureaux are unlikely to be a significant competitive

¹⁶³ See Annex 24.05 Bottomline's Consolidated Response to the First s.109 Notice and Annex B.4.1 to Bottomline's Response to the Second s.109 Notice.

¹⁶⁴ See slide 10 of Annex 24.03 of Bottomline's Consolidated Response to the First s.109 Notice.

¹⁶⁵ See BOT00031517.docx submitted as part of Bottomline's Response to the Second s.109 Notice.

¹⁶⁶ See [Bacs-approved software providers](#).

¹⁶⁷ In paragraph 33 of *Bottomline/Albany*, the OFT found that Bottomline and EPG's shares of supply for Bacs direct submissions were [50-60]% (including Microgen and Albany) and [30-40]% (respectively) (Table 1).

constraint on software providers such as Bottomline and may themselves be adversely affected by the Merger. Consistent with this view, third parties have expressed concerns in this regard:

- (a) Several bureaux have expressed concerns that the Merger will result in Bottomline removing support for deployed solutions and forcing customers to use its (in their view) more expensive cloud solutions.
- (b) One bureau expressed concerns that the Merger will result in a reduction of credible providers available for bureaux customers. The increase in Bottomline's share of supply also was cited as a reason for this increased risk.
- (c) The CMA also has received concerns from a competitor that, as a result of its increased scale in the supply to bureaux, Bottomline will be motivated to reduce its support to third party bureaux in order to improve its own bureau service.¹⁶⁸

184. In light of the above evidence, the CMA does not consider that bureaux will sufficiently competitively constrain the combined entity post-Merger. In particular, whilst bureaux may be a competitive option for certain customers, the evidence from bureaux, customers and competitors indicates that bureaux do not provide a significant competitive constraint on direct submission software.

Online banking

185. Bottomline submitted that online banking provides a significant competitive constraint on direct submission software. Bottomline cites the growth in functionality of these platforms, as well as the number of customer losses to online banking, as evidence of this constraint. Bottomline also referred to the potential effect of this constraint through references to online banking in its internal documents.¹⁶⁹

186. The CMA acknowledges that the capabilities of online banking have evolved since it previously considered these markets in *Bottomline/Albany*. The growth of these capabilities may be reflected in the prevalence of online banking in Bottomline's cancellation data. However, when considered against the other evidence obtained during the course of its investigation, the cancellation data alone is not sufficient to allow the CMA to conclude that online banking is a

¹⁶⁸ See [redacted] response to third party questionnaire.

¹⁶⁹ See slide 10 of Annex 24.03 of Bottomline's Consolidated Response to the First s109 Notice and PT-X Battlecard included Annex A.1.3 to Bottomline's response to the CMA's Section 109 Notice dated 16 July 2019.

significant constraint on payment software providers. The two cancellation datasets submitted by Bottomline show that Bottomline lost [X] customers to online banking in 2018 which accounted for [X] in lost revenue.¹⁷⁰

187. As discussed above in relation to the frame of reference, evidence from third parties consistently indicates online banking platforms do not offer the same level of functionality as direct submission software, particularly in relation to batch-processing, systems integration or automation. The level of functionality provided by online banking may be sufficient for smaller businesses with less complex requirements but is not suitable for many customers in the market.
188. Therefore, although online banking may be evolving as a competitive constraint, the CMA has not received evidence that it will be a sufficient competitive constraint on the Parties to mitigate any adverse effects on competition for the supply of direct submission software as a result of the Merger.

White-label software

189. The CMA also has considered the constraint from white-label software provided by banks. As described above, white-label software essentially operates as a bank-branded software service through which customers are able to make direct submission to Bacs. This potentially provides an alternative to direct submission software for customers. Bottomline has submitted that white-label software is the same product as direct submission software and that there exist no material differences in terms of functionality.¹⁷¹ Bottomline further submitted that customers of white-label software are customers of the relevant bank such that the bank is able to control pricing and other terms of supply. Bottomline submitted that banks are sophisticated purchasers of the software and able to act as gatekeepers of the relevant customers.¹⁷²
190. However, given their status as customers of direct submission software, the CMA considers the competitive interaction between software providers and banks to be akin to that between suppliers and distributors. Whilst there may be some competition between the two levels of supply, software suppliers ultimately control the input that is resold by banks and therefore are able to

¹⁷⁰ See Annex 24.05 Bottomline's Consolidated Response to the First s.109 Notice and Annex B.4.1 to Bottomline's Response to the Second s.109 Notice.

¹⁷¹ Bottomline's Issues Meeting Presentation, Slide 95.

¹⁷² *Ibid.*

influence downstream pricing and quality.¹⁷³ Moreover, the CMA understands that Bottomline is a significant supplier of white-label software, with only [X] being of any meaningful scale in this area. Therefore, banks will have limited competitive alternatives in the event that Bottomline sought to influence downstream conditions of supply in response to increased competitiveness from white-label software.

191. Additionally:

- (a) Given the distribution relationships with banks, white-label software is a means through which Bottomline is able to increase its own brand and product awareness amongst bank customers. This is recognised in an internal Bottomline document which notes the importance of bank relationships as regulatory developments occur within the payments sector.¹⁷⁴ White-label software therefore acts as another means through which Bottomline is able to increase its existing market strength.
- (b) The CMA has not received any evidence from third parties that white-label software is a significant competitive constraint on direct submission software.
- (c) The CMA notes that white-label arrangements are reflected in the shares of supply discussed above (since they are attributed to the underlying software provider).

192. In light of the above factors, the CMA considers that white-label software provides only a limited competitive constraint on direct submission software and is unlikely to provide a significant competitive constraint on the combined entity post-Merger.

Regulatory developments

193. The CMA has considered the extent to which competitors arising through new payment methods and channels currently act as a competitive constraint on the Parties in respect of direct submission software. The CMA notes that both Parties appear to acknowledge the need to adapt their respective businesses in order to compete effectively in the new payments landscape. This is reflected in the Parties' internal documents and also the views of third parties.

¹⁷³ For example, because Bottomline controls the input price charged to the bank who is reselling the white-label software. The CMA notes that its approach in this case is consistent with other inquiries where white-label offerings or separate brands have not been viewed as independent competitive constraints. See for example: *SSE/Npower* (ME/6721/17) and *Experian/ClearScore* (ME/6743/18).

¹⁷⁴ See slide 10 of Annex 24.03 of Bottomline's Consolidated Response to the First s109 Notice.

194. However, the CMA has not obtained any evidence that competitors arising out of Open Banking and PSD2, such as Third Party Providers (**TPPs**)/Payment Initiation Service Providers (**PISPs**) or Electronic Money Institutions (**EMIs**)/non-bank Payment Services Providers (**PSPs**), *currently* act as a sufficient competitive constraint on the Parties in respect of Bacs submissions. In particular, the CMA does not consider that a current competitive threat is reflected in the Parties' own internal documents, nor have any third parties indicated that such suppliers are competitive alternatives.
195. The extent to which the NPA and other regulatory developments may lead to entry or expansion in the relevant frames of reference is discussed further below.

Conclusion on alternative channels

196. The CMA therefore does not consider that alternative channels will provide a significant competitive constraint on the combined entity post-Merger, for the reasons set out above.

Conclusion on horizontal unilateral effects in the supply of payments software for Bacs submissions via Bacstel-IP in the UK

197. For the reasons set out above, the CMA believes that the Merger is the acquisition by Bottomline (by far the largest supplier of payments software for Bacs submissions via Bacstel-IP in the UK) of one of a small number of alternative suppliers with any material scale in the UK. Whilst the competitive interactions between the Parties may have lessened in recent years, largely as a result of the recent lack of investment in, or marketing of, EPG, evidence available to the CMA indicates that EPG is one of a small number of suppliers with the potential to compete effectively with Bottomline; this is particularly the case with respect to larger/complex customers and bureaux.
198. In addition, in accordance with the counterfactual identified above, the CMA considers that there is a realistic prospect that EPG would, in the absence of the Merger, have acted as more of a competitive constraint on Bottomline than prior to the Merger.
199. The CMA therefore considers that the Merger will allow Bottomline to further strengthen its market power – a view that is reflected in the concerns raised by some third parties.
200. Moreover, whilst there are alternative suppliers and channels that offer varying degrees of competitive constraint, the CMA considers that such

constraints will be insufficient to significantly constrain the combined entity post-Merger.

201. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of payments software for Bacs submissions via Bacstel-IP in the UK.

Horizontal unilateral effects in the supply of payments software for FPS DCA submissions via Secure-IP in the UK

Parties' submissions

202. Bottomline submitted that all of its software solutions that can be used to make direct submissions to Bacs via Bacstel-IP can also be used to make submissions to FPS DCA via Secure-IP (the FPS variant of Bacstel-IP).¹⁷⁵
203. Bottomline also submitted that FPS DCA submissions using the Parties' software are negligible and estimates that the Parties' combined share of supply represents less than 1% of overall FPS payments volume.¹⁷⁶

CMA's assessment

204. As with Bacs, shares of supply can be measured in three ways: (i) SUNs; (ii) volume of transactions; and (iii) revenues.
205. Bottomline submitted that share of SUNs is the most appropriate measure of market share for the same reasons that apply to Bacs software. In the below section, the CMA has assessed the various shares of supply for the FPS DCA via Secure-IP.
206. The CMA has assessed shares of supply by volume of transactions, SUNs, and revenue. Shares of supply for FPS DCA via Secure-IP are presented below in Table 5.

¹⁷⁵ Bottomline's Consolidated Response to the First s.109 Notice, paragraph 111.

¹⁷⁶ Bottomline's Consolidated Response to the First s.109 Notice.

Table 5: FPS DCA via Secure-IP market shares

Supplier	Volume of transactions market share	SUNs market share	Revenue market share
Bottomline	[50-60%]	[40-50]%	[30-40]%
EPG	[0-10]%	[5-10]%	[10-20]%
<i>Parties combined</i>	<i>[50-60]%</i>	<i>[50-60]%</i>	<i>[40-50]%</i>
Finastra	[30-40]%	[20-30]%	[30-40]%
CORVID	[0-5]%	[10-20]%	[10-20]%
AccessPay	[0-5]%	[5-10]%	[5-10]%
Elseware	[0-5]%	[0-5]%	[0-5]%

Source: Bottomline estimates for SUNs and revenues. Pay UK for volumes.

207. The CMA considers that the considerations relating to each measure of share discussed above in relation to Bacs also apply to FPS DCA.
208. Similar to Bacs, each measure of share for FPS DCA indicates that the combined entity will be the largest supplier post-Merger and that the constraint from alternative suppliers is likely to be limited.
209. The CMA notes that Finastra has a significantly higher market share in relation to FPS DCA compared to Bacs and may be a stronger post-Merger competitive constraint on the combined entity. However, other leading providers, namely CORVID and AccessPay, have a much smaller presence in relation to FPS DCA and may provide a much weaker competitive constraint post-Merger. The Parties estimates of shares based on revenue suggest that CORVID has a similar share to EPG. However, these shares were not corroborated by third parties. Further the CMA notes that the Parties [redacted].¹⁷⁷ The CMA considers it unlikely that a competitor which accounts for less than [0-5]% of FPS transactions accounts for [10-20]% of all FPS revenues.
210. The CMA therefore believes that the Merger reflects a reduction in the number of credible large providers from three to two in the supply of payments software for FPS DCA via Secure-IP.
211. As noted above, Bottomline submitted that FPS DCA is an overly-narrow frame of reference and that FPS DCA is significantly constrained by other FPS payment channels. The CMA notes that only customers of Barclays and HSBC are able to make submissions to FPS DCA using Secure-IP. However, the CMA has not received any evidence that this channel is constrained by other FPS channels. For example, the CMA has not received evidence that other FPS channels offer the same functionality as the Parties' software,

¹⁷⁷ Bottomline Response to the CMA's s109 notice of 17 May 2019, table 8.

including the practicality of making bulk FPS submissions, systems integration and automation.

212. Moreover, data provided from Pay UK indicates that the Parties are the only suppliers of FPS DCA software to bureaux, such that the combined entity will be the sole supplier post-Merger. This is consistent with the views of one bureaux customer which raised concerns suggesting that the Merger would leave it with just one realistic alternative option, ie reducing the number of alternative providers which it would consider from two to one.¹⁷⁸ The CMA also notes that two additional FPS DCA customers have raised concerns about the competitive effect of the Merger.
213. Therefore, the evidence available to the CMA indicates that the combined entity remains the largest provider with respect to FPS DCA submissions post-Merger and, aside from Finastra, no alternative providers will provide a significant competitive constraint.

Conclusion on the supply of payments software for FPS DCA submissions via Secure-IP in the UK

214. In light of Bottomline's significant share and the very limited number of alternative providers, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of payments software for FPS DCA submissions via Secure-IP in the UK. In particular, the Merger will result in a reduction from three to two in terms of credible FPS DCA software suppliers, as well as making Bottomline the sole supplier of FPS DCA software to bureaux. Moreover, under the counterfactual discussed above, the CMA considers that EPG would have been sold to an alternate purchaser that does not give rise to competition concerns and that would compete for new business and develop the EPG product going forward. The CMA considers that the sale to this alternate purchaser would have made the EPG business more competitive than under Experian's previous ownership and result in a more competitive situation than the sale to Bottomline.

Barriers to entry and expansion

215. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA

¹⁷⁸ [redacted] response to the Questionnaire, question 8.

considers whether such entry or expansion would be timely, likely and sufficient.¹⁷⁹

Bottomline's submissions

216. Bottomline submitted that barriers to entry and expansion are low in the supply of software for Bacs and FPS submissions.¹⁸⁰ Bottomline submitted that it is not difficult or costly to create software to run a hosted solution and that the costs of entry are lower as a result of Bacs charging approved software suppliers an annual fee based on the number of SUNs as opposed to a fixed fee. Bottomline further submitted that the growth of cloud computing increases the ease of entry.
217. Bottomline similarly submitted that barriers to expansion are limited and that this is demonstrated at so-called “look-up moments”¹⁸¹, in relation to which Bottomline cites the example of EPG which originally entered the market when Bacs replaced Bacstel with Bacstel-IP and was able to gain a significant number of customers.
218. Bottomline further cites the examples of Serrala and EFIS as recent entrants and submitted that it is too premature to say that they will not have a competitive impact. Bottomline also submitted that the continued expansion of AccessPay and GoCardless will act as a competitive constraint.¹⁸²

Entry and expansion by alternative software providers

219. As discussed above, the CMA believes that switching rates are low in these product markets and that the evidence indicates barriers to switching are significant (as discussed above at paragraph 149). This is also reflected in the discussion of the cancellation data above which indicates that [X] % of Bottomline’s customer base appears to have switched provider in 2018. Moreover, as show in Table 5 below, the shares of leading suppliers in the supply of Bacs payments software (based on volume of transactions) appear to have remained stable over time. This again indicates that little switching between providers occurs.

¹⁷⁹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

¹⁸⁰ Bottomline’s Issues Meeting Presentation, slides 54-56. The CMA notes that these submissions appear inconsistent with Bottomline’s submissions in relation to the CMA’s counterfactual in which it suggests that a new entrant would have difficulties expanding and competing effectively.

¹⁸¹ Bottomline explained “look-up” moments to be market developments that prompt customers to assess their competitive options - Bottomline’s Issues Meeting Presentation.

¹⁸² Bottomline’s Consolidated Response to the First s.109 Notice, paragraph 139.

Table 6: Bacs software providers' market shares (based on volume of transactions) 2016-2018

Supplier	2016	2017	2018
Bottomline	[40-50%]	[40-50%]	[40-50%]
EPG	[40-50%]	[30-40%]	[30-40%]
Finastra	[10-20%]	[10-20%]	[10-20%]
CORVID	[0-5%]	[0-5%]	[0-5%]
AccessPay	[0-5%]	[0-5%]	[0-5%]

Source: Pay UK

220. In addition, the customer comments discussed above at paragraph 152, indicate a preference of customers submitting larger volumes of transactions to have a reliable software provider. Entry/expansion therefore may be inhibited by limited opportunities for less established rivals to contest new business and further, larger customers may be reluctant to switch to providers without a proven track record and associated reputation.
221. The CMA also has assessed the entry/expansion of rivals cited by Bottomline. As regards EFiS and Serrala, the CMA notes that both of these providers have a minimal market share ([0-5]% by share of transactions), no customers or competitors have cited them as significant competitors, nor do any of the Parties' internal documents consider them to be meaningful competitive constraints. Further, as discussed above in relation to alternative software providers, the CMA has not received sufficient evidence to suggest that further expansion by AccessPay will sufficiently constrain the combined entity post-Merger.
222. Bottomline also has indicated that GoCardless is a recent entrant into the payments sector and that it is likely to pose a significant competitive constraint post-Merger. The CMA notes that the share estimates provided by Bottomline also indicate that GoCardless has only a [0-5]% share amongst bureaux and that any expansion by GoCardless would take place in the context of a highly concentrated market in which the Merger has removed the largest provider other than Bottomline.¹⁸³ The CMA therefore does not consider that further expansion by GoCardless will be sufficient to mitigate the effects of any SLC.

Regulatory developments

Bottomline's submissions

223. Bottomline submitted that new regulatory developments, namely PSD2, Open Banking and the NPA, will subject payments software providers to increased

¹⁸³ See Table 6 of Bottomline's Consolidated Response to the First s.109 Notice.

competition. In particular, Bottomline submitted that the NPA will impact Bacs submission software in two ways: (i) all providers of Bacs software must invest to ensure that their software is compatible with the NPA;¹⁸⁴ and (ii) request to pay (RTP), which will be introduced as part of the NPA, will offer increased choice for consumers and act as an alternative to current direct debits.¹⁸⁵

224. For the reasons discussed below, the CMA believes that the impact on competition from these regulatory developments currently is unknown, such that they are unlikely to mitigate the effects of any SLC.

Timing

225. Information on the Pay UK website confirms that the NPA is forecast for implementation after 2021.¹⁸⁶ [REDACTED].¹⁸⁷ The CMA therefore does not consider that the competitive effects of the NPA will be implemented within the two-year period in which entry/expansion typically may be expected to mitigate the effects of any SLC.¹⁸⁸

226. In addition the CMA has not received any evidence that competition from TPP/PISPs, PSPs or EMIs/PSPs, currently provide a meaningful competitive constraint on the Parties with respect to the supply of payments software for either direct Bacs or FPS submissions or will do so in the short to medium term.¹⁸⁹ The CMA also has not seen any material discussion of these firms in the Parties' internal documents that suggest that they will pose a competitive threat within two years, nor has this been raised by third parties.

Uncertainty

227. [REDACTED].¹⁹⁰ An Experian internal document further suggests that the introduction of RTP as part of the NPA will not lead to the replacement of direct debits, suggesting that these regulatory developments will not adversely affect Bottomline's payments software business.¹⁹¹ The CMA therefore believes that

¹⁸⁴ Bottomline's response to the Issues Paper, paragraph 22.

¹⁸⁵ Bottomline's Consolidated Response to the First s.109 Notice, paragraph 47.

¹⁸⁶ <https://www.wearepay.uk/new-payments-architecture-core/>

¹⁸⁷ [REDACTED].

¹⁸⁸ Merger Assessment Guidelines, paragraph 5.8.11.

¹⁸⁹ TPPs (otherwise known as Payment Initiation Service Providers) are a new form of payment provider envisaged by Open Banking. Once active and regulated, it is expected that TPPs will be able to access information and initiate payments by connecting to banks, building societies, or payment companies via APIs. EMIs and PSPs are a new form of payments provider resulting from Open Banking and the NPA. The aim of such suppliers is to offer an alternative form of banking to businesses – including alternatives to the Bacs and FPS methods of payment.

¹⁹⁰ [REDACTED].

¹⁹¹ [REDACTED] as submitted by Experian in response to the Experian RFI.

the effects of the NPA on Bacs or FPS payment software suppliers is currently uncertain.

Position of existing suppliers

228. The NPA is designed to combine and replace the existing Bacs and FPS payment systems and modernise their functionality. Therefore, incumbent providers of Bacs and FPS payment software will be likely to have a competitive advantage in terms of supplying payments software for the NPA due to their historical reputation. This particularly is the case for Bottomline which, as discussed above, is the significant market leader. The CMA considers that the uncertainty related to the implementation of the NPA and resulting competitive landscape means that it is unable to conclude that Bottomline will be sufficiently constrained in this market leading position in the future.

Conclusion on barriers to entry and expansion

229. For the reasons set out above, in particular low switching rates, customer preferences for established providers and uncertainty surrounding future regulatory developments, the CMA believes that entry or expansion would not be sufficient timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

Conclusion on substantial lessening of competition

230. The CMA considers that the relevant counterfactual against which to assess the competitive effects of the Merger is that EPG would have been acquired by an alternate purchaser which does not give rise to competition concerns and who would compete for new business and develop the EPG product going forward. The CMA therefore considers that there is a realistic prospect that the EPG business would have been more competitive under the ownership of an alternate purchaser than under Experian's previous ownership (ie the pre-Merger conditions). The CMA also considers that this counterfactual would have created a more competitive situation than the sale of EPG to Bottomline.
231. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to the supply of: (i) payments software for Bacs submissions via Bacstel-IP in the UK; and (ii) the supply of payments software for FPS DCA submissions via Secure-IP in the UK.

Decision

232. The CMA believes that it is or may be the case that: (i) a relevant merger situation has been created; and (ii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the UK.
233. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.¹⁹² Bottomline has until 14 October 2019¹⁹³ to offer an undertaking to the CMA.¹⁹⁴ The CMA will refer the Merger for a phase 2 investigation¹⁹⁵ if:
- (a) Bottomline does not offer an undertaking by 14 October 2019;
 - (b) if Bottomline indicates before 14 October 2019 that it does not wish to offer an undertaking; or
 - (c) if the CMA decides¹⁹⁶ by 21 October 2019 that there are no reasonable grounds for believing that it might accept the undertaking offered by Bottomline, or a modified version of it.
234. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 15 October 2019. For the avoidance of doubt, the CMA hereby gives Bottomline notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by Bottomline and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from Bottomline stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

Joel Bamford
Senior Director of Mergers
Competition and Markets Authority
7 October 2019

¹⁹² Section 22(3)(b) of the Act.

¹⁹³ Section 73A(1) of the Act.

¹⁹⁴ Section 73(2) of the Act.

¹⁹⁵ Sections 22(1) and 34ZA(2) of the Act.

¹⁹⁶ Section 73A(2) of the Act.

ⁱ The reference to 'Bankers' Automated Clearance System' should be to 'Bankers Automated Clearing Services' or simply 'Bacs'.

ⁱⁱ Indirect submissions also require a SUN. Where a business cannot obtain direct debit originator status, a FMDD provider will allocate a SUN to that company.

ⁱⁱⁱ Footnote 68 should be a reference to Question 13, Experian's Response to the CMA's Request for Information dated 4 June 2019.

^{iv} Paragraph 80, sentence two should read: 'This is because these two payment systems have inherently different characteristics and distinct software functionality is required for each.'

^v The Bottomline cancellation data (Table 4) shows competitors to whom Bottomline's customers have switched where the customer has provided the information as part of an exit interview.