

Completed acquisition by Bottomline Technologies (de), Inc. of Experian Limited's Experian Payments Gateway business and related assets

Provisional findings report

Notified: 18 February 2020

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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Appendices

- A: Terms of reference
- B: Analysis of customer switching
- C: Conduct of the inquiry

Glossary

Summary

1. The Competition and Markets Authority (CMA) has provisionally found that the completed acquisition by Bottomline Technologies (de), Inc. of Experian Limited's (Experian) Experian Payments Gateway business and related assets (EPG) (the Merger) has not resulted, and may not be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom for goods or services as a result of:
 - (a) horizontal unilateral effects in the supply of payment software for submissions to Bacs via Bacstel-IP and Faster Payments Direct Corporate Access (FPS DCA) via Secure-IP in the United Kingdom; or
 - (b) a loss of potential competition in the supply of a wider range of payment software and solutions in the United Kingdom.
2. We invite any parties to make representations to us on these provisional findings by no later than **17:00 on Tuesday 10 March 2020**. Parties should refer to the **notice of provisional findings** for details of how to do this.

Background

The reference

3. On 21 October 2019, in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act) the CMA referred the Merger to a group of CMA Panel Members (the Inquiry Group) for further investigation and report to decide the following questions in accordance with section 35(1) of the Act:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

The parties and transaction

4. The direct acquirer is Bottomline Technologies Limited (Bottomline UK), a company incorporated in England. Bottomline UK's ultimate parent is Bottomline Technologies (de), Inc., a NASDAQ-listed company incorporated in the United States.

5. Bottomline Technologies (de), Inc. and its subsidiaries (including Bottomline UK), hereinafter collectively referred to as 'Bottomline', provide software for banking, payments and document automation solutions.
6. Bottomline supplies payment software that allows customers to make submissions to the UK's Bacs and FPS DCA payments systems (such software is hereinafter referred to as 'Bacs Approved Software'). In addition to supplying end users directly, Bottomline also supplies its payment software products to banks on a 'white label' basis.
7. The target, EPG, comprises the Experian Payments Gateway software business and related assets. EPG also supplies Bacs Approved Software.
8. Throughout this document we refer to Bottomline and EPG collectively as the Parties and, as applicable, the Merged Entity.
9. The Merger was implemented by way of an asset purchase agreement between Bottomline and Experian pursuant to which Bottomline agreed to acquire EPG. EPG does not comprise a standalone business and so is now trading under Bottomline (subject to the terms of an Interim Enforcement Order made by the CMA on 22 May 2019).

The industry

10. Bacs Approved Software is payment software that allows the submission of batch payments to Bacs via Bacstel-IP and/or FPS DCA via Secure-IP. There are currently 18 Bacs Approved Software providers, six of whom (including the Parties) are approved to also supply software to connect to FPS DCA.
11. Bacs and FPS are the two most widely used systems for making electronic transfers in the UK (although FPS DCA payments specifically are a small subset of all FPS payments).
12. In order to make Bacs and FPS DCA payments directly to the inter-bank payments scheme via Bacstel-IP (for Bacs) or Secure-IP (for FPS DCA), businesses can purchase (or subscribe to) a software license and submit payments directly. Alternatively, businesses may use a 'bureau' or 'facilities managed direct debit' (FM DD) provider to make submissions on their behalf. There are approximately 600 Bacs-approved bureaux and approximately 50 FM DD providers in the UK.
13. There are also alternative channels into to the Bacs and FPS payments schemes, including services provided by banks and 'non-bank' electronic and payment institutions.

14. Some Bacs Approved Software providers provide banks with a white label version of their software with the purchasing bank's branding. Licenses to this software are then sold by banks to their clients, who can use it to make submissions directly to Bacstel-IP or Secure-IP.
15. The payment software industry has been influenced by two main technological trends in the last decade: developments aimed at improving security, and a greater emphasis on cloud-hosted software.

Provisional findings

Jurisdiction

16. The Merger is a completed transaction. We have provisionally found that the Merger has resulted in the creation of a relevant merger situation within the meaning of the Act on the basis that, as a result of the Merger, the Parties have a combined share of supply in the UK over 25% in relation to the supply of Bacs Approved Software.

Counterfactual

17. The evidence provided to us during the inquiry shows that Experian had not been investing significantly in EPG for a number of years and had made the strategic decision to divest EPG. Our provisional finding on the most likely situation is that Experian would have divested EPG in the absence of a sale to Bottomline.
18. The evidence also shows that, absent the sale to Bottomline, Experian would have sold EPG to one particular purchaser. This identified alternative purchaser submitted a bid for EPG, and both Experian and the identified alternative purchaser told us they would have continued with the sales process in the absence of the sale to Bottomline. Experian told us there was no reason why it would not have sold EPG to the identified alternative purchaser.
19. We have therefore provisionally found that the most likely situation for the ownership of EPG absent the Merger is that EPG would have been acquired by the identified alternative purchaser.
20. In relation to EPG's competitive strategy absent the Merger, the evidence provided to us shows that the identified alternative purchaser would not have invested significantly in EPG so as to bring about a step-change in the functionality and growth of EPG's product. In addition, it would not have

actively targeted or been focussed on winning new customers specifically for Bacs processing.

21. Therefore, our provisional finding is that the competitive strategy of EPG under the ownership of the identified alternative purchaser would have been broadly similar to that which existed pre-Merger, and that the most likely counterfactual situation is therefore one where the prevailing conditions of competition pre-Merger would have continued.

Market definition

22. Our provisional finding is that the relevant market for the assessment of the Merger is the market for the supply of Bacs Approved Software in the UK.
23. We have provisionally defined a single relevant market for Bacs Approved Software comprising software that enables submissions to Bacstel-IP and Secure-IP. In our provisional view, the relevant market includes both hosted (on the cloud) and deployed (on-premises) software, and it also includes Bacs Approved Software supplied on a white label basis by banks. We have taken into account customer differentiation in the assessment of the competitive effects of the Merger rather than segmenting the relevant market.
24. Our provisional finding is that indirect submissions (through bureaux and FM DDs) and alternative banking or electronic money institution channels (namely online banking and host to host) are not part of the relevant market, but we have taken into account the constraint they impose in our assessment of the competitive effects of the Merger.

Competitive effects

25. We have considered the competitive effects of the Merger using the following theory of harm: whether the Merger, by bringing together Bottomline and EPG, may give the Merged Entity the ability and incentive to worsen elements of its competitive offering (horizontal unilateral effects).
26. Our provisional view is that EPG is a weak competitive force in the market. This is explained by the fact that the EPG product has not received investment in recent years and has not been actively promoted by Experian. In the counterfactual, the competitive strategy of EPG under the alternative purchaser would have been broadly similar to that which existed pre-Merger. Although EPG has a high market share by volume, this overstates the competitive constraint it provides as it largely reflects its historic position in the market. We have therefore provisionally found that EPG exerts no meaningful competitive constraint on Bottomline.

27. While we have provisionally found that Bottomline exerts some competitive constraint on EPG, customer switching evidence shows it is not a close competitor.
28. Furthermore, post-Merger there will remain a number of providers of Bacs Approved Software, and evidence on customer switching shows that providers such as AccessPay, Paygate and Finastra exercise a stronger competitive constraint on the market than EPG.
29. In addition, the Merged Entity will be further constrained by out of market options such as bureaux and by competition from the products offered by banks, namely host-to-host services and online banking (although these are not significant constraints).
30. Our provisional view is therefore that there are sufficient alternative options to the Merged Entity available to customers of Bacs Approved Software to offset the limited loss of competition between the Parties resulting from the Merger.
31. On this basis, we have provisionally found that horizontal unilateral effects do not provide a basis for a substantial lessening of competition resulting from the Merger.
32. As set out in the Issues Statement published on 14 November 2019, we also considered a possible theory of harm in which the Merger brought about a loss of potential competition in the provision of a wider range of payment software and solutions. However, our provisional view is that this theory of harm is no longer credible as it is not supported by our provisional conclusions on the counterfactual. Additionally, we have not found any evidence that current customers of Bottomline's or EPG's Bacs Approved Software demand, or would be likely to demand, a suite of payment products.

Provisional conclusion on the substantial lessening of competition test

33. We have provisionally found that the Merger has not resulted, and may not be expected to result, in a substantial lessening of competition as a result of horizontal unilateral effects in the supply of Bacs Approved Software in the United Kingdom.
34. We have also provisionally found that the Merger has not resulted, and may not be expected to result, in a substantial lessening of competition as a result of a loss of potential competition in the supply of a wider range of payment software and solutions in the United Kingdom.

35. We invite any parties to make representations to us on these provisional findings no later than 17:00 on Tuesday 10 March 2020. Parties should refer to the notice of provisional findings for details of how to do this.

Provisional findings

1. The reference

- 1.1 On 21 October 2019, in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act) the Competition and Markets Authority (CMA) referred the completed acquisition by Bottomline Technologies (de), Inc. (referred to, together with its subsidiaries, as Bottomline) of the Experian Payments Gateway business (EPG) carried on by Experian Limited (Experian) (the Merger) for further investigation and report by a group of independent panel members (the Inquiry Group).
- 1.2 The terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. The Inquiry Group is required to publish its final report by 5 April 2020.
- 1.3 In this investigation, the Inquiry Group must decide:
- (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
- 1.4 This document, together with its appendices, constitutes the Inquiry Group's provisional findings, published and notified to Bottomline Technologies (de) Inc in line with the CMA's rules of procedure.¹ Further information relevant to this inquiry, including non-confidential versions of the submissions received from Bottomline, can be found on the CMA's website.
- 1.5 Throughout this document we refer to Bottomline and EPG collectively as the Parties and, as applicable, the Merged Entity.

2. The parties

Acquirer: Bottomline

- 2.1 The acquirer is Bottomline Technologies Limited, a company incorporated in England (Bottomline UK).²

¹ *Rules of procedure for merger, market and special reference groups* (CMA17), paragraphs 11.1 to 11.7.

² Bottomline, Consolidated response to CMA s109 Notice (phase 1), 18 June 2019, question 3: Asset Purchase Agreement between Experian Limited and Bottomline Limited dated 6 March 2019.

- 2.2 Bottomline UK's ultimate parent is Bottomline Technologies (de), Inc., a NASDAQ-listed company incorporated in the United States. Its market capitalisation as at the date of the Merger was \$2.08 billion.³
- 2.3 Bottomline UK's ultimate parent, Bottomline Technologies (de), Inc., and its subsidiaries (including Bottomline UK itself) are referred to collectively as 'Bottomline'.
- 2.4 Bottomline provides various software for banking, payments and document automation solutions to businesses, including cyber fraud and risk management; digital banking; financial document automation; financial messaging; and payments and cash management.⁴
- 2.5 Among other activities, Bottomline supplies software that allows customers to make submissions to the UK's Bacs and Faster Payments Direct Corporate Access (FPS DCA) payments systems (hereinafter referred to as Bacs Approved Software).⁵
- 2.6 In addition to supplying end users directly, Bottomline also supplies its Bacs Approved Software products to banks on a 'white label' basis. Banks can then sell it with their own corporate branding to end-users.⁶
- 2.7 Bottomline also operates a commercial bureau which uses its direct Bacs Approved Software to make payments on behalf of third-party organisations.⁷

Financial metrics: Bottomline

- 2.8 Table 1 shows Bottomline's consolidated turnover, operating profit and net assets for the financial years ended 30 June in 2016, 2017, and 2018.

Table 1: Key financial metrics of Bottomline

	USD \$ million		
	<i>Financial year ended 30 June</i>		
	<i>2016</i>	<i>2017</i>	<i>2018</i>
Turnover	343	349	394
Operating profit	-19	-38	1
Net assets	651	617	636

Source: Bottomline Technologies (de), Inc Form 10-K Annual Reports for the years ended 30 June in 2016, 2017, and 2018 from Orbis.

³ Ycharts.com, Market capitalisation for Bottomline Technologies Inc (EPAY).

⁴ [Bottomline website](#).

⁵ Bacs is responsible for approving both Bacstel-IP and Secure-IP

⁶ Bottomline, Response to CMA s109 Notice, 19 November 2019, question 9.

⁷ [Bottomline website](#), 'Payment Bureau solutions'.

Financial metrics: Bottomline UK

2.9 Table 2 shows Bottomline UK's turnover, operating profit and net assets for the financial years ended 30 June in 2016, 2017 and 2018.

Table 2: Key financial metrics of Bottomline UK

	£ million		
	Financial year ended 30 June		
	2016	2017	2018
Turnover	71	71	70
Operating profit	7	5	3
Net assets	61	69	77

Source: Bottomline UK audited statutory financial statements for the years ended 30 June in 2016, 2017, and 2018.

Financial metrics: Bottomline's payments business unit

2.10 Table 3 below shows Bottomline's consolidated revenue and cost of revenue from the sale of Bacs Approved Software.

Table 3: Bottomline's key revenues and gross margins from the sale of Bacs Approved Software

	USD \$ million		
	Financial year ending 30 June		
	2016	2017	2018
Revenues			
Subscriptions	[REDACTED]	[REDACTED]	[REDACTED]
Software licenses	[REDACTED]	[REDACTED]	[REDACTED]
Maintenance & servicing	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]
Cost of revenue			
Subscriptions	[REDACTED]	[REDACTED]	[REDACTED]
Software licenses	[REDACTED]	[REDACTED]	[REDACTED]
Gross margin			
Subscriptions	[REDACTED]	[REDACTED]	[REDACTED]
Software licenses	[REDACTED]	[REDACTED]	[REDACTED]

Source: Bottomline, Response to CMA s109 Notice, 19 November 2019, Annex 2.48.1.

2.11 Table 3 shows that, since 2016, Bottomline has been [REDACTED]. Chapter 4 (The Industry) discusses the industry trend of shifting from deployed to hosted software.

2.12 We note that Bottomline's gross profit margins from the sale of Bacs Approved Software have remained generally consistent since 2016 at around [REDACTED]% for subscriptions and [REDACTED]% for licenses.

Bottomline acquisitions

2.13 Bottomline has acquired several companies in the past decade, including:

- (a) Albany Software Limited, a payment software provider, in 2012;⁸
- (b) Sterci and Simplex GTX, a financial messaging developer, in 2013;⁹
- (c) Andera, a mobile device payment software developer, in 2014;¹⁰
- (d) First Capital Cash Flow, a Bacs-approved bureau, in 2017;¹¹ and
- (e) Microgen Banking Systems Limited, a payment software provider, in 2018.¹²

Target: EPG (business and assets)

Assets acquired

- 2.14 The Merger was implemented by way of an asset purchase agreement between Bottomline and Experian, pursuant to which Bottomline agreed to acquire EPG.
- 2.15 EPG comprises the following assets: (i) software products ('Experian Payments Gateway software', 'EPG Licence Key Generator Tool', 'EPG 2'¹³ and 'EPG Data Manager Application'); (ii) intellectual property; (iii) freehold property; (iv) commercial contracts; (v) goodwill; (vi) know how; (vii) employees (comprising technical, operational and administrative staff) and (viii) customer lists. EPG owns a property in Rugby in England. Bottomline intends to sell this property and lease other premises for the EPG business.¹⁴
- 2.16 Bottomline and Experian also entered into a transitional service agreement related to the Merger which includes additional software licensing.
- 2.17 EPG does not comprise a standalone business and so is now trading under Bottomline (subject to the terms of an Initial Enforcement Order made by the CMA on 22 May 2019).¹⁵

⁸ See *OFT decision on anticipated acquisition by Bottomline Technologies (de), Inc of Albany Software Limited* published on 20 September 2012.

⁹ [IT Nation website](#), 23 August 2013.

¹⁰ [Edison Partners sale announcement](#), 7 May 2014

¹¹ Note 4 of Bottomline Technologies (de), Inc Form 10-Q filing for fiscal quarter ended December 31, 2017.

¹² [Bottomline 2018 Annual Report](#), p92.

¹³ The CMA understands that this payments submission software is a further development of EPG's software suite and is used by [REDACTED]: Project Express Operating Plan slides prepared by Bottomline dated February 2019, Bottomline, Response to the CMA's s109 dated 19 November 2019 Annex 2.36.1, p11

¹⁴ Bottomline, Response to CMA s109 Notice, 28 October 2019, Annex 1.16.

¹⁵ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

2.18 Bottomline told us that [REDACTED].¹⁶

The Experian Payments Gateway software

2.19 EPG supplies a Bacs Direct Debit and Faster Payment processing product called Experian Payments Gateway software (formerly known as EigerPay Gateway). According to EPG's website, this product is tailored to large organisations and bureaux with high volumes of payments and complex processing needs.¹⁷

2.20 Experian Payments Gateway software obtained approval by Bacs in 2003.¹⁸ Bottomline stated that few changes have subsequently been made to the user interface.¹⁹ Bottomline submitted that Experian Payments Gateway software [REDACTED].²⁰

2.21 At the time of the Merger, around [REDACTED] customers used Experian Payments Gateway software, with the top [REDACTED] customers accounting for approximately [REDACTED] of total revenue. The largest single customer by revenue, [REDACTED], accounted for approximately [REDACTED] of revenue.²¹

Customer list

2.22 Bottomline acquired [REDACTED].²²

2.23 The average software licence revenue per customer was around £[REDACTED] to £[REDACTED] between the 2017 and 2019 financial years.²³ Table 4 shows the number of customers of Experian Payments Gateway software in different revenue bands.

Table 4: Experian Payments Gateway software revenue breakdown (Bottomline due diligence)

<i>Annual revenue</i>	<i>Number of customers</i>
More than £40,000	[REDACTED]
Between £20,000 and £40,000	[REDACTED]
Between £10,000 and £20,000	[REDACTED]
Less than £10,000	[REDACTED]
Total	[REDACTED]

¹⁶ Bottomline, Response to CMA phase 1 decision, 11 November 2019. One of Bottomline's internal documents states that EPG also had [REDACTED] (Project Express Operating Plan slides prepared by Bottomline dated February 2019, Bottomline, Response to CMA s109 Notice, 19 November 2019 Annex 2.36.1).

¹⁷ [EPG website](#).

¹⁸ [The Global Treasurer website](#), 17 July 2003:

¹⁹ Bottomline explanation at Site Visit, 21 November 2019.

²⁰ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

²¹ Experian, Response to CMA request for information (phase 1), 4 June 2019, Question 1.

²² Bottomline, Response to CMA s109 Notice, 28 October 2019, Annex 1.16 ([REDACTED]).

²³ Project Express Operating Plan slides prepared by Bottomline dated February 2019. Bottomline, Response to CMA s109 Notice, 18 November 2019, Annex 2.36.1.

- 2.24 Bottomline stated that [REDACTED]% of the total volume of transactions made using Experian Payments Gateway software are made by around [REDACTED] customers.²⁴ We calculated that at least [REDACTED]% of Experian Payments Gateway software's customers are listed on the FTSE 100 Index with the London Stock Exchange.²⁵
- 2.25 Experian Payments Gateway software was developed to meet the needs of complex Bacs users which require flexible automation.²⁶

Marketing of and investment in Experian Payments Gateway software

- 2.26 Experian stated that it has not been actively promoting the EPG business.²⁷ It said [REDACTED].²⁸
- 2.27 Experian submitted that Experian Payments Gateway software was [REDACTED].²⁹
- 2.28 [REDACTED].³⁰

Financial metrics: Experian Payments Gateway software

- 2.29 Experian's internal documents state that Experian Payments Gateway software has seen 'minimal' investment in recent years, [REDACTED].³¹
- 2.30 Experian's accounting records for the disposal of EPG forecast a [REDACTED] in revenue from the 2018 financial year [REDACTED] to the 2019 financial year [REDACTED].³²

Seller: Experian

- 2.31 Prior to the Merger, Experian Payments Gateway software was owned by Experian, a company incorporated in England.³³ Experian is a wholly-owned subsidiary of Experian plc. Experian's principal business is providing credit references and associated risk products.³⁴

²⁴ Bottomline, Response to CMA Issues Statement, 2 December 2019.

²⁵ Bottomline, Response to CMA s109 Notice, 18 December 2019 and FTSE 100 data from Hargreaves Lansdown's website.

²⁶ EPG, Slides at site visit on 21 November 2019, p.6.

²⁷ Call with Experian, 5 December 2019.

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² Experian, Response to CMA s109 Notice, 26 November 2019, Annex 106 question 48.

³³ Bottomline, Consolidated response to the CMA s109 Notice (phase 1), 18 June 2019, question 3: Unsigned Asset Purchase Agreement between Experian Limited and Bottomline Limited dated 6 March 2019. p3.

³⁴ [Experian website](#), 'About Us'.

Financial metrics: Experian

2.32 Table 5 shows Experian's turnover, operating profit and net assets for the financial years ended 31 March in 2016, 2017 and 2018.

Table 5: Key financial metrics of Experian

	£ million		
	<i>Financial year ended 31 March</i>		
	2016	2017	2018
Turnover	628	621	603
Operating profit	154	125	155
Net assets	206	146	185

Source: Experian's audited statutory financial statements for the years ended 31 March in 2016, 2017, and 2018.

2.33 Experian stated that revenue from Experian Payments Gateway software comprised [REDACTED] of its total revenue in the UK and Ireland.³⁵

Pre-merger areas of overlap

Payments software

2.34 The supply of Bacs Approved Software to customers in the UK is the only area of overlap between Bottomline and EPG. Bottomline Technologies and EPG are both Bacs Approved Software providers.

2.35 There are two types of Bacs Approved Software. Software is either 'deployed', which means that it is run on a customer's computer or internal server (that is, on premise), or it is 'hosted', which means that it is run on the software provider's server (in the cloud).

Bottomline's payment software products

2.36 Bottomline stated that it provides a number of Bacs Approved Software products, including Bacway, ePay, C-Series and PT-X.³⁶ PT-X is the only product which is hosted, with the rest being deployed.

2.37 Different software is marketed in different ways by Bottomline – for example, while we understand that C-series is Bottomline's main deployed software, Bottomline's website states that ePay offers industry-leading performance at an affordable price for customers looking for a 'simpler' solution.³⁷

³⁵ Experian, Response to CMA s109 Notice, 26 November 2019: [REDACTED].

³⁶ Bottomline's consolidated response to the CMA's s109 notice, 17 May 2019, paragraph 22.

³⁷ [Bottomline website](#), 'ePay'.

2.38 Bacway was acquired by Bottomline from Microgen in 2018.³⁸ [REDACTED].

PT-X (hosted product)

2.39 According to Bottomline, PT-X can offer customers similar functionality to Bacway, ePay and C-Series but it is a hosted solution with some additional functionality.³⁹ Because PT-X is a hosted, rather than deployed, solution, it does not require installation on the customer's application server or web server.

2.40 Bottomline offers PT-X customers additional functionality through modules such as 'Protect', which mitigates against the risk of incorrect or fraudulent payments being made.^{40,41}

2.41 Table 6 shows the number of Bottomline's active (current) customers that use hosted and deployed Bacs Approved Software, the average annual revenue, and average number of transactions.⁴²

Table 6: Average revenues and transactions per Bottomline customer, 2019

	<i>Number of active customers that use Bacs Approved Software</i>	<i>Average of annual contract value per active customer (£)</i>	<i>Average number of transactions per active customer</i>
Hosted	[REDACTED]	[REDACTED]	[REDACTED]
Deployed	[REDACTED]	[REDACTED]	[REDACTED]

Source: Bottomline's supplemental response to CMAs s109 Notice, November 2019, p3.
Note: Customers that use both hosted and deployed software are counted twice.

2.42 [REDACTED].⁴³

Experian Payments Gateway software

2.43 Experian Payments Gateway software is a deployed Bacs Approved Software product.

2.44 [REDACTED].⁴⁴

³⁸ Bottomline, Response to CMA s109 Notice dated 19 November 2019, p10.

³⁹ [Bottomline website](#).

⁴⁰ [Bottomline website](#), 'What is PT-X Protect'.

⁴¹ Bottomline, Response to CMA s109 Notice, 19 November 2019, p10.

⁴² Bottomline, Response to CMA s109 Notice, 19 November 2019, p10.

⁴³ Bottomline, Response to CMA s109 Notice, 19 November 2019, p3.

⁴⁴ Pay.UK, Response to CMA request for information, 13 August 2019.

3. The merger and merger rationale

Key sales process milestones

- 3.1 Experian submitted that a decision to pursue divestment was taken in [REDACTED], 'once it became apparent that the advent of NPA [New Payments Architecture] would make it impossible for EPG to service existing customers without significant investment.'⁴⁵ Chapter 4 (The Industry) gives information on the New Payments Architecture and other anticipated industry developments.
- 3.2 Experian submitted that the Experian Payments Gateway software was [REDACTED]. It identified that the Experian Payments Gateway software was only available as an on premise (deployed) solution whereas 'most (if not all)' competitors had moved to hosted solutions.⁴⁶
- 3.3 [REDACTED].⁴⁷
- 3.4 In [REDACTED], Experian carried out a strategic review⁴⁸ and considered a number of options for EPG, including:
- (a) 'Maintain / run-off': Continuing the business in its current form, not making any major investment and accepting that customers will move to competitors over time (due to Experian Payments Gateway software not supporting future industry and regulatory requirements).
 - (b) 'Divest': Selling the EPG business and its book of customers.
 - (c) 'Invest': Developing a prioritised roadmap of investment to enable EPG to retain and grow its customer base by providing a market-leading solution.
- 3.5 [REDACTED], valued EPG in the range of [REDACTED]. This was based on a multiple of [REDACTED] of the forecast 2019 financial year revenue.⁴⁹
- 3.6 Following the strategic review, [REDACTED] Experian made the strategic decision to sell EPG [REDACTED].⁵⁰

⁴⁵ Experian, Response to CMA s109 Notice, 26 November 2019, p9. Chapter 4 (The Industry) gives information on the New Payments Architecture and other anticipated industry developments.

⁴⁶ Experian, Response to CMA s109 Notice, 26 November 2019, question 39.

⁴⁷ Call with Experian, 5 December 2019.

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ Experian, Response to CMA s109 Notice, 23 September 2019, Annex 1.4.

- 3.7 Experian identified a list of [REDACTED] potential 'priority' bidders.⁵¹ It approached [REDACTED] of them: [REDACTED].⁵² It received [REDACTED].
- 3.8 Bottomline and Experian agreed in principle the consideration for EPG in [REDACTED] by signing a non-binding term sheet.⁵³
- 3.9 [REDACTED].⁵⁴
- 3.10 The asset purchase agreement between Bottomline and Experian for the acquisition of EPG is dated 6 March 2019.⁵⁵

Consideration

- 3.11 Bottomline paid [REDACTED] to Experian for EPG, [REDACTED].⁵⁶
- 3.12 [REDACTED].⁵⁷

Valuation model

- 3.13 Bottomline's internal financial model for the acquisition of EPG is [REDACTED].⁵⁸ Using the total acquisition cost of £[REDACTED], the income multiple is [REDACTED].⁵⁹
- 3.14 Bottomline's model assumes that, within the first three years after the completion date of 6 March 2019:
- (a) around [REDACTED]% of EPG's customers will switch to a competitor;⁶⁰
 - (b) around [REDACTED]% of EPG's customers will migrate to PT-X;⁶¹ and
 - (c) around [REDACTED]% of EPG's customers would continue to use Experian Payments Gateway software.⁶²

⁵¹ Experian, Response to CMA s109 Notice, 23 September 2019, Annex 3.1.

⁵² Experian, Response to CMA s109 Notice, 23 September 2019, Question 41.

⁵³ Bottomline, Response to CMA s109 Notice, 28 October 2019, Question 1.

⁵⁴ Experian, Response to CMA s109 Notice, 23 September 2019, Annex 1.5.

⁵⁵ Bottomline, Consolidated response to CMA s109 Notice (phase 1), 18 June 2019, Question 3: Unsigned Asset Purchase. Agreement between Experian Limited and Bottomline Limited dated 6 March 2019. p3.

⁵⁶ Bottomline, Consolidated response to CMA s109 Notice (phase 1), 18 June 2019, Q3: Unsigned Asset Purchase Agreement between Experian Limited and Bottomline Limited dated 6 March 2019. s3, p16.

⁵⁷ [REDACTED]

⁵⁸ Bottomline, Response to CMA s109 Notice, 28 October 2019, 1.16.

⁵⁹ Bottomline, Response to CMA s109 Notice, 28 October 2019, Annex 1.16 ([REDACTED]).

⁶⁰ Bottomline, Response to CMA s109 Notice, 28 October 2019, Annex 1.16 ([REDACTED]). Tab 'PT Customer Migration Check'.

⁶¹ Bottomline, Response to CMA s109 Notice, 28 October 2019, Annex 1.16 ([REDACTED]). Tab 'PT Customer Migration Check'.

⁶² Bottomline, Consolidated response to CMA s109 Notice, 18 June 2019, Annex 22.4 (Express Operating Plan Feb 19), p21.

- 3.15 Bottomline’s model estimates that it will have acquired and retained [REDACTED] EPG customers after three years.⁶³
- 3.16 Bottomline’s model forecasts [REDACTED] of £[REDACTED] in year three and £[REDACTED] in year four after the acquisition.⁶⁴
- 3.17 Bottomline’s model assumes that its revenue from EPG customers will [REDACTED] over the first four years from £[REDACTED] in year one to £[REDACTED] in year four. The year-on-year forecast revenue growth is [REDACTED]% in year two, [REDACTED]% in year three and [REDACTED]% in year four.⁶⁵

Bottomline’s rationale for acquiring EPG

- 3.18 Bottomline’s internal documents show that [REDACTED]. For example:
- (a) The Bottomline Board Memorandum dated May 2018 states that [REDACTED].⁶⁶
 - (b) Bottomline’s Project Express (the project code name used by the Parties for the acquisition) Operating Plan presentation dated February 2019 includes a slide on deal rationale with the statement: [REDACTED].⁶⁷
 - (c) Bottomline’s Project Express Operating Plan dated February 2019 states that the ‘*opportunity*’ is: [REDACTED].⁶⁸
 - (d) The same document Bottomline states, beneath the heading ‘Deal Rationale’, that it is a ‘[REDACTED]’.⁶⁹
- 3.19 A purchase price assessment by Bottomline calculated that the business had a fair value of £[REDACTED], of which around [REDACTED].⁷⁰
- 3.20 Bottomline submitted that it planned to [REDACTED].⁷¹
- 3.21 Bottomline submitted its forecast quarterly revenue from the acquisition of Experian Payments Gateway software and [REDACTED].⁷² We infer from [REDACTED], all

⁶³ Bottomline, Response to CMA s109 Notice, 28 October 2019, Annex 1.16 ([REDACTED]: Tab ‘Customers Acquired’).

⁶⁴ Bottomline, Response to CMA s109 Notice, 28 October 2019, Annex 1.16 (Tab ‘S&T Transition’).

⁶⁵ Bottomline, Response to CMA s109 Notice, 28 October 2019, Annex 1.16 (Tab ‘Revenues’).

⁶⁶ Bottomline, Response to CMA s109 Notice (phase 1), 18 June 2019, Annex 22.1 (Bottomline internal memorandum).

⁶⁷ Bottomline, Response to CMA s109 Notice (phase 1), 18 June 2019, Annex 22.4 (Express Operating Plan Feb 19), p3.

⁶⁸ Bottomline, Response to CMA s109 Notice (phase 1), 18 June 2019, Annex 22.4 (Express Operating Plan Feb 19), p4.

⁶⁹ Project Express Operating Plan slides prepared by Bottomline dated February 2019, Bottomline, Response to CMA s109 Notice, 19 November 2019 Annex 2.36.1.

⁷⁰ Bottomline, Response to CMA request for information, 18 December 2019, Annex B.17.3.

⁷¹ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

⁷² Project Express Operating Plan slides prepared by Bottomline dated February 2019, Bottomline, Response to CMA s109, 19 November 2019, Annex 2.36.1.

shown in that document, that Bottomline intended to [REDACTED] customers of Experian Payments Gateway software to increase revenues from them.

Experian's rationale for selling EPG

3.22 Experian's internal documents give the following reasons for selling EPG:⁷³

- (a) Strategic: [REDACTED].⁷⁴
- (b) Support existing customers: 'for many of Express's [Experian Payments Gateway software's] customers, including those who are large customers of Experian overall, the Express product is an important part of their payments process and these customers would like to see the product in the hands of an established payments business who would invest to develop the product roadmap.'⁷⁵ Experian wanted to ensure that its reputation among customers of both Experian Payments Gateway software and its 'Bank Wizard' verification software would not be damaged if Experian Payments Gateway software became obsolete.⁷⁶
- (c) Profitability: [REDACTED].⁷⁷
- (d) Market position: Experian Payments Gateway software had a strong customer base which would be attractive to potential acquirers.⁷⁸
- (e) Lack of technical expertise: [REDACTED].⁷⁹
- (f) Possible industry changes: [REDACTED].⁸⁰

3.23 Chapter 6 (The counterfactual) contains further analysis of these reasons.

3.24 Experian told us that, after receiving bids from Bottomline and [REDACTED], it decided to progress negotiations with Bottomline because of the following factors:⁸¹

- [REDACTED];
- [REDACTED]; and
- [REDACTED].

⁷³ Experian, Response to CMA s109 Notice, 23 September 2019, Annex 1.4.

⁷⁴ Experian, Response to CMA s109 Notice, 23 September 2019, Annex 1.4.

⁷⁵ Experian, Response to CMA s109 Notice, 23 September 2019, Annex 1.4.

⁷⁶ Experian, Response to CMA s109 Notice, 23 September 2019, Annex 1.4.

⁷⁷ Bottomline, Consolidated Response to CMA s109 Notice, 18 June 2019, Annex 22.4 (Express Operating Plan Feb 19), p21.

⁷⁸ Experian, Response to CMA s109 Notice, 23 September 2019, Annex 1.4.

⁷⁹ Experian, Response to CMA s109 Notice, 23 September 2019, Annex 1.4.

⁸⁰ Experian, Response to CMA s109 Notice, 23 September 2019, Annex 1.4.

⁸¹ Call with Experian, 5 December 2019.

4. The industry

Payment systems

- 4.1 As previously explained, the Parties supply software that facilitates the submission of batch payments to Bacs via Bacstel-IP and to Faster Payments Services via Secure-IP (specifically using Direct Corporate Access), referred to collectively as Bacs Approved Software.
- 4.2 Bacs and Faster Payments are the most widely-used payment systems for making electronic transfers in the UK (although they account for a low proportion of transactions by value).⁸² Another payment system, CHAPS, is operated by the Bank of England and used in the UK for making high-value and time-critical wholesale financial and retail payments.^{83,84}
- 4.3 Table 7 shows the volume and value of Bacs, FPS, CHAPS and cheque transactions in 2018 and their relative percentage proportions.

Table 7: Bacs and FPS transactions in 2018

	<i>Volume (million)</i>	<i>Volume % of total</i>	<i>Value (£ billion)</i>	<i>Value % of total</i>
Bacs	6,444	73%	4,959	5%
FPS	2,043	23%	1,709	2%
CHAPS	49	1%	83,514	92%
Cheque	235	3%	300	<0%
Total	8,771	100%	90,482	100%

Source: Pay.UK Annual Summary of Payment Statistics 2018

Bacs

Bacs overview

- 4.4 Bacs is a UK inter-bank payments scheme first introduced in 1968 known as the 'automated clearing house'.⁸⁵ It is a scheme commonly used by businesses to make batch (bulk) payments. In 2018 Bacs accounted for 73% of all inter-bank payments by volume.⁸⁶

⁸² [Bacs website](#), 'An Introduction to the UK's Interbank Payment Schemes'.

⁸³ Pay.UK Annual Summary of Payment Statistics 2018

⁸⁴ [Bank of England website](#), Payment and settlement.

⁸⁵ [Bacs website](#) 'Access to UK Payment Schemes for Non-Bank Payment Service Providers' December 2019.

⁸⁶ CMA calculations based on Annual summary of payment statistics 2018, [Bank of England website](#)

- 4.5 There are two types of UK business payments that can be completed with the Bacs payment scheme: Bacs Direct Credit and Bacs Direct Debit (explained below).⁸⁷
- 4.6 The Bacs payment scheme is recognised as systemically important infrastructure under the Banking Act 2009. This means that, as the operator of Bacs Direct Debit and Bacs Direct Credit, Pay.UK is regulated by the Financial Markets Infrastructure Directorate at the Bank of England.⁸⁸

Bacs Direct Credit payments

- 4.7 Bacs Direct Credit payments are used to electronically pay money to another bank account.⁸⁹ Bacs Direct Credit payments are commonly used, for example, for paying suppliers, payroll, and state benefits.⁹⁰
- 4.8 The total number of Bacs Direct Credit payments processed each year has been between 2 billion and 2.5 billion since 2005.⁹¹ In 2018, 2.1 billion Bacs Direct Credit payments were processed, including 352 million wage and salary payments, 268 million business to business payments and around 1 billion state and other benefits.⁹²
- 4.9 UK Finance figures on the proportion of wage and salary payments made using different methods in 2012 and in 2018 show there has only been a single percentage point decrease in the share of Bacs (compared with other payment methods) between 2012 and 2018 (from 72% to 71% of the total).⁹³ The proportion of wage and salary payments made by businesses using Faster Payments has increased 13 percentage points, from 3% to 16%, whilst the proportion made using cash and cheques has decreased 16 percentage points, from 22% to 6%.⁹⁴
- 4.10 UK Finance figures show that there has been a 12 percentage point fall, from 44% to 32%, in the share of Bacs Direct Credit transaction volumes accounting for supplier and other payments to businesses between 2012 and 2018. Other payment methods, and in particular Faster Payments (considered further below), have become more popular as the use of cheques has declined.⁹⁵

⁸⁷ [AccessPay website](#), 'What is Bacs'.

⁸⁸ [Bacs website](#), 'Corporate Overview'.

⁸⁹ [Bacs website](#), Direct Credit.

⁹⁰ [AccessPay website](#), 'What is Bacs'.

⁹¹ [PaymentsCardsandMobile website](#), 'UKs Bacs Payments Network Hits New Heights', 15 January 2015.

⁹² [Bacs website](#), Bacs Processing Statistics 2018.

⁹³ UK Finance, Business Payments Survey, March 2019, p27.

⁹⁴ UK Finance, Business Payments Survey, March 2019, p27, 2012: 11% + 11%; 2018: 4% + 2%

⁹⁵ UK Finance, Business Payments Survey, March 2019, p.30.

- 4.11 UK Finance figures show that the proportion of outgoing payments made using Bacs Direct Credit, on average, varies significantly depending on the size of the business making them, with medium and large businesses most likely to choose Bacs Direct Credit.
- 4.12 The proportion of outgoing payments made using Bacs Direct Credit by large businesses (with 250 or more employees) has increased 16 percentage points, from 69% in 2012 to 85% in 2018.⁹⁶ The above figures also show that, despite growth in Faster Payments, Bacs Direct Credit still accounts for a significant proportion of outgoing payments made by businesses in the UK.

Bacs Direct Debit payments

- 4.13 Bacs Direct Debit payments are used to electronically collect an amount of money from another bank account. The amounts and dates may vary from payment to payment.⁹⁷
- 4.14 Bacs Direct Debit payments are commonly made for receiving money which is owed to business suppliers, utility companies and through subscriptions.⁹⁸ Users (typically consumers) issue Bacs Direct Debit instructions that allow their banks or building societies to make the payment via Bacs.
- 4.15 All banks and building societies that accept instructions to pay Bacs Direct Debits offer a Direct Debit Guarantee. This entitles a payer to a full and immediate refund of the money paid from their bank or building society if an error is made in the payment of the Bacs Direct Debit by the organisation collecting the payment or the bank or building society.⁹⁹
- 4.16 In 2018, around four billion Bacs Direct Debit payments were processed, including 133 million business-to-business payments.¹⁰⁰ This is an increase of around 33% compared with the total number of Bacs Direct Debit payments processed in 2008 (around three billion).¹⁰¹
- 4.17 UK Finance figures show the proportion of outgoing payments made using Bacs Direct Debit, by size of business, in 2012 and 2018. The figures show there has been relatively little change in business' use of Bacs Direct Debits to make payments owed by them and that this system is commonly used, particularly by smaller firms. The biggest change was by small businesses

⁹⁶ UK Finance, Business Payments Survey, March 2019, p21.

⁹⁷ [Bacs website](#), 'Glossary'.

⁹⁸ [Bacs website](#), 'An Introduction to the UK's Interbank Payment Schemes'.

⁹⁹ [GoCardless website](#), Direct Debit Guarantee.

¹⁰⁰ [Bacs website](#), Bacs Processing Statistics 2018.

¹⁰¹ [PaymentsCardsandMobile website](#), 'UKs Bacs Payments Network Hits New Heights' dated 15 January 2015.

which, on average, increased their proportionate usage four percentage points, from 7% in 2012 to 11% in 2018.¹⁰²

Features of Bacs

4.18 Bacs is characterised by the following features:

- (a) Timing: the Bacs payment cycle typically takes three days to complete. Payments are submitted to Bacs on the first day, processed by the banks on the second day, and simultaneously taken from the sender account and credited to the recipient account on the third day.
- (b) Transaction limits: the maximum which can typically be paid in a single one-off or forwarded dated Bacs service transaction is currently £20 million.¹⁰³
- (c) Currency: Bacs can only be used for Pound Sterling payments.¹⁰⁴

Faster Payment Service

Faster Payment Service overview

4.19 Faster Payments Service (FPS) is a UK inter-bank payments scheme first introduced in 2008. FPS allows for four types of payments:

- (a) single one-off immediate payments;
- (b) forward-dated one-off payments;
- (c) standing orders for payment of a fixed amount to the same recipient on regular dates; and
- (d) Direct Corporate Access (DCA) batch payment messaging files. These payment files are input using a Secure-IP solution (similar to Bacstel-IP), using the same standard file format as Bacs transactions.¹⁰⁵

4.20 FPS payments only pay out (rather than collect) an amount of money to another bank account. There is no FPS equivalent of Bacs Direct Debit.

¹⁰² UK Finance, Business Payments Survey, March 2019, p26.

¹⁰³ [Bacs website](#), 'An Introduction to the UK's Interbank Payment Schemes'.

¹⁰⁴ [Bacs website](#), 'An Introduction to the UK's Interbank Payment Schemes'.

¹⁰⁵ [Faster Payments website](#), Types of Faster Payments.

4.21 The Parties overlap in the supply of software to enable to FPS via DCA (as well as access to Bacs). FPS DCA represent less than [⌘] of all FPS transactions.¹⁰⁶

Growth in the use of FPS generally

4.22 In 2018, around two billion FPS transactions were made, with a value of around £1.7 trillion. This represents an increase of 23% (by volume) and 22% (by value) compared with the previous year.¹⁰⁷

4.23 UK Finance figures shows the increase in the use of all types of FPS for making payments between 2012 and 2018 by size of business.¹⁰⁸

4.24 UK Finance believes that the considerable growth in the use of FPS in a relatively brief period may be a reflection of the increasing popularity of online banking along with the introduction and rapid growth of mobile banking.¹⁰⁹ Almost all internet and telephone banking payments in the UK are now processed via FPS.¹¹⁰

Features of FPS

4.25 FPS is characterised by the following features:

(a) Timing: a key distinguishing feature of FPS is that it enables payments to be made with real time confirmation given to the sender and funds immediately made available to the recipient.¹¹¹ FPS payments can be made 24 hours a day, seven days a week.¹¹²

(b) Transaction limits: FPS is used for low-value payments compared with other payment schemes.¹¹³ The maximum which can be paid in a single one-off or forward-dated faster payment transaction is currently £250,000,¹¹⁴ although some banks choose to set lower limits than this for their customers.

(c) Currency: FPS can only be used for Pound Sterling payments.¹¹⁵

¹⁰⁶ [⌘].

¹⁰⁷ Pay.UK Annual Summary of Payment Statistics 2018.

¹⁰⁸ UK Finance, Business Payments Survey, March 2019, p22.

¹⁰⁹ UK Finance, Business Payments Survey, March 2019, p22.

¹¹⁰ PSR website, 'New Regulatory Framework' March 2015.

¹¹¹ Faster Payments Service website, 'How Faster Payments Work'.

¹¹² Faster Payments Service Principles, February 2018.

¹¹³ Bacs website, 'An Introduction to the UK's Interbank Payment Schemes'.

¹¹⁴ Faster Payments Service, 'Service Principles'.

¹¹⁵ Faster Payments Service Principles, February 2018.

FPS DCA

- 4.26 FPS DCA offers direct technical access to FPS for batch payment submissions.^{116,117} Up to 1.2 million transactions can be submitted in one file.¹¹⁸
- 4.27 Although FPS DCA supports batch payment file submissions in a similar way to Bacs, as explained above, the value of each individual payment is capped at £250,000 (payments made by Bacs can have a value up to £20 million).¹¹⁹
- 4.28 Bottomline told us that only Barclays and HSBC are currently able to offer their customers access to the FPS DCA service.¹²⁰ Barclays' FPS DCA service was launched in 2009. Bottomline told us [redacted].¹²¹
- 4.29 Payments made by FPS DCA comprise a small proportion of total payments made by FPS. Pay.UK has stated that [redacted] transactions were made in 2018. This represents less than [0-5]% of all FPS transactions.¹²²

Bacs and FPS payment channels

- 4.30 We understand that businesses can make submissions to the Bacs and FPS central infrastructure through several channels, including:
- (a) Bacstel-IP and Secure-IP; and
 - (b) bank and payment institution channels.

Bacstel-IP and Secure-IP

- 4.31 Businesses can submit Bacs and FPS payments directly to the central infrastructure provider operated by Vocalink via:
- (a) Bacstel-IP for Bacs; and
 - (b) Secure-IP for FPS.
- 4.32 The Bacs website gives direct submitters access to their submission history, transaction reports and the ability to maintain details of service users and

¹¹⁶ [Barclays website](#), 'Business Tariff' publication, 13 January 2018.

¹¹⁷ HSBC-IP Factsheet.

¹¹⁸ The Association of Corporate Treasurers article, 'At the tipping point', dated September 2011.

¹¹⁹ [Barclays website](#), 'Business Tariff' publication, 13 January 2018.

¹²⁰ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

¹²¹ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

¹²² Pay.UK, Response to CMA request for information, 13 August 2019 [redacted].

contacts.¹²³ Bottomline told us that this information can be downloaded by users of their software.¹²⁴

- 4.33 Payment instructions must adhere to prescribed Bacstel-IP and Secure-IP requirements.¹²⁵
- 4.34 Some Bacs Approved Software providers sell banks 'white label' versions of their software. Banks can then sell the Bacs Approved Software (with the purchasing bank's branding) to their clients who can use it to make submissions directly to Bacstel-IP and Secure-IP.

Bacs via Bacstel-IP software

- 4.35 Bacstel-IP is a channel which provides businesses with secure direct access to Bacs.¹²⁶
- 4.36 Based on data provided to us by Pay.UK, we estimate that [70-80]% of all Bacs transactions in 2018 were submitted using Bacs Approved Software. [✂].¹²⁷
- 4.37 There are currently 18 Bacs Approved Software providers. All Bacs Approved Software solutions must pass testing and meet quality standards and must demonstrate continuing compliance with technical standards.¹²⁸
- 4.38 Bacs tests providers' software to ensure that Bacstel-IP and Secure-IP communications are properly authenticated, secure, have the correct structural format and content, and that there is appropriate error and warning handling.¹²⁹
- 4.39 Pay.UK has control over the process for assessing whether Bacstel-IP or Secure-IP software should be given 'approved' status. Pay.UK told us that there is no technical barrier to entry and that accreditation is not particularly onerous, as long as the software complies with the required specification.¹³⁰

¹²³ [Bacs website](#), 'Direct Submitters'.

¹²⁴ Bottomline, Response to CMA S109 Notice, 19 November 2019, Question 3.

¹²⁵ Call with Pay.UK on 28 November 2019.

¹²⁶ [Bacs website](#), 'Direct Submitters'.

¹²⁷ [✂]

¹²⁸ [Bacs' website](#), 'Approved Software'.

¹²⁹ [Bacs website](#): 'Approved Software'.

¹³⁰ Call with Pay.UK on 28 November 2019.

FPS via Secure-IP software

- 4.40 Secure-IP is an FPS variant of the Bacstel-IP channel which provides businesses with secure direct access to FPS.¹³¹
- 4.41 There are currently six Bacs Approved Software providers that can supply software to connect to FPS via Secure-IP (all of which can also supply software that connects to Bacstel-IP). These are a subset of the 18 Bacs Approved Software providers that can supply software to connect to Bacs via Bacstel-IP.¹³²
- 4.42 Table 8 below shows all Bacs Approved Software providers and whether they are Bacstel-IP and/or Secure-IP approved.

Table 8: Bacs Approved Software providers

	Bacstel-IP (Bacs)	Secure-IP (FPS)
AccessPay	Yes	Yes
Finastra	Yes	Yes
APT	Yes	No
Bottomline	Yes	Yes
Cashbook Limited	Yes	No
Paygate	Yes	Yes
EFiS AG	Yes	No
Elseware	Yes	Yes
EPG	Yes	Yes
Grange IT Limited	Yes	No
Interbacs	Yes	No
Mosaic Software	Yes	No
SAA Consultants Limited	Yes	No
Serrala	Yes	No
Smarterpay	Yes	No
Unified Software	Yes	No
V1 Limited	Yes	No
WPM	Yes	No

Source: [Bacs website: list of Bacs Approved Software providers](#)

Bureaux

Bacs-approved bureaux

- 4.43 Bacs-approved bureaux use Bacs Approved Software to submit payments to Bacs via Bacstel-IP software on behalf of other organisations.¹³³ There are approximately 600 Bacs-approved bureaux.¹³⁴ Bottomline submitted that Bacs-approved bureaux are important players in the market and account for more than a quarter of the total volume of Bacs submissions.¹³⁵

¹³¹ [Faster Payments website](#), 'Service Principles'.

¹³² [Bacs website](#): 'Approved Software'.

¹³³ [Bacs website](#), 'An Introduction to the UK's Interbank Payment Schemes'.

¹³⁴ [Bacs website](#), Directory of Bacs-approved bureaux.

¹³⁵ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

- 4.44 Bottomline also stated that it is aware that there are end-customers that make a large volume of transactions using Bacs-approved bureaux.¹³⁶

Facilities management Direct Debit (FM DD) providers

- 4.45 FM DD providers submit Bacs Direct Debit payment instructions on behalf of others using Bacstel-IP.¹³⁷
- 4.46 FM DD providers manage the whole Bacs Direct Debit process for clients, including taking receipt of proceeds and some administrative functions.^{138,139}
- 4.47 Bottomline submitted that FM DD have grown very significantly in the last five years and, prior to the Merger, there were approximately 50 FM DD providers.¹⁴⁰ Bacs accredited 32 FM DD providers in 2019.¹⁴¹ Paygate told us that it is increasingly hard to obtain a direct submitting service user number (SUN) for Bacs Direct Debit so the market for FM DD, where an individual SUN is not required, has increased and continues to increase.¹⁴²

Bank and EMI Payment Service Provider channels

- 4.48 Banks and EMI¹⁴³ Payment Service Providers¹⁴⁴ can connect directly to Bacs and/or FPS by entering into contractual arrangements with the payment systems.^{145,146} There are currently 26 Bacs direct participants¹⁴⁷ and 33 FPS direct participants.¹⁴⁸ The overwhelming majority of Bacs and FPS direct participants are banks.
- 4.49 Modulr told us that EMI may be able to provide customers with channels for issuing payment instructions to multiple Banks or other financial institution portals.¹⁴⁹

¹³⁶ Bottomline, Response to CMA phase 1 decision, 11 November 2019. Examples given are [X]

¹³⁷ [Bacs website](#), Accredited Facilities Management Providers. The CMA understands that there may be limits on the ability of FMDD providers to make Bacs Direct Credits if they (1) submit payments on behalf of their customers under a shared SUN; and (2) are not Bacs-approved bureaux.

¹³⁸ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

¹³⁹ PSR Consultation Paper, 'Direct Debit Facilities Management: Switching Providers' August 2017.

¹⁴⁰ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

¹⁴¹ [Bacs website](#), 'Accredited Facilities Management Providers': 5 December 2018 and 31 December 2019.

¹⁴² Paygate, Response to CMA request for information dated 6 December 2019.

¹⁴³ EMI refers to payment institutions or electronic money institutions which are registered or authorised by the FCA. Source: [Bank of England website](#), 'First non-bank payment service provider (PSP) directly accesses UK payment system dated 18 April 2018: and [Bacs website](#), 'Access to UK Payment Schemes for Non-Bank Payment Service Providers' December 2019.

¹⁴⁴ Payment service providers refers to institutions which offer payment services to businesses.

¹⁴⁵ PSR Access and Governance Report dated March 2018.

¹⁴⁶ [Bacs website](#), 'Access to UK Payment Schemes for Non-Bank Payment Service Providers' December 2019.

¹⁴⁷ [Bacs website](#), 'Bacs Participants'.

¹⁴⁸ [Faster Payments website](#), 'Directly Connected Participants'.

¹⁴⁹ Call with Modulr, 6 January 2020.

Regulatory background

Relevant bodies

Payment systems regulator

- 4.50 The Payment Systems Regulator (PSR) regulates Pay.UK. Pay.UK owns the inter-bank payment systems (including Bacs and FPS).¹⁵⁰
- 4.51 One of the aims of the PSR is to develop and protect competitive markets, and to contribute to the creation of market conditions in which innovation thrives and service-users' interests are protected.¹⁵¹

Bank of England

- 4.52 The Bank of England oversees recognised inter-bank payment systems (such as Bacs and FPS) for economic stability purposes.¹⁵²
- 4.53 Subject to approval from the Treasury, the Bank of England may publish principles to which operators of inter-bank payment systems must have regard.¹⁵³

Financial Conduct Authority

- 4.54 The Financial Conduct Authority (FCA) assesses Payment Service Providers' compliance in the following areas:
- (a) governance and risk management arrangements;
 - (b) safeguarding of customer funds; and
 - (c) financial crime.^{154,155}

Pay.UK

- 4.55 Pay.UK is the trading name of Pay.UK Limited, a private company limited by guarantee without share capital incorporated in England.

¹⁵⁰ Call with the PSR, 11 December 2019.

¹⁵¹ [PSR website](#), 'New Regulatory Framework' March 2015.

¹⁵² [HM Treasury briefing for peers](#), Financial Services (Banking Reform) Bill:

¹⁵³ Banking Act 2009, s188.

¹⁵⁴ [Bacs website](#), 'Access to UK Payment Schemes for Non-Bank Payment Service Providers' December 2019:

¹⁵⁵ Applicable laws and regulations are prescribed by the Payment Services Regulations 2017, the E-Money Regulations 2011 and the Money Laundering Regulations 2007.

- 4.56 Pay.UK is regulated by the Bank of England and by the PSR. In 2018, Pay.UK became the ultimate controlling party and parent company of the companies responsible for administering Bacs and Faster Payments: Faster Payments Scheme Limited and Bacs Payment Schemes Limited.¹⁵⁶
- 4.57 Pay.UK's remit includes working in the public interest to ensure that the systems the country relies on for its banking transactions are safe, open, innovative and resilient.¹⁵⁷
- 4.58 Pay.UK maintains a 'Guide and Rules' for Bacs services and schemes. All organisations using Bacs Direct Debit and Bacs Direct Credit, whether they submit directly or indirectly to Bacs, must adhere to their rules.¹⁵⁸

Vocalink

- 4.59 Vocalink operates and maintains the Bacs technical infrastructure and the Faster Payments real-time payments infrastructure.¹⁵⁹ We understand that Vocalink is around 92% owned by Mastercard, with the remainder owned by UK banks.¹⁶⁰

Recent industry developments

- 4.60 The payments industry has been affected by two technological trends in the last decade: developments aimed at improving security and a shift away from deployed software and towards hosted software.

Improving security

- 4.61 There have been two key developments regarding security.
- (a) First, there was an upgrade from BACSTEL service to the Bacstel-IP service. By the end of 2005, every organisation that submitted payment files to Bacs had to have upgraded their submission software to comply with the Bacstel-IP service. This was a major project for organisations, replacing established systems and processes that had worked effectively for up to two decades.¹⁶¹ Bacstel-IP offered significant functionality

¹⁵⁶ [Pay.UK website](#), 'About Us'.

¹⁵⁷ [Faster Payments website](#), 'Pay.UK' announced as the new name for the UK's leading retail payments authority'.

¹⁵⁸ [Little Bacs Book](#).

¹⁵⁹ [Vocalink website](#), 'About Us'.

¹⁶⁰ [Financial Times website](#), 'MasterCard bags payment processor Vocalink for £700m' dated 21 July 2016.

¹⁶¹ [Finextra website](#), 'Migrating to Bacstel-IP', 31 January 2006

improvements compared with BACS, in areas such as control, security, automation and reporting.¹⁶²

- (b) Second, in 2016, Bacs changed its security protocols from secure sockets layer (commonly referred to as 'SSL') to transport layer security (commonly referred to as 'TLS'). TLS is a cryptographic protocol that ensures privacy between communicating applications and ensures that no third party may eavesdrop or tamper with a message.¹⁶³

Hosted payment software

4.62 We understand that there is a general trend a shift away from deployed software and towards hosted software:

- (a) Bottomline told us that, with the exception of EPG, most Bacs software providers have invested in hosted solutions.¹⁶⁴
- (b) AccessPay told us that some large customers are surveying the market for cloud-based vendors.¹⁶⁵
- (c) Gartner, a research and advisory firm, has forecast that 75% of total customer relationship management software spending will be on hosted solutions, 'continuing the rapid decline of on-premises deployments'.¹⁶⁶

4.63 This is reflected in Bottomline's statement that the proportion of its customers with only deployed solutions has decreased from [redacted]% in 2015 to [redacted]% in 2018, [redacted].

4.64 However, Paygate told us that, whilst the general trend is towards hosted software, it found that there is still enough demand for a deployed solution to make it worth offering.

4.65 As discussed at paragraph 4.35 above, access to Bacs and FPS via Bacstel-IP and Secure-IP is tightly controlled and Bacs Approved Software providers must demonstrate continuous compliance with strict technical standards. Accordingly, we understand that both hosted and deployed solutions process and submit payments to Bacs and FPS in the same way. AccessPay told us that, 'for a vendor to become Bacs-certified, the same broad process applies for on-premise and cloud-based software'.¹⁶⁷

¹⁶² [Finextra website](#), 'Migrating to Bacstel-IP', 31 January 2006:

¹⁶³ [Bottomline website](#), 'UK Payments and Collections'.

¹⁶⁴ Bottomline Teach-In Slides presented to the CMA on 12 July 2019.

¹⁶⁵ Call with AccessPay, 15 November 2019.

¹⁶⁶ [Gartner website](#), Cloud to Represent 75% of Total Spend on CRM in 2019 dated 4 April 2019.

¹⁶⁷ Call with AccessPay, 15 November 2019.

Anticipated industry developments

4.66 We have identified two potential future developments which each have the potential to disrupt the payment software industry and briefly discuss each of them in this chapter:

- (a) the New Payments Architecture; and
- (b) Open Banking.

New Payments Architecture

4.67 Pay.UK has stated that the New Payments Architecture (NPA) will bring together Bacs and Faster Payments. It will create a new framework that will allow new ‘overlay services’ to be ‘easily’ developed, leading to greater competition and innovation, with new and better payments products and services.¹⁶⁸

Possible impact on payment solutions

4.68 Bottomline has told us that it understands that current low value, high volume inter-bank clearing (such as Bacs or FPS) will be replaced with a single, simplified clearing and settlement layer.¹⁶⁹

4.69 [REDACTED].¹⁷⁰

Timeframe

4.70 Pay.UK has stated that it is working with suppliers on procurement of the NPA.¹⁷¹ Minutes of a recent meeting between the Bank of England and Pay.UK state that they would be consulting on a core NPA standard in early 2020.¹⁷²

4.71 [REDACTED].

4.72 Bottomline told us that regulatory effects from the NPA are nonetheless being felt at present.¹⁷³ It stated that the formation of the PSR, its issuance of specific directions regarding Bacs and Faster Payments, and the formation of Pay.UK to aggregate the FPS and Bacs schemes and to implement the NPA

¹⁶⁸ [Pay.UK website](#), ‘New Payments Architecture Core’.

¹⁶⁹ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

¹⁷⁰ Call with Pay.UK, 28 November 2019.

¹⁷¹ Pay.UK 2018 Annual Report.

¹⁷² [Bank of England website](#), Minutes of the Standards Advisory Panel.

¹⁷³ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

mandate set out by the Payments Strategy Forum, publicly signalled an intention to change the UK's clearing and settlement services.¹⁷⁴

Open Banking

- 4.73 'Open Banking' is the term used to describe a series of measures that together enable consumers and small and medium-sized businesses to share their bank transaction data securely with trusted third parties using open, common, application programming interfaces (APIs).
- 4.74 Open Banking is aimed at enabling a wide range of innovative financial services to help consumers and businesses manage their finances more effectively.
- 4.75 The adoption of open, common API standards was made mandatory for the largest British and Northern Irish banks by the CMA following its 2016 Market Investigation into retail banking.¹⁷⁵ It was introduced around the same time as the EU's second payment services Directive ('PSD2') which, in effect, requires all providers of payment services to enable data sharing but does not stipulate the use of open, common APIs.¹⁷⁶
- 4.76 Responsibility for the design and implementation of these standards was assigned to the Open Banking Implementation Entity (OBIE)¹⁷⁷ and the banks began their adoption in January 2018. The standards themselves are available on the OBIE's website.¹⁷⁸ In addition to larger banks, who were required to adopt open APIs, the same standards have also been adopted voluntarily by smaller banks with the result that open banking functionality is now available to more than 98% of UK current account holders.¹⁷⁹
- 4.77 There are currently around 70 providers of open banking services, providing 'account information' services (which enable consumers to view several payment accounts at the same time, for example), or 'payment initiation' services (which enable consumers or small business to make payments without, for example, the use of a credit or debit card).¹⁸⁰

¹⁷⁴ Bottomline, Response to CMA request for information, 18 December 2019.

¹⁷⁵ CMA Retail Banking Market Investigation 2016.

¹⁷⁶ SI 2017/752, Financial Services and Markets, The Payment Services Regulations 2017, regulation 55.

¹⁷⁷ The incorporated name of the OBIE is Open Banking Ltd.

¹⁷⁸ [Open Banking website](#).

¹⁷⁹ CMA Retail Banking Market Investigation Order 2017, Article 45 Report.

¹⁸⁰ Opening Banking website, Regulated Providers.

Timeframe

- 4.78 Bottomline's website states that its PT-X software already supports Open Banking: 'Open banking has opened its doors and we're knocking for all UK businesses like yours. With Bottomline PT-X, you can see a single window into every bank account your business holds, leaving you to get on with your day'.¹⁸¹ However, PT-X's Open Banking functionality does not currently extend to making batch payment submissions.¹⁸²
- 4.79 It is plausible that Open Banking could over time provide the payment standards used by businesses and consumers to make payments. Accenture have stated that it is becoming increasingly clear that Open Banking and real-time payments have the potential to be a 'match made in heaven' when different players in the market leverage the underlying opportunities.¹⁸³
- 4.80 Notwithstanding the current direction of travel towards an uptake of Open Banking standards, adoption is not mandated in law.¹⁸⁴

5. Relevant merger situation

- 5.1 Under section 35 of the Act and pursuant to our terms of reference,¹⁸⁵ the Inquiry Group are required to decide certain statutory questions, the first being whether a relevant merger situation has been created.
- 5.2 The concept of a relevant merger situation has two principal elements, set out in sections 23 and 26 of the Act, which for the purposes of this case are that:
- (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24 of the Act; and
 - (b) one (or both) of the following conditions is (or are) satisfied:
 - (i) the value of the turnover in the UK of the enterprise being taken over exceeds £70m (the turnover test);
 - (ii) the result of those enterprises ceasing to be distinct creates or enhances a share of supply of 25 per cent or more in respect of goods or services of any description which are supplied in the UK, or a substantial part of the UK (the share of supply test).

¹⁸¹ [Bottomline website](#), 'Account Visibility'.

¹⁸² [Bottomline website](#), 'Account Visibility'.

¹⁸³ [Accenture Consulting website](#), 'Open Banking + Real-Time Payments'.

¹⁸⁴ [Accenture Consulting website](#), 'Open Banking + Real-Time Payments'.

¹⁸⁵ The Terms of Reference are set out in Appendix A.

Enterprises ceasing to be distinct

- 5.3 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’. A ‘business’ is defined as including ‘a professional practice’ and ‘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’.¹⁸⁶
- 5.4 Bottomline, through Bottomline UK, is active in the supply of payments software to customers in the UK for gain or reward. Bottomline is therefore a business for the purposes of the Act.
- 5.5 We consider that the assets that form EPG (as transferred) – including goodwill, customer lists and staff¹⁸⁷ – constitute a business for the purposes of the Act.¹⁸⁸
- 5.6 We are therefore satisfied that the activities of each of the Parties are ‘enterprises’ for the purposes of the Act.
- 5.7 On the basis that the Merger comprises the acquisition by Bottomline (through Bottomline UK) of the entirety of EPG, such that EPG is wholly under the control of Bottomline,¹⁸⁹ we are also satisfied that the enterprises of Bottomline and EPG have ceased to be distinct.
- 5.8 We therefore consider that the Merger has resulted in two or more enterprises ceasing to be distinct enterprises.

Statutory period for reference

- 5.9 Under section 24 of the Act, a completed merger must have taken place not more than four months before the day on which the reference to a phase 2 investigation is made, unless the merger took place without having been made public and without the CMA being informed of it (in which case the four-month period starts from the earlier of the time that material facts about the merger are made public or the time the CMA is told of those material facts).

¹⁸⁶ Section 129(1) and (3) of the Act.

¹⁸⁷ The assets comprising the EPG business are software products (Experian Payments Gateway software; EPG Licence Key Generator Tool; EPGv2 (payments submission software); 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. See further from paragraph 2.14 above.

¹⁸⁸ Mergers: Guidance on CMA jurisdiction and procedure (CMA2), January 2014, paragraph 4.8.

¹⁸⁹ The enterprises of Bottomline and EPG have been brought under common ownership or common control; Bottomline has acquired a controlling interest in EPG (section 26 of the Act). See further from paragraph 2.14 above.

The test under the Act for when material facts are ‘made public’ is when they are ‘so publicised as to be generally known or readily ascertainable’.¹⁹⁰

Factual background

- 5.10 The Parties completed the Merger on 6 March 2019.¹⁹¹
- 5.11 On 7 and 8 March 2019, Bottomline contacted EPG customers to inform them about the Merger. Bottomline also contacted Bacs and Vocalink to inform them about the Merger.¹⁹²
- 5.12 On 8 March 2019, Bottomline submitted a public filing ‘Form 8-K’ to the US Securities and Exchange Commission which referred to the fact that on 6 March 2019 Bottomline had completed the acquisition from Experian Limited of certain technology assets and customer related assets to complement its existing UK payment products (i.e. referencing the Merger).¹⁹³
- 5.13 Between 8 and 11 March 2019, the Merger was reported in specialist newswires, including MarketScreener, Streetinsider.com and S&P Global.¹⁹⁴
- 5.14 Between 7 March and 15 May 2019, Bottomline introduced an additional page on its website with information regarding the EPG business and Experian updated the Experian Payments Gateway software page on its website stating that the Experian Payments Gateway software business had been sold to Bottomline.¹⁹⁵
- 5.15 At some stage the Bacs Approved Software providers page on the Bacs website was updated, noting that Bottomline had acquired the Experian Payments Gateway software business from Experian.^{196,197}
- 5.16 On 15 May 2019, the CMA was made aware of the Merger by a third party.

¹⁹⁰ Section 24 of the Act. See also Mergers: Guidance on the CMA’s jurisdiction and procedure (CMA2), January 2014, paragraphs 4.3, 4.43 and 4.44.

¹⁹¹ Bottomline Technologies (de), Inc. [Form 8-K](#).

¹⁹² Bottomline, Submission following Issues Meeting, 16 September 2019, p16.

¹⁹³ Bottomline Technologies (de), Inc. [Form 8-K](#).

¹⁹⁴ Bottomline, Submission following Issues Meeting, 16 September 2019, paragraph 16.

¹⁹⁵ 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 (paragraph 4 of Bottomline, Response to CMA Questions of 17 September 2019, submitted on 18 September 2019).

¹⁹⁶ According to Bottomline this occurred on 14 March 2019, although Bottomline is unclear on which exact date this page was amended (paragraph 13 of Bottomline, Response to CMA Questions of 17 September 2019, submitted on 18 September 2019).

¹⁹⁷ Bottomline submitted that the changes to the Bacs Approved Software suppliers page, as well as the website pages referred to at paragraph 5.14, featured ‘very prominently in the results of relevant searches conducted using Google and Bing’, Bottomline, Response to phase 1 decision, 11 November 2019, (paragraph 73(a) and (b)).

5.17 On 17 May 2019, the CMA wrote to Bottomline requesting details of the Merger.

Bottomline's submissions

5.18 Bottomline has submitted that the statutory deadline for a reference passed on 15 August 2019 at the latest and therefore the reference decision was unlawful.¹⁹⁸

5.19 Bottomline further submitted that the various announcements, publicity and notices (referred to at paragraphs 5.11 to 5.15 above) must be 'assessed in the round'¹⁹⁹ meaning that material facts about the Merger were made public by 15 March 2019.

5.20 Bottomline has also submitted that it is 'surprising' that the CMA did not consider the steps referred to at paragraphs 5.11 to 5.15 sufficient to constitute material facts being made public given that 'the CMA draws on the research of a dedicated intelligence team which the CMA claims enables its Mergers Intelligence Committee to identify and consider more than 600 transactions per year'.

5.21 In particular, Bottomline expressed surprise that the filing of the Form 8-K referred to at paragraph 5.12 might be insufficient to constitute material facts being made public in light of the CMA's statutory duty to seek to promote competition both within and outside the United Kingdom.²⁰⁰

Assessment

5.22 For the reasons set out below, we consider that notice of material facts about the Merger was given to the CMA, for the purposes of section 24 of the Act, on 15 May 2019 on which date the four-month clock commenced.

5.23 Our view is that the publicity and notices (referred to at paragraphs 5.11 to 5.15 above), whether considered individually or 'in the round', are insufficient to constitute material facts about the Merger having been made public before 15 May 2019. Nor was the information individually or collectively sufficient to have constituted giving notice to the CMA of material facts about the Merger.

¹⁹⁸ Bottomline, Response to the phase 1 Decision, 11 November 2019, footnote 90. Bottomline's submissions acknowledge that the four-month statutory period was suspended for one month between 3 June 2019 and 3 July 2019. See further at footnote 205 below.

¹⁹⁹ Bottomline, Response to phase 1 decision, paragraph 74.

²⁰⁰ Bottomline, Response to phase 1 decision, 11 November 2019, footnote 93 and 94. See also section 25(3) of the Enterprise and Regulatory Reform Act 2013.

- 5.24 Our public guidance sets out the factors the CMA will have regard to in interpreting when material facts are made public.²⁰¹ Considering such factors, in particular that the steps taken by Bottomline do not involve '[publication] in the national or relevant trade press in the UK' or 'steps to publicise the transaction at large' (which would normally involve 'publishing and prominently displaying' on Bottomline's website 'a press release about the transaction'), our provisional view is that the steps taken by Bottomline do not constitute material facts having been made public. Nor do they constitute giving notice to the CMA of material facts about the Merger.
- 5.25 Prior to 15 May 2019, the dissemination of information relating to the Merger was not such as to be generally known or readily ascertainable.²⁰²
- 5.26 In making this assessment we consider, in particular that:
- (a) The fact that Experian Payments Gateway software's customers were informed about the Merger is not sufficient for material facts to be regarded as having been made public.²⁰³
 - (b) A regulatory filing in another jurisdiction and publication on specialised websites which provide market intelligence or are aimed at a professional audience are, given that they have a restricted circulation, not 'national or relevant trade press' or 'steps to publicise the transaction at large'.²⁰⁴ Therefore, these are not sources the CMA can reasonably be expected to monitor in order to satisfy any of its relevant statutory duties.
 - (c) The inclusion of additional sub-pages on a website is insufficient to constitute prominent display on a website and therefore such additional pages are not sources the CMA can reasonably be expected to monitor.
- 5.27 In view of the above, our view is that the four-month time limit for a decision under section 24 of the Act commenced on 15 May 2019. The time limit was

²⁰¹ Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2), January 2014, paragraph 4.44.

²⁰² Bottomline, Response to phase 1 decision, 11 November 2019, paragraph 74. The Explanatory Notes to the Act (paragraph 107) make clear that in establishing whether or not material facts have been made public 'the 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'. The public guidance (Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2), January 2014), which is consistent with the Act and the Explanatory Notes thereto and intended to assist companies and their advisors in the interpretation of the same, paragraph 4.44 further elaborates this as meaning that 'such information could readily be ascertained by the CMA acting reasonably and diligently in accordance with its statutory functions'.

²⁰³ Informing a target company's customers about a merger is insufficient for a merger to be regarded as having been 'so publicised as to be generally known or readily ascertainable' (see Completed acquisition by Genus plc of Local Breeders Limited (ME/3608/08), OFT decision of 14 May 2008 (*Genus/Local Breeders*). See also the discussion at paragraph 11 of 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).

²⁰⁴ By analogy see for example paragraph 9 of *Genus/Breeders* where publication in a newspaper with regional circulation was considered insufficient for a merger to have been 'so publicised as to be generally known or readily ascertainable'.

subsequently extended, by one month, to 15 October 2019.²⁰⁵ On 7 October 2019, the CMA decided that the Merger gave rise to a realistic prospect of a substantial lessening of competition (the 'SLC Decision')²⁰⁶ and extended the four-month time limit to allow Bottomline the opportunity to offer undertakings in lieu of a reference (UILs).²⁰⁷ Bottomline submitted proposed UILs on 14 October 2019.²⁰⁸ On 21 October 2019, after examination of the proposed UILs, the CMA concluded that it did not believe that they would achieve as comprehensive a solution as was reasonable and practicable to the competition concerns identified in the SLC Decision and the resulting adverse effects.²⁰⁹ The CMA therefore decided not to exercise its discretion under section 73(2) of the Act to accept the proposed UILs and instead referred the Merger for a phase 2 investigation.²¹⁰

5.28 In view of the foregoing, we are satisfied that the applicable statutory time limits in relation to this reference have been complied with.

Turnover and share of supply test

5.29 As noted in paragraph 5.2 the turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70m. As the turnover of EPG in the UK in its last financial year prior to the Merger was approximately £[REDACTED], the turnover test is not met.²¹¹

5.30 However, our provisional view is that the share of supply test is met, since the Merger has resulted in an increase to a share of supply of at least 25% in relation to services which are supplied or acquired in the UK, or in a substantial part of the UK. As explained in more detail from paragraph 8.62 onwards, the CMA estimates that the Parties have combined market shares

²⁰⁵ 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 limit under section 25(2) of the Act on 3 June 2019. Following the CMA subsequently being satisfied that the information and documents were provided, the extension was terminated on 3 July 2019.

²⁰⁶ *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)*, 7 October 2019. This was within the statutory 40 working day deadline under section 34ZA of the Act, as the CMA had given notice to Bottomline that the 'initial period' (as defined in section 34ZA(3) of the Act) commenced on 12 August 2019. The statutory 40 working day deadline was therefore 7 October 2019.

²⁰⁷ Sections 25(4) and 73A(1) of the Act. Bottomline thereby had until 14 October 2019 to offer any UILs to the CMA.

²⁰⁸ Accordingly, under section 73A(2) of the Act, the CMA had until 21 October 2019 to decide whether to accept the proposed UILs.

²⁰⁹ *Completed acquisition by Bottomline Technologies (de), Inc. of Experian Limited's Experian Payments Gateway Business and related assets, Decision to refer (ME/6830/19)*, 21 October 2019.

²¹⁰ Sections 22(1) and 34ZA(2) of the Act.

²¹¹ See paragraph 2.29 above.

over 25% in relation to the supply of Bacs Approved Software in the UK.²¹² Therefore, our provisional view is that the share of supply test is met.

Provisional conclusion on the relevant merger situation

5.31 In light of the above assessment, we provisionally conclude that the Merger has resulted in the creation of a relevant merger situation.

6. The counterfactual

Framework for assessment of the counterfactual

6.1 The counterfactual is an analytical tool used in answering the question of whether or not a merger gives rise to a substantial lessening of competition.²¹³ It does this by providing the basis for a comparison of the prospects for competition with the merger against the most likely competitive situation without the merger.²¹⁴ The latter is called the counterfactual.²¹⁵

6.2 The CMA will typically incorporate into the counterfactual only those aspects of situations that appear likely based on the facts available to it and the extent of its ability to foresee future developments.²¹⁶ The foreseeable period can sometimes be relatively short.²¹⁷ If an event or circumstances is not sufficiently certain to be included in the counterfactual, they may still be considered in the context of the competitive assessment of the merger.²¹⁸

6.3 To help make an overall judgement on the most likely future situation in the absence of the merger, the CMA may examine several possible situations, one of which may be the continuation of the pre-merger situation; but ultimately only the most likely situation will be selected as the counterfactual.²¹⁹

6.4 When the CMA considers that the choice between two or more situations will make a material difference to the competitive assessment, it will carry out

²¹² In the present case, we have used the Parties' combined market shares for the purposes of the share of supply test, although as set out in Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2), January 2014, paragraph 4.56, the description of goods or services identified for the purposes of the share of supply test does not have to correspond with the economic market definition adopted for the purposes of determining market shares in relation to the substantial lessening of competition question.

²¹³ [Merger Assessment Guidelines](#), paragraph 4.3.1.

²¹⁴ [Merger Assessment Guidelines](#), paragraph 4.3.1.

²¹⁵ [Merger Assessment Guidelines](#), paragraphs 4.3.1 and 4.3.6.

²¹⁶ [Merger Assessment Guidelines](#), paragraph 4.3.6.

²¹⁷ [Merger Assessment Guidelines](#), paragraph 4.3.2.

²¹⁸ [Merger Assessment Guidelines](#), paragraph 4.3.2.

²¹⁹ [Merger Assessment Guidelines](#), paragraph 4.3.6.

additional detailed investigation before reaching a conclusion on the appropriate counterfactual.²²⁰

- 6.5 As noted above, the CMA will typically incorporate into the counterfactual only those aspects of situations that appear likely based on the facts available to it and the extent of its ability to foresee future developments. As such, the CMA seeks to avoid importing into the assessment of the appropriate counterfactual any spurious claims to accurate prediction or foresight.²²¹
- 6.6 Given that the counterfactual incorporates only those elements of situations that are foreseeable, it will not in general be necessary to make finely balanced judgements about what is and what is not the counterfactual.²²²
- 6.7 Depending on the evidence, the selection of the counterfactual could be a situation either more or less competitive than the prevailing conditions of competition. Therefore, the selection of the appropriate counterfactual may increase or reduce the prospects of a substantial lessening of competition finding.²²³

Bottomline's submissions

- 6.8 Bottomline submitted²²⁴ that the most likely scenario was that Experian would have either:
- (a) maintained EPG as a declining set of assets with a small number of staff and without investing in it further; or
 - (b) sold EPG to an alternative purchaser with existing Bacs and/or FPS/DCA software expertise who, like Bottomline, would have sought to upsell and service the EPG customer base.
- 6.9 Bottomline submitted that it considered it unrealistic that Experian would have sold EPG to a purchaser with no experience in Bacs or FPS software. Bottomline submitted that further, even if Experian would have been willing to sell EPG to a purchaser with limited or no experience in such software, the CMA would have to show that *that* purchaser would have been willing and able successfully to develop the EPG product going forward in order to have a future-proofed proposition to sell to customers. Bottomline stated that the CMA had not provided any evidence in its phase 1 decision indicating that this

²²⁰ [Merger Assessment Guidelines](#), paragraph 4.3.6.

²²¹ [Merger Assessment Guidelines](#), paragraph 4.3.6.

²²² [Merger Assessment Guidelines](#), paragraph 4.3.6.

²²³ [Merger Assessment Guidelines](#), paragraph 4.3.4.

²²⁴ Bottomline, Response to CMA phase 1 decision, 11 November 2019, paragraph 21 onwards.

would be the most likely scenario absent the Merger, let alone compelling evidence.

- 6.10 Bottomline submitted that the most likely scenario was that EPG would have been a diminished competitor, regardless of whether it would have been retained by Experian or sold to an alternative purchaser; and that, as such, the counterfactual against which the competitive effects of the transaction must be assessed is the status quo ante, that is, EPG operating as a declining set of assets with a small number of staff.

Counterfactual situations

- 6.11 In this section we set out our assessment and provisional finding, based on the evidence provided to us, on the appropriate counterfactual.
- 6.12 We first consider the ownership of EPG absent the Merger, in particular the extent to which Experian would have retained ownership of EPG or would have sold EPG to an alternative purchaser.
- 6.13 We then consider the most likely competitive strategy of EPG absent the Merger, in particular the extent to which EPG would likely have continued with its pre-Merger strategy, or would likely have pursued a more expansionary approach, or conversely contracted or ceased its operations.

Ownership of EPG absent the merger

Introduction

- 6.14 EPG formed part of the Identity and Fraud sub business unit of Experian, which was itself part of the 'B2B – Decisioning' division.
- 6.15 In the financial year 2018, EPG generated £[REDACTED] of revenue within Experian's revenue of £[REDACTED].²²⁵
- 6.16 Experian told us that EPG was a [REDACTED].²²⁶
- 6.17 Experian told us that [REDACTED].²²⁷
- 6.18 Experian also told us that there were significant technological, market and regulatory changes (including Open Banking, New Payments Architecture and

²²⁵ Experian, Response to CMA s109 Notice, 25 November 2019, paragraph 2.1.

²²⁶ Experian, Response to CMA s109 Notice, 25 November 2019, paragraph 2.2.

²²⁷ Experian, Response to CMA s109 Notice, 25 November 2019, paragraph 2.4.

PSD2) taking place in the payments sector in which EPG operated. It told us that [REDACTED].²²⁸

6.19 Experian told us that the decision to proceed with the disposal was taken in the context of [REDACTED]²²⁹ [REDACTED].²³⁰

Experian's strategic review and the decision to divest EPG

6.20 Experian provided us with a number of documents which discuss the options available to Experian for EPG over the summer of 2017.

6.21 [REDACTED], was brought in to carry out a strategic review of the Identity, Fraud and Payments (ID&F) business, in mid-2017.²³¹ [REDACTED].

6.22 A document dated 28 August 2017 entitled 'FY19-23 Strategic planning – decision analytics states: [REDACTED]. The document then sets out the options for EPG as follows:

(a) Maintain/run off - continuing the business in its current form, ie not making any major investment and accepting that customers will move to competitors over time (due to EPG not supporting future industry and regulatory requirements)

(a) Divest – selling the EPG business and book of customers

(b) Invest - developing a prioritised roadmap of investment to enable EPG to retain and grow its customer base by providing a market-leading solution²³²

6.23 A presentation entitled 'FY19-23 strategic planning, payment UK&I, draft as of 30 August 2017' states that [REDACTED].

6.24 The same document states [REDACTED].²³³

6.25 The same document notes, in a section on 'the way forward':

²²⁸ Experian, Response to CMA s109 Notice, 25 November 2019, paragraph 2.5.

²²⁹ The UK government's official definition of Critical National Infrastructure is: 'Those critical elements of infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in: a) Major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or b) Significant impact on national security, national defence, or the functioning of the state.' ([Centre for the Protection of National Infrastructure](#)).

²³⁰ Experian, Response to CMA s109 Notice, 25 November 2019, paragraph 3.

²³¹ Experian, Response to CMA s109 Notice, 25 November 2019, Document 3.

²³² Experian, Response to CMA s109 Notice, 25 November 2019, Document 4.

²³³ Experian, Response to CMA s109 Notice, 25 November 2019, Document 10.

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(e) [REDACTED]

(f) [REDACTED]

6.26 The same document sets out a 'decision framework' to enable Experian Identity and Fraud to move rapidly to a recommended course of action, which includes:

(a) current and projected revenues for EPG, including estimated profitability;

(b) capex investment for current EPG3 plans, and incremental investment needed for strategic capability. Expected return on investment and what investment would be avoided by a divestment;

(c) availability of staff capacity to accelerate EPG3 development and build strategic additional capability;

(d) view on Experian brand and desire to build payments capability, and impact of this on potential partnerships and customers particularly in the future API-enabled world;

(e) view on likelihood of retaining existing customers with/without strategic developments to EPG, particularly in SaaS ('software as a service') world, and the associated timings for this;

(f) view on ability to exploit future hosted EPG for view of Direct Debit transactional data with associated data analytics proposition – including regulatory and operational risk considerations;

(g) colleague impact – number of staff affected, career opportunities for them, [REDACTED];

(h) past experience with divestments generally, and the specific work performed by [REDACTED] on EPG previously. Costs and effort required to manage a sale and divestment process;

(i) optimum timeline for any divestment (the document states next few months may be the ideal window for this, [REDACTED]);

- (j) likely bidders and the competitive dynamics of each (synergies, brand association, migration path, support capabilities, partnering opportunities, etc); and
 - (k) competitor propositions and roadmaps – customer views on the best positioned providers, both now and perceived for the future, and expected functionality.
- 6.27 An email dated 31 August 2017²³⁴ records the recommendation of the Executive Steering meeting to stop the phase 3 Analysis and Design (referred to as EPG3, and relating to the delivery of a hosted solution for EPG). The reasons given were [REDACTED].
- 6.28 A subsequent email in the same email chain dated 7 September 2017 stated that [REDACTED].
- 6.29 A document entitled ‘FY19-23 Strategic planning presentation, Growth overview, September 2017’²³⁵ states ‘we will seek to divest EPG, which is a high risk/niche payments software where regulatory change between now and 2020 is driving the need for investment and increased risk’.
- 6.30 It appears from the above that, by September 2017, the decision to divest EPG was the preferred outcome of the strategic review.
- 6.31 [REDACTED] continued to work with Experian and in November 2017 produced a ‘strategic product roadmap’ for the whole of the Identity and Fraud business.²³⁶ The roadmap document states: ‘EPG requires strategic intervention due to its investment profile and the fact that Payments does not naturally sit within the Experian product profile.’
- 6.32 A more detailed document entitled ‘Project Express Status Update’ dated 20 November 2017 sets out the key findings from the strategic review, as follows:
- (a) [REDACTED].
 - (b) Strong existing market position; despite future structural issues, Express represents an opportunity for a buyer to acquire large customer base.
 - (c) Market will evolve through UK Payments Strategy Forum blueprint of payments market; industry-wide consultation process held (completed in September 2017), blueprint due to be issued in December 2017.

²³⁴ Experian, Response to CMA s109 Notice, 25 November 2019, Document 18.

²³⁵ Experian, Response to CMA s109 Notice, 25 November 2019, Document 26, slide 66.

²³⁶ Experian, Response to CMA s109 Notice, 25 November 2019, Document 1, slide 43.

(d) Separation considerations [...].

(e) Broad spectrum of potential acquirers; will require review with [REDACTED] to identify realistic levels of interest in Express.²³⁷

6.33 Finally, we have seen a document entitled Experian: Experian Payments Gateway (EPG) Divestment – Initiation Phase, dated 5 December 2017, written by [REDACTED].

(a) It states: ‘There is a widespread view within Experian that EPG does not really fit within the Experian product portfolio, payments processing has different margin and risk profiles to other Experian services, and EPG would require significant investment over the next few years to remain viable for existing clients, let alone attract new client sales.’

(b) The report contains, among other matters (such as EPG product overview and financial information on EPG), discussion of market and regulatory changes, capex and opex requirements, and divestment considerations, including an indicative valuation (of between [REDACTED])²³⁸ and an initial list of potentially interested parties.

6.34 It appears from the above that, by the end of 2017, Experian had started its consideration of the practical issues surrounding the divestment process.

The sale process, and alternative bidders

6.35 A list of [REDACTED] priority bidders was identified, plus a longer list of [REDACTED], who were described as likely to be contacted by exception rather than their being a presumption that all will be contacted. The list was as follows:²³⁹

(c) Priority list [REDACTED]

(d) High priority [REDACTED]

(e) Medium priority [REDACTED]

(f) Low priority [REDACTED]

6.36 The priority list categorised potential bidders into two broad groups: those with an equivalent product, where customer base was important, and those with no equivalent product, where a ‘partnership/collaboration’ would need to be developed. The discussion on the approach for priority bidders included

²³⁷ Experian, Response to CMA s109 Notice, 25 November 2019, Document 52.

²³⁸ [REDACTED].

²³⁹ Experian, Response to CMA s109 Notice, 25 November 2019, Document 53.

'Express [EPG] is Experian's only payment asset so want to leverage expertise of a payments specialist in driving the business forward'.

- 6.37 [REDACTED] bidders signed non-disclosure agreements in [REDACTED] ([REDACTED], and Bottomline).
- 6.38 [REDACTED] carried out due diligence between approximately April and August 2018.²⁴⁰ After this period Bottomline carried out further due diligence until approximately January 2019.
- 6.39 [REDACTED].²⁴¹
- 6.40 Experian set out a comparison of the bids from [REDACTED] and Bottomline in an email dated [REDACTED].²⁴² In summary, it noted that Bottomline's bid was [REDACTED].
- 6.41 The email stated: [REDACTED].
- 6.42 As a result of this comparison, Bottomline was granted exclusivity and in early September 2018 reconfirmed its offer where the commercial terms were unchanged but included a break clause confirming that exclusivity would end if Bottomline reduced its price, or did not reconfirm its offer by 5 October 2018.²⁴³
- 6.43 Experian told us that there were three criteria for its assessment of the bids received for EPG: [REDACTED].²⁴⁴
- 6.44 Although Experian told us [REDACTED]²⁴⁵ internal documents indicate that Bottomline's knowledge of the product was an important consideration in accepting Bottomline's offer:
- (a) Experian notes that Bottomline [REDACTED];²⁴⁶ and
 - (b) Experian notes that Bottomline [REDACTED].²⁴⁷
- 6.45 On 26 November 2018, the Experian Strategic Projects Committee approved the disposal of EPG in a transaction with Bottomline for [REDACTED].²⁴⁸
- 6.46 We asked Experian what it would have done had the deal with Bottomline fallen away. It stated that the decision had been taken to dispose of EPG, and that it would have [REDACTED]. Experian told us that there was no in-principle reason

²⁴⁰ [REDACTED].

²⁴¹ [REDACTED] and it did not follow up its initial expression of interest with a written offer.

²⁴² Experian, Response to CMA s109 Notice, 25 November 2019, Document 57.

²⁴³ Experian, Response to CMA s109 Notice, 25 November 2019, Document 56.

²⁴⁴ Call with Experian, 5 December 2019.

²⁴⁵ Call with Experian, 5 December 2019.

²⁴⁶ Experian, Response to CMA s109 Notice, 25 November 2019, Document 57.

²⁴⁷ Experian, Response to CMA s109 Notice, 25 November 2019, Document 37.

²⁴⁸ Experian, Response to CMA s109 Notice, 25 November 2019, Document 58.

why it would not have sold EPG to [X]. It also told us that [X] was a more likely buyer than [X], because [X] had engaged in the sale process more than [X], in terms of submitting a written bid and carrying out due diligence.²⁴⁹

Divestment

- 6.47 Experian was very clear that [X].
- 6.48 Experian was [X].
- 6.49 Experian carried out a detailed strategic review over a number of months, considering the options of divest/maintain and invest/run-off and the decision by the Experian Strategic Projects Committee was to divest the EPG business.
- 6.50 Experian carried out a formal sale process in order to realise this divestment, and it told us that it would have continued with the sale process until it found a buyer, had the Bottomline bid fallen away.
- 6.51 Experian was not concerned with [X].
- 6.52 There was acceptable interest in EPG from potential purchasers who were familiar with the payments industry. [X].

Evidence from [X]

- 6.53 We held a call with [X]²⁵⁰ and subsequently obtained further clarification from [X] in writing. We also reviewed [X]'s internal documents relating to its bid for EPG. The salient points arising are summarised below.
- 6.54 [X] first engaged with Experian in February/March 2018 regarding the possible purchase of EPG.
- 6.55 [X] made an initial non-binding bid in the range of £[X] million in cash, which accounted for [X]'s conservative assumptions regarding the projected decline of the business and EPG's margin profile and included future commercial arrangements. [X]'s conservative discounted cashflow (DCF) valuation assumed approximately 7-8% decline in revenue. Given the relatively consistent margin erosion over the period, [X] assumed a decline in margin in the range of 4-8% in perpetuity.

²⁴⁹ Call with Experian, 5 December 2019.

²⁵⁰ [X]

- 6.56 The final bid submitted by [X] was for £[X] million (which also included future commercial arrangements).²⁵¹
- 6.57 [X] excluded revenue synergies²⁵² from its valuation because this was upside that [X] was not willing and did not deem necessary to factor into the consideration. Revenue synergies are not something [X] would normally pay for in a deal.²⁵³
- 6.58 [X] had multiple initial calls with Experian but did not have the opportunity to undertake a detailed diligence process so did not arrive at a full understanding of EPG's customer base beyond the size and type of customers. However, [X] assumed that a lot of EPG's existing customers were already [X]'s customers, and the overlap in customers would have provided the opportunity to cross-sell and up-sell the [X] product.²⁵⁴
- 6.59 [X]'s last bid letter was in August 2018. [X] received a response from Experian that it was still reviewing [X]'s bid with management.
- 6.60 [X] followed up with Experian on a monthly basis for at least a couple of months to seek feedback on the bid. The feedback Experian provided was regarding whether [X] could move on the terms of the commercial relationship, which [X] was unable to do.
- 6.61 Between [X]'s first and second bids, Experian showed keen interest in expanding the commercial relationship with [X], though neither Experian nor [X] were sure of how to do this.
- 6.62 [X] engaged actively in discussions with Experian regarding potential partnerships outside of the acquisition, but neither could come up with a viable approach. This led [X] to explore possible licensing and spreading of revenues to accommodate Experian's request (regarding expansion of the commercial relationship).²⁵⁵
- 6.63 In terms of cross-selling, the possibility of 'referral / reseller models' came under the potential broader commercial arrangements that [X] and Experian were exploring in the event of successful acquisition by [X]. However, [X]

²⁵¹ [X].

²⁵² Revenue synergies arise as a result of a merged entity being able to generate more revenues than the two entities would have been able to generate pre-merger, for example by cross-selling the acquiring entity's existing product into the target entity's customer base.

²⁵³ [X]

²⁵⁴ [X]

²⁵⁵ [X]

did not proceed to expand on that as the sale process did not progress further.²⁵⁶

- 6.64 [X] told us that, after it submitted its revised bid in August 2018, the frequency and efficiency with which it heard back from Experian diminished, which indicated to [X] that Experian was not particularly interested in [X]'s offer. [X] was surprised not to have been provided with details of the timing for possible closing of the transaction and was unsure of whether it was being used as a 'stalking horse'.²⁵⁷
- 6.65 We asked [X] whether it would have acquired EPG, had the deal with Bottomline fallen away. It stated that it would have continued with the process following its August 2018 bid, although it would not have been able to increase its bid offer.²⁵⁸

Provisional conclusion on ownership of EPG absent the merger

- 6.66 Based on the evidence provided to us, our provisional finding on the most likely situation is that, in the absence of a sale to Bottomline, Experian would have still divested EPG.
- 6.67 We have also provisionally found that the most likely situation is that Experian would have sold EPG to [X]. [X]. [X] told us that it would have continued with the sale process, had the Bottomline bid fallen away.²⁵⁹ Experian told us that it was not aware of any reason for it not to have sold EPG to [X]. We therefore consider that, even if [X] would not have been able to increase its bid offer, Experian would have likely sold to [X] as the next available offer.
- 6.68 Our provisional finding on the most likely situation is therefore that Experian would have sold EPG to [X] in the absence of the Merger. [X] is hereafter referred to as 'the alternative purchaser'.

Competitive strategy of EPG absent the merger

- 6.69 We now consider the most likely competitive strategy of EPG absent the Merger, in particular whether EPG would likely have continued with its pre-Merger strategy, pursued a more expansionary approach, or contracted or ceased its operations.
- 6.70 Based on the evidence provided to us, our provisional finding on the most likely situation is that EPG would have been under the ownership of the

²⁵⁶ [X]

²⁵⁷ [X]

²⁵⁸ [X]

²⁵⁹ [X]

alternative purchaser, had it not been acquired by Bottomline, and thus we examine the alternative purchaser's rationale, strategy and plans for EPG under its ownership.

Rationale for the alternative purchaser's acquisition of EPG

6.71 We asked the alternative purchaser to explain its rationale for the acquisition of EPG. It told us [REDACTED].²⁶⁰

(a) [REDACTED].

(b) [REDACTED].²⁶¹

Technical development of EPG under the alternative purchaser

6.72 In terms of improving EPG's current offering, the alternative purchaser told us that it was likely that it would have upgraded the software by updating functionality as required. This would have been to improve the overall solution and portfolio offering (together with [REDACTED]) to customers.²⁶²

6.73 The alternative purchaser told us that it did not have specific plans for improvement of EPG's software, because it had not progressed beyond the early stages of due diligence. However, at a minimum (that is, to maintain EPG in its current form), there would have been investments on base enhancements or updates to the software as necessary.²⁶³

6.74 The alternative purchaser told us that, in terms of a shift to the hosted solution, the alternative purchaser did not consider this in detail. The alternative purchaser currently offers [REDACTED] either deployed or through a hosted delivery model. The alternative purchaser would not have marketed a hosted EPG-only solution, but it would have considered the possibility of offering a hosted EPG product on a client-by-client basis if a customer was looking for a hosted payments offering inclusive of Bacs payment capabilities. The alternative purchaser noted that it would be difficult for the alternative purchaser to migrate EPG's software onto the cloud.²⁶⁴

²⁶⁰ [REDACTED]

²⁶¹ [REDACTED]

²⁶² [REDACTED]

²⁶³ [REDACTED]

²⁶⁴ [REDACTED]

Integration of EPG with the alternative purchaser's business

- 6.75 The alternative purchaser told us that it did not get far enough in the due diligence process to develop a detailed integration plan, but at a high level the plan would have been to integrate EPG's assets into the alternative purchaser's [REDACTED] offering.²⁶⁵ It told us that if it had been successful in acquiring EPG, the main challenge would likely have been the general integration of EPG into [REDACTED].²⁶⁶
- 6.76 The alternative purchaser told us it was not particularly concerned by the [REDACTED] because it would fill the gap in the alternative purchaser's offering in relation to Bacs functionality.
- 6.77 It was the alternative purchaser's expectation that Bacs usage would continue to decline as real-time payments increased in volume.
- 6.78 If the alternative purchaser acquired EPG's customers, it could potentially directly and immediately up-sell and cross-sell them with [REDACTED] so that, as the traffic in Bacs usage started to decline, these customers were already up and running on the alternative purchaser's [REDACTED].²⁶⁷

Competition for new customers under the alternative purchaser

- 6.79 The alternative purchaser told us that, if it had been successful in acquiring EPG, its focus would not have been on winning new customers specifically for Bacs processing.
- 6.80 Rather, the expectation was that: (i) the alternative purchaser would be able to cross-sell and up-sell an enhanced payments offering including [REDACTED] into EPG's customer base; and (ii) win new deals across the alternative purchaser's entire portfolio with the addition of Bacs functionality.
- 6.81 There was no expectation that the alternative purchaser would actively target new customers that were only looking for Bacs processing (the alternative purchaser told us that the intent would be not to focus on winning Bacs-only (i.e. current-state EPG) deals).²⁶⁸
- 6.82 The alternative purchaser told us that, in terms of customer requirements, it considered that customers in the UK generally have differing requirements. Some are looking for a 'one-stop-shop' for payments. The alternative

²⁶⁵ [REDACTED]

²⁶⁶ [REDACTED]

²⁶⁷ [REDACTED]

²⁶⁸ [REDACTED]

purchaser considers that its current offering is a payments hub, but it lacks the Bacs functionality to provide the bulk sterling direct debit and credit solution. It considers that tier 1 and tier 2 banks²⁶⁹ and corporate clients are moving towards a universal payments²⁷⁰ offering.

- 6.83 The alternative purchaser told us that it does not compete in this space today, but understands that Bottomline does compete with its payments aggregation solution.²⁷¹ the alternative purchaser expects that it would have been able to compete more heavily in this space had it been able to acquire EPG.²⁷²

Provisional conclusion on the competitive strategy of EPG absent the merger

- 6.84 In view of the above, based on the evidence provided to us, our provisional finding on the most likely situation for the competitive strategy of EPG under the ownership of the alternative purchaser is that it would have been broadly similar to that which existed pre-Merger for the following reasons:

- (a) Technical development of EPG - although it appears that there is limited scope to add additional functionality to Bacs Approved Software because of constraints imposed by Bacs itself, it is likely that the alternative purchaser would have upgraded EPG to meet future requirements set by Bacs (without offering additional functionality). However, we consider it would be unlikely that the alternative purchaser would offer 'hosted payments offering including Bacs': the alternative purchaser noted²⁷³ that it would be difficult for them to migrate EPG's software onto the cloud.
- (b) Integration of EPG with the alternative purchaser's business - although the alternative purchaser told us that it did not get very far in the diligence process to make detailed plans, its investment plans for the software appeared to be limited to integration into the alternative purchaser's stack and base enhancements or updates to the software as necessary. It did not consider a shift to a hosted solution, instead considering the offer of a hosted solution on a client-by-client basis only if a customer was looking for a hosted payments offering including Bacs.²⁷⁴ The alternative purchaser is only likely to have offered EPG side-by-side with its [REDACTED], without embedding any coding or design from one product into another.²⁷⁵

²⁶⁹ Generally considered to be the top US banks, which are global and strong across most product areas and locations.

²⁷⁰ We consider universal payments cover multiple types of payment scheme.

²⁷¹ We consider payments aggregation services act as a gateway into a payment scheme (eg Bacs or FPS). Businesses submit transactions to an aggregator which will in turn funnel them through the appropriate channel.

²⁷² [REDACTED]

²⁷³ [REDACTED]

²⁷⁴ [REDACTED]

²⁷⁵ [REDACTED]

We therefore consider that the alternative purchaser would likely not have invested significantly in EPG to bring about a step-change in functionality and growth of the Bacs processing product.

- (c) Competition for new customers - the purpose of the acquisition was to acquire the functionality (Bacs) which was the feature missing from the alternative purchaser's product offering. We note that EPG's customer base was attractive to the alternative purchaser.²⁷⁶ The alternative purchaser would not have actively targeted or been focussed on winning new customers specifically for Bacs processing, although if a customer requested a Bacs-only (ie current-state EPG) deal, its sales team would sell it on a standalone basis.²⁷⁷ Rather, the alternative purchaser intended to (i) cross-sell and up-sell an enhanced payments offering into EPG's existing customer base and (ii) win new deals as part of an integrated payments offering with Bacs functionality.²⁷⁸ We note that this strategy is different from what Experian was intending to do with EPG but, in terms of the Bacs offering, absent significant investment in EPG, we do not consider it is a materially different strategy so as to depart from the prevailing conditions of competition.

Provisional conclusion on the counterfactual

6.85 For the reasons set out above, based on the evidence provided to us, our provisional finding is that the competitive strategy of EPG under the ownership of the alternative purchaser would have been broadly similar to that which existed pre-Merger, and that the most likely counterfactual situation is one where the prevailing conditions of competition pre-Merger would have continued.

7. Market definition

Introduction

7.1 The purpose of market definition is to provide a framework for analysis of the competitive effects of the Merger. The relevant market contains the most significant competitive alternatives available to the customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger (ie the CMA's aim when

²⁷⁶ [REDACTED]

²⁷⁷ [REDACTED]

²⁷⁸ [REDACTED]

identifying the relevant market is to include the most relevant constraints on behaviour of the merger firms).²⁷⁹

- 7.2 Market definition is a useful tool, but not an end in itself, and identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of a merger in any mechanistic way. In assessing whether a merger may give rise to a substantial lessening of competition the CMA may take into account constraints from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.²⁸⁰

Product market

- 7.3 The relevant product market is a set of products that customers consider to be close substitutes, for example in terms of utility, brand or quality.²⁸¹ In identifying the relevant product market the CMA will pay particular regard to demand side factors (the behaviour of customers and its effects). However, the CMA may also consider supply-side factors (the capabilities and reactions of suppliers in the short term) and other market characteristics.²⁸²
- 7.4 The Parties overlap in the supply of software for Bacs submissions via Bacstel-IP and FPS DCA submissions via Secure-IP (collectively referred to in this report as Bacs Approved Software).²⁸³
- 7.5 Given this overlap, and that most Bacs transactions are made using Bacs Approved Software,²⁸⁴ we consider the appropriate starting point in our analysis to determine the relevant market to be the supply of Bacs Approved Software. We consider the following questions in relation to the product dimension:

- (a) whether the market is segmented into:
- (i) Bacs Approved Software for Bacs (Bacstel-IP) submissions separate to Bacs Approved Software for FPS DCA (Secure-IP) submissions;
 - (ii) deployed and hosted software; and/or

²⁷⁹ [Merger Assessment Guidelines](#), paragraph 5.2.1.

²⁸⁰ [Merger Assessment Guidelines](#), paragraph 5.2.2.

²⁸¹ [Merger Assessment Guidelines](#), paragraph 5.2.5(a).

²⁸² [Merger Assessment Guidelines](#), paragraph 5.2.6.

²⁸³ See paragraph 2.34.

²⁸⁴ As set out in paragraph 4.36, the majority of Bacs transactions are made using Bacs Approved Software.

- (iii) customer groups characterised by the potential complexity of their requirements
- (b) whether:
- (i) bureaux and Facilities Management and Direct Debit (FM DD) providers; and
 - (ii) banks which purchase and sell ‘white-label’ software
- represent a different customer group, an additional competitive constraint in the market,²⁸⁵ or both; and
- (c) whether the relevant market includes solutions that make use of alternative channels to Bacstel-IP/Secure-IP, such as:
- (i) online banking; and
 - (ii) ‘host-to-host’ connections.

Market segmentation

Segmentation between Bacs Approved Software for Bacs (Bacstel-IP) submissions and Bacs Approved Software for FPS DCA (Secure-IP) submissions

- 7.6 This section considers whether the supply of software that enables Bacs submissions through Bacstel-IP is part of the same, or is in a separate, relevant market to the supply of software that enables FPS DCA submissions through Secure-IP.
- 7.7 Bottomline submitted that FPS DCA is ‘not really a market’, that in practice it is relevant to Barclays’ customers only (according to Bottomline, [X]), and that there are very small volumes and values of transactions using FPS DCA. According to Bottomline, bulk FPS is very niche and users have been moving away to other channels.²⁸⁶
- 7.8 Bottomline and EPG, together with four other Bacs Approved Software providers (AccessPay, Finastra, Paygate and Elseware),²⁸⁷ supply software that allows customers to make FPS DCA submissions via Secure-IP.²⁸⁸ We

²⁸⁵ The CMA may take into account constraints from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others ([Merger Assessment Guidelines](#), paragraph 5.2.2).

²⁸⁶ Bottomline, phase 1 Issues meeting slides, 12 September 2019 (updated on 16 September 2019), slide 9.

²⁸⁷ [Bacs website](#), Approved software.

²⁸⁸ All suppliers who sell software that enables FPS DCA submissions through Secure-IP also sell software that enables Bacs submissions through Bacstel-IP (although it is not the case the other way around).

understand that Secure-IP software works in a near identical way to Bacstel-IP software - payments are submitted in files using the same format as Bacs Direct Credits and Bacs Direct Debits²⁸⁹ – with the key difference being that Secure-IP software submits payments into FPS rather than Bacs.

- 7.9 As explained at paragraph 4.18(a), 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. In contrast, FPS payments via DCA have a shorter processing and confirmation times of 1 hour and the system operates 24 hours a day, 7 days a week.
- 7.10 We have been told that FPS DCA is particularly suitable for paying insurance claims, staff expenses, refunds and managing cash flow during the working day.²⁹⁰ Indeed, [REDACTED].²⁹¹
- 7.11 Finastra told us that customers will pay a significant premium for a same day payment via FPS compared to Bacs so banks charge more for it and customers only use it where this premium can be justified.²⁹² The price of FPS was raised by other software providers and banks as one of the factors in customers' preference for using Bacs.²⁹³
- 7.12 Whilst we note these differences, the evidence provided to us shows that FPS DCA is seen as an add-on module to software that enables Bacs submissions through Bacstel-IP rather than standalone software:
- (a) [REDACTED].²⁹⁴ Neither Bottomline's nor EPG's software can be configured to enable the FPS DCA functionality but disable the Bacs functionality.²⁹⁵
 - (b) Bottomline submitted that, following the introduction of FPS DCA in 2008, both Bottomline and EPG considered it to be an additional functionality that customers may wish to purchase and that, as a result, FPS DCA functionality was included as an optional additional functionality to the base Bacstel-IP functionality of Bottomline's and EPG's software.

²⁸⁹ [Vocalink website](#), Faster Payments Service.

²⁹⁰ HSBC Factsheet: Direct Connectivity to Bacs and/or Faster Payments DCA (HSBC, Response to Questionnaire, 6 December 2019).

²⁹¹ [REDACTED]

²⁹² Call with Finastra, 14 November 2019.

²⁹³ LBG, Response to CMA Questionnaire, 25 November 2019; Barclays, Response to CMA questionnaire, 28 November 2019 (Barclays listed three factors that would be key considerations informing customer preference: the price of the service, speed of settlement of funds and payment value limits (which are lower for FPS than Bacs)); Call with Paygate, 15 November 2019; AccessPay, Response to CMA's Questionnaire, 3 December 2019.

²⁹⁴ Bottomline, Response to CMA s109 Notice, 21 October 2019, paragraph 10.1; Bottomline, Response to CMA request for information, 10 December 2019, paragraph 12.1.

²⁹⁵ Bottomline, Response to CMA request for information, 10 December 2019, paragraph 15.1.

Bottomline also submitted that other vendors are likely to have had a similar view of FPS DCA.²⁹⁶

- (c) Finastra and [REDACTED] market FPS DCA as a 'module' rather than separate software.²⁹⁷
- (d) A factsheet put together by Vocalink describes FPS DCA as designed to complement the Bacs payment processes.²⁹⁸
- (e) HSBC told us that [REDACTED].²⁹⁹
- (f) Barclays told us that a customer might use Bacs Approved Software for Bacs payments before deciding to add FPS DCA to the setup.³⁰⁰

7.13 We understand the use of Bacs Approved Software for FPS DCA is limited compared to its use for Bacs:

- (a) The volume of FPS DCA transactions amounted to around [REDACTED] in 2018, compared to around 6.5 billion Bacs transactions in the same year.³⁰¹
- (b) Among the customers of the Parties, the number of FPS DCA users is currently relatively small.³⁰² Only [REDACTED] of Bottomline's [REDACTED] PT-X customers buy the FPS DCA module; and only [REDACTED] of EPG's customers (of [REDACTED] customers listed in the contract list provided by Bottomline) buy the FPS module.³⁰³

7.14 Only submitters who bank with Barclays and HSBC can make bulk payment submissions to FPS through DCA, and [REDACTED]. Submitters who only bank with other institutions do not have the option to use FPS DCA. Paygate told us that this is a specific challenge in expanding the uptake of FPS DCA.³⁰⁴

²⁹⁶ Bottomline, response to CMA request for information, 10 December 2019, paragraph 15.1.

²⁹⁷ Faster Payments Module (Finastra, Response to CMA Questionnaire, 29 November 2019); HSBC Factsheet: Direct Connectivity to Bacs and/or Faster Payments DCA (HSBC, Response to CMA Questionnaire, 6 December 2019).

²⁹⁸ [Vocalink website](#), Faster Payments Service.

²⁹⁹ HSBC, Response to CMA Questionnaire, 6 December 2019.

³⁰⁰ Barclays, Response to CMA Questionnaire, 28 November 2019.

³⁰¹ [Bacs website](#), Bacs Processing Statistics; Pay.UK, Response to CMA request for information (phase 1), 13 August 2019.

³⁰² The same appears to be true for the Parties' competitors. For example. [REDACTED]

³⁰³ The actual number of EPG customers who purchase the FPS DCA module may be higher, because for [REDACTED] of [REDACTED] EPG customers the information on whether they purchase the FPS DCA module is not available (most of these customers bought EPG through its reseller). Source: Bottomline, Response to CMA s109 Notice, 21 October 2019, Annex 10.1.

³⁰⁴ Paygate, Response to CMA Questionnaire, 5 December 2019.

Provisional conclusion regarding segmentation into Bacs Approved Software for Bacs (Bacstel-IP) submissions and Bacs Approved Software for FPS DCA (Secure-IP) submissions

- 7.15 Despite the fact that software that enables FPS DCA (Secure-IP) submissions works in a near identical way to software that enables Bacs (Bacstel-IP) submissions, differences in processing times in particular mean that FPS DCA may be more suitable to certain types of payments.
- 7.16 However, because software that enables FPS DCA submissions is not offered as a standalone product, because it is sold by the same suppliers who sell software that enable Bacs submissions (which means that there is scope for supply-side substitution) and because it is not widely used (partly driven by the fact that it is only sponsored by two banks), we provisionally consider that it is best seen as an add-on module to software that enables Bacs submissions rather than belonging in a separate relevant market.
- 7.17 We therefore provisionally define a single relevant market for Bacs Approved Software comprising software that enables submissions to Bacstel-IP and Secure-IP.

Segmentation into hosted and deployed Bacs Approved Software

- 7.18 As explained in paragraph 2.34, Bacs Approved Software can be ‘deployed’, which means that it is run on a customer’s computer or internal server (that is, on premise). Alternatively, software can be ‘hosted’ which means that it is run on the software provider’s server (in the cloud).
- 7.19 We understand that, when Bacstel-IP was first launched, deployed software was the industry standard. However, over the past decade the wider software industry has been gradually moving to the cloud³⁰⁵ and most providers of Bacs Approved Software offer hosted software either exclusively or alongside their legacy deployed software.³⁰⁶
- 7.20 Bottomline offers both deployed (Bacway, ePay and C-Series) and hosted (PT-X) software. EPG only offers deployed software.
- 7.21 Bottomline stated that it has been marketing its hosted software PT-X to its deployed software customers and that approximately [X]% of its customers have chosen PT-X.³⁰⁷ Bottomline told us that for the time being around [X]%

³⁰⁵ Call with AccessPay, 15 November 2019; call with Paygate, 15 November 2019; [X].

³⁰⁶ Eleven Bacs Approved Software suppliers sell hosted Bacs Approved Software ([Bacs website](#), Bacs Approved Software).

³⁰⁷ Bottomline, Response to CMA s109 Notice (phase 1), 17 May 2019, paragraph 23.

of C-Series customers chose to remain with deployed software when offered a move to Bottomline's hosted software PT-X.³⁰⁸

- 7.22 Bottomline continues to sell deployed software. In 2019, it made [REDACTED] new sales of deployed software (in comparison with [REDACTED] new sales of its hosted software PT-X).³⁰⁹ In addition, the data provided by Bottomline shows that its current deployed software customers make a much higher volume of transactions on average than those on PT-X (approximately [REDACTED] transactions a year, compared to approximately [REDACTED]).³¹⁰
- 7.23 From a functional perspective, there do not appear to be any substantial differences that stem from the software being hosted or deployed. The functions performed appear identical and are largely mandated by Bacs.
- 7.24 Although customers appeared to be generally unfamiliar with options available to them outside of their current provider, there is evidence from customers we have held calls with that hosted and deployed options are, at least to some extent, substitutable. For example:³¹¹
- (a) [REDACTED] ([REDACTED]) noted that it had no absolute preference between deployed or hosted software.³¹²
 - (b) [REDACTED]'s view was that it would consider switching to hosted software and that it saw no security benefit in using deployed software.³¹³
 - (c) [REDACTED] stated that it did not have strong preferences between hosted and deployed Bacs Approved Software.³¹⁴
 - (d) [REDACTED] and [REDACTED], who have both recently procured PT-X from Bottomline on a white-label basis, told us that they did not have preferences for either hosted or deployed software.³¹⁵
- 7.25 On the other hand, some customers expressed preferences for, or identified advantages of, either deployed or hosted software:

³⁰⁸ Bottomline noted that migrations to PT-X occur as a result of an on-going sales process rather than a one-off event and that some customers who decide not to use PT-X when it is first offered to them subsequently decide to use PT-X. Source: Bottomline site visit, 21 November 2019 and Bottomline, Response to Working Papers, January 2020.

³⁰⁹ Bottomline, Response to CMA s109 Notice, 19 November 2019, paragraphs 2.2. and 2.3. New sales also include where a business purchased additional deployments and therefore the number of new customers is lower than [REDACTED]. (Source: Bottomline, Response to Working Papers, January 2020.)

³¹⁰ Bottomline, Supplemental Response to CMA s109 Notice, 8 November 2019, paragraph 24.5.

³¹¹ [REDACTED]. See discussion of the number of customers contacted/who provided responses to us in the course of this investigation at footnote 427 below.

³¹² [REDACTED]

³¹³ [REDACTED]

³¹⁴ [REDACTED]

³¹⁵ [REDACTED]; [REDACTED]

- (a) Some of Bottomline's PT-X customers we spoke to have told us that they saw advantages in using a hosted solution,³¹⁶ which included access from any location by multiple users and automatic updates.³¹⁷
- (b) On the other hand, some of the EPG's customers we have held calls with pointed to perceived greater reliability of and control over deployed software compared to hosted³¹⁸ and lower risk associated with server failure.³¹⁹
- (c) [REDACTED] told us that it was aware of some disadvantages of hosted software, such as reduced flexibility for bespoke tailoring.³²⁰

7.26 Other software providers made the following points in relation to customer preferences:

- (a) SmarterPay – a [REDACTED] software provider offering both hosted and deployed Bacs Approved Software - told us that the two types of software should offer the same functionality, although there may be some differences in payment authorisation using smart cards, which they encountered difficulties with in their own hosted software.³²¹
- (b) SmarterPay also told us that it believes that large enterprise customers prefer deployed software. It told us this was despite the fact that its own customer survey did not find a strong correlation between size and preference for deployed or hosted. SmarterPay believes it is important to offer both hosted and deployed software as not all customers prefer hosted and do not like to be forced to adopt hosted software.³²²
- (c) Paygate told us that processing speeds and volumes may be particularly relevant to larger corporates (ie of the type of customer likely to be EPG's customers) and multi-tenant, hosted systems require extra resilience to cope with high user numbers (eg 100,000 users).³²³
- (d) APT – a smaller software provider, offering hosted Bacs Approved Software only - told us that both hosted and deployed software have their advantages and the decision to choose hosted or deployed software will depend on business and customer requirements. APT told us that for

³¹⁶ [REDACTED]; [REDACTED]

³¹⁷ [REDACTED]

³¹⁸ [REDACTED]

³¹⁹ [REDACTED]

³²⁰ [REDACTED]

³²¹ Call with SmarterPay, 19 November 2019

³²² SmarterPay, Response to CMA's questionnaire, 11 December 2019.

³²³ Call with Paygate, 15 November 2019.

customers with the most stringent security protocols and control over their data, deployed software is likely to be the best option.³²⁴

- 7.27 At the point of its acquisition by Bottomline, EPG was the only provider with a high volume of transactions that did not supply hosted software.³²⁵ Of the software providers that have provided evidence to us, two (AccessPay and Finastra)³²⁶ only offer hosted software and three (Paygate, SmarterPay and Unified Software) offer both deployed and hosted software.³²⁷

Provisional conclusion on the segmentation into hosted and deployed Bacs Approved Software

- 7.28 The evidence above demonstrates that for some customers who provided evidence to us, whether the software is deployed or hosted will be a differentiating feature. This seems to be driven by customer preferences, as well as perceptions of security and stability. However, the two types of product appear to be broadly similar in their functionality and there is scope for supply-side substitution, as indicated by the fact that a number of Bacs Approved Software providers offer both hosted and deployed Bacs Approved Software. We therefore provisionally define a single relevant market for deployed and hosted Bacs Approved Software.

Segmentation by direct submitter customer groups

- 7.29 The CMA may sometimes define relevant markets for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers and require a separate analysis.³²⁸
- 7.30 This section examines whether differences in requirements by different groups of direct submitter customers³²⁹ means that those different groups are in distinct relevant markets.

³²⁴ APT, Response to CMA Questionnaire, 5 December 2019.

³²⁵ Of the 18 Bacs Approved Software providers, seven (Cashbook Ltd, Elseware, EPG, Grange IT Ltd, SAA Consultants Ltd, Serrala, V1 Ltd) do not currently offer a hosted solution ([Bacs website](#), Bacs Approved Software).

³²⁶ Finastra told us it migrated all its customers from its legacy deployed solution to its hosted solution. AccessPay told us that it never had a deployed product. (Finastra, Response to CMA Questionnaire, 29 November 2019; AccessPay, Response to CMA Questionnaire, 3 December 2019).

³²⁷ Paygate, Response to CMA Questionnaire, 5 December 2019; SmarterPay, Response to CMA Questionnaire, 11 December 2019; Unified Software, Response to CMA Questionnaire, 28 November 2019. Elseware, who has also provided a response to CMA's questionnaire, only offer deployed products. (Elseware, Response to CMA Questionnaire, 29 November 2019).

³²⁸ [Merger Assessment Guidelines](#), paragraph 5.2.28.

³²⁹ Bureaux and FM DD customers providing indirect submission services to smaller corporates and bank customers purchasing white-label solutions are considered below.

- 7.31 There appears to be relatively limited scope for differentiation in the basic functionality of Bacs Approved Software:
- (a) As set out in paragraphs 4.37 to 4.39, to be approved, software must follow a prescribed set of steps mandated by Bacs.
 - (b) Evidence from Bottomline and other Bacs Approved Software providers has been generally consistent in indicating that there is relatively little differentiation in terms of core software functionality.³³⁰
 - (c) AccessPay told us that there is limited scope for innovation beyond what is driven by changes in Bacs specifications.³³¹
- 7.32 As set out below, there is, however, some evidence that customer requirements can vary, and that certain Bacs Approved Software is better suited to submitters with specific requirements (generally referred to as more 'complex'). This was the prevailing view among the current Bottomline and EPG customers who provided evidence to us, as well as some of the larger competitors.

Drivers of complexity

- 7.33 Evidence submitted by the Parties, as well as some competitors and customers of the Parties we have spoken to, demonstrates that some Bacs Approved Software customers may have more complex requirements than others:
- (a) Bottomline told us that there is no single product that would suit all customers and that, whilst all customers could switch to an alternative that is suitable for them, smaller customers would have different alternatives to large customers with complex needs.³³²
 - (b) Bottomline also told us that it is not necessarily the case that customers with larger numbers of transactions have more complex requirements. Bottomline submitted that there are companies that make relatively few transactions which nonetheless have complex requirements; and

³³⁰ Bottomline site visit, 21 November 2019; AccessPay, Response to CMA Questionnaire, 3 December 2019; Paygate, Response to CMA Questionnaire, 5 December 2019; Finastra, Response to CMA Questionnaire, 29 November 2019.

³³¹ One example given to us by AccessPay was the upgrade to SHA-2 in 2016 which required these changes to be made by all software providers (Call with AccessPay, 15 November 2019).

³³² Bottomline, Response to CMA phase 1 decision, 11 November, paragraph 8.

conversely there are some customers that make very many transactions that have relatively simple requirements.³³³

- (c) [REDACTED], one of EPG's largest customers,³³⁴ told us that for a large and complex customer the ability to effectively and securely manage large volumes of data and several Service User Numbers (SUNs) via a robust user interface supplemented by a good management information solution would be important when choosing software. [REDACTED] also believes that making Faster Payments (which they do through FPS DCA) is essential for their particular business model. [REDACTED] values EPG's product because it can control and customise it. [REDACTED] perceives EPG to be very safe and reliable and its processing power is substantial.³³⁵
- (d) [REDACTED] – also among EPG's largest customers³³⁶ – told us that the tailoring around file transformation that EPG offers would not be available 'at the lower end' of the market. [REDACTED] also told us that whilst software may not notionally have file size limits, in practice not all software can process the highest limit file size volumes.³³⁷
- (e) [REDACTED] told us that it considers itself to be a complex customer and believes that this is how Bottomline categorises them, which is reflected in the price it pays for the PT-X software. [REDACTED] believes this is a result of several characteristics including the number of bank accounts, separate entities, SUNs, transactions and users. [REDACTED] told us that Bottomline's software allows for a number of different profiles with different import processes and the ability to manage these processes behind the scenes.³³⁸
- (f) Lloyds Banking Group (LBG), [REDACTED] and offers its own bank channel Bacs solutions, told us that EPG's software is typically used by organisations that have high volumes and require sophisticated integrated solutions.³³⁹
- (g) [REDACTED] told us there is complexity in EPG's software with how it allows users to set up workflows/approvals.³⁴⁰
- (h) [REDACTED] told us that EPG's customers can have multiple authorisation steps within a workflow for split responsibilities. This prevents payroll managers

³³³ Bottomline, Response to CMA s109 Notice, 21 October 2019; Bottomline, Response to CMA Request for information, 10 December 2019, paragraph 14.1.

³³⁴ Bottomline, Response to CMA s109 Notice, 30 October 2019, paragraph 11.1, annex 11.5.

³³⁵ [REDACTED]

³³⁶ Bottomline, Response to CMA s109 Notice, 30 October 2019, paragraph 11.1, annex 11.5.

³³⁷ [REDACTED]

³³⁸ [REDACTED]

³³⁹ LBG, Response to CMA Questionnaire, 25 November 2019.

³⁴⁰ [REDACTED]

from being able to generate a payroll file and submit it to Bacs without an additional check.³⁴¹

- (i) AccessPay – a Bacs Approved Software provider - told us that transactional volume and regulatory needs (for example, property management companies need to separate monies and manage assets on behalf of others) are among factors that dictate the complexity of customer needs.³⁴²

7.34 Based on the above evidence, our provisional finding is that there are a number of different characteristics that may drive complexity of customers' requirements, which can be distilled into the following:

- (a) a high volume of transactions;
- (b) multiple SUNs;
- (c) multiple bank accounts;
- (d) a number of different users and workflow steps; and
- (e) a number of different file types generated by internal software for uploading to Bacs Approved Software.

7.35 Although from the evidence provided to us there appears to be various factors that may make a customer's requirements complex, our understanding is that there is likely to be a correlation between at least some of them: for example, those with a high volume of transactions are more likely to have a greater number of SUNs, users and workflow steps. Some customers (most likely larger corporates) are likely to have many or all of the requirements listed above. This factor, as well as the nature of some of the characteristics, means that the customers of Bacs Approved Software are likely to sit on a spectrum of 'needs complexity' rather than in distinct groups.

Supplier options available for customers with more complex requirements

7.36 The presence of at least some of the characteristics listed in paragraph 7.34 is likely to lead to demand for specific types of, or modules for, Bacs Approved Software. For example, customers submitting large volumes of transactions are more likely to demand software/modules that enable automation of processes, and customers with a number of users may have a

³⁴¹ [redacted]

³⁴² Call with AccessPay, 15 November 2019.

preference for using software that is sold with a Hardware Security Module (HSM).

7.37 Some examples of the ways in which software can be tailored to more complex customer requirements through additional modules are listed below:³⁴³

(a) EPG's and all of Bottomline's Bacs Approved Software offer bureau modules. EPG's and most of Bottomline's Bacs Approved Software (including its deployed software C-series and PT-X) also offer HSM.³⁴⁴ PT-X has a number of additional modules, such as Direct Debit management, validation, encryption and multi-factor authentication.³⁴⁵

(b) The additional modules offered by Paygate are: (i) a bureau module (which aggregates multiple files for different clients); (ii) a Direct Debit collections module (which assists with identification of individual customers and payment plans); (iii) a HSM (used for signing instead of a smart card); (iv) an automation module; and (v) a validation module (which allows the customer to check data outside of the Bacs processing system using Vocalink's database for bank account details).³⁴⁶

(c) Finastra's range of additional modules appears to be similar to Paygate's and includes automation, HSM, Sage integration, Direct Debit management and bureau. Finastra told us that their product provides functionality for the complete range of customers, from small users to full automation for the largest customers.³⁴⁷

(d) AccessPay told us that the additional modules they offer include: (i) approval workflows; (ii) audit trails; (iii) [redacted]; and (iv) [redacted].³⁴⁸ AccessPay also told us that their software can facilitate international payments through a further module (using SWIFT connectivity).³⁴⁹

7.38 Some Bacs Approved Software providers told us that only some of the providers are able to cater for the needs of large, complex customers:

³⁴³ We understand that there are basic software functions without these additional modules, but that certain customers may choose to purchase these 'add-ons' to meet their specific requirements. It is possible that some software suppliers offer certain modules as part of their basic product whilst others sell them separately as add-ons. AccessPay told us that each vendor approaches development and marketing of additional modules differently (Source: Call with AccessPay, 15 November 2019.)

³⁴⁴ Bottomline, Response to CMA s109 Notice (phase 1), 17 May 2019, paragraphs 22 and 24.

³⁴⁵ Bottomline, Response to CMA s109 Notice, 8 November 2019, paragraph 12.1.

³⁴⁶ Call with Paygate, 15 November 2019.

³⁴⁷ Finastra, Response to CMA Questionnaire, 29 November 2019.

³⁴⁸ Call with AccessPay, 15 November 2019.

³⁴⁹ AccessPay, Response to CMA Questionnaire, 3 December 2019.

- (a) AccessPay told us that among its competitors only Bottomline and EPG can handle the level of complexity of certain customers. AccessPay's view was that EPG was able to win most of its customers by building bespoke workflows, which required substantial investment. AccessPay also believes that levels of investment and scale needed to service the larger, more complex customers is what drives the lack of choice in the market.³⁵⁰
- (b) APT told us that to be able to provide a Bacs solution to larger customers, a supplier must be able to offer certain modules (for example, HSM, which APT does not currently offer) and to be able to process much higher volumes.³⁵¹ In addition to this, APT told us that smaller providers would not have the staff numbers to be able to onboard and support large volume customers. APT told us that larger providers with larger resources and budgets can create bespoke services and integration for customers (which also makes it difficult for a customer to subsequently move away to another provider).³⁵²
- (c) LBG [redacted] told us that solutions for a small group of large organisations are predominantly provided by Finastra, Bottomline and EPG.³⁵³ LBG told us that this was partly due to the nature of the product but also the ability of these providers to onboard complex clients and integrate the software into the corporates' internal processes.³⁵⁴

7.39 However, one [redacted] Bacs Approved Software supplier believed its product was suitable for larger or more complex customers. SmarterPay told us that:

- (a) It was not aware of any fundamental differences between different Bacs Approved Software on the market and did not think that any integral functions were missing within their own software, although there were some 'nice to have' aspects that could be improved or added.
- (b) Although the majority of its customer base are SMEs, some of its customers submit high volumes of transactions, including utility companies collecting millions of Direct Debits per month.

³⁵⁰ Call with AccessPay, 15 November 2019.

³⁵¹ [Bacs website](#), Approved Software.

³⁵² APT, Response to CMA Questionnaire, 5 December 2019.

³⁵³ LBG, Response to CMA Questionnaire, 25 November 2019.

³⁵⁴ Call with LBG, 7 December 2019.

(c) Bacs Approved Software, such as those provided by EPG and Bottomline is likely to have certain differentiating features such as more sophisticated workflow and alert functions.³⁵⁵

7.40 Both smaller and larger providers told us that the track record of providing services to larger corporates and branding is important:

(a) SmarterPay told us that there is a tendency among larger customers to prefer to work with the market leaders.³⁵⁶

(b) APT told us that, due to the nature of the product (handling payment data), there is a strong emphasis on trust which is closely tied to brand and reputation.³⁵⁷

(c) Finastra told us that some customers ‘follow the crowd’ by going with the biggest provider in the market (Bottomline) due to perception of decreased risk.³⁵⁸

‘Legacy effects’ in the distribution of large and/or more complex customers

7.41 We understand that many of the Parties’ clients are large and/or more complex submitters, and that this may be due to legacy effects. More specifically:

(a) EPG’s Bacs Approved Software was launched in 2003 with a specific purpose to cater for large Bacs submitters, following market research that identified a market for a ‘top-end’ solution that would meet the needs for automation and security of Bacs payments.³⁵⁹

(b) [REDACTED], EPG has been able to largely retain its customer base.³⁶⁰

(c) Since most customers have been with their current provider for many years³⁶¹, the current concentration of larger customers with EPG and Bottomline may to some extent reflect product differentiation that existed in the market a number of years ago, but which may be less pronounced now.

³⁵⁵ Call with SmarterPay, 19 December 2019.

³⁵⁶ SmarterPay, Response to CMA Questionnaire, 11 December 2019.

³⁵⁷ APT, Response to CMA Questionnaire, 5 December 2019.

³⁵⁸ Finastra, Response to CMA Questionnaire, 29 November 2019.

³⁵⁹ EPG slide deck, slide 3, Bottomline site visit, 21 November 2019

³⁶⁰ See paragraph 8.33(a).

³⁶¹ These include [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Paragraphs 8.33 to 8.47 discuss customer switching in more detail.

Provisional conclusion on segmentation by direct submitter customer groups

- 7.42 In relation to customer segmentation, the evidence demonstrates that there are differences in customer preferences and requirements (characterised overall as ‘customer complexity’), driven by a number of characteristics.
- 7.43 The evidence also shows that there is a perception amongst certain Bacs Approved Software providers and customers that not all Bacs Approved Software providers are able to meet the needs of more complex customers.³⁶²
- 7.44 We do, however, consider that options may not be as limited as some customers perceive them to be because many large corporate customers have not gone out to the market for some time. It is therefore possible that their views of competitors would be different if they were to consider their current options in more detail.
- 7.45 Whilst the evidence generally implies that there may be a distinct ‘complex customer’ group within the product market, its characteristics are such that it does not necessarily have distinct boundaries, and that customer requirements are best viewed as being on a spectrum of complexity.
- 7.46 For this reason, we provisionally conclude that there is not a separate market for more complex customers. Instead, we have taken customer differentiation into account in the assessment of the competitive effects of the Merger.

Bureaux/FM DD providers, and banks which offer white-label software

- 7.47 Bureaux and FM DD providers and white-label software customers are customers of Bacs Approved Software providers, but they also provide services to their own customers which are alternatives to those customers purchasing software direct from Bacs Approved Software providers.
- 7.48 This section considers whether bureaux and FM DD providers, as well as banks with white-label software: i) have distinct requirements that mean they are a distinct customer segment; ii) whether the services they provide are part of the relevant market.

Bureaux and FM DD providers

- 7.49 Bacs-approved bureaux and FM DDs are customers of Bacs Approved Software providers. They submit payments on behalf of their customers via

³⁶² An additional factor is the alternatives that different groups of customers would have to making direct submissions using Bacs Approved Software, such as making submissions indirectly through bureaux and using alternative bank channels. See discussion of the number of customers contacted / who provided responses to us in the course of this investigation at footnote 427 below.

Bacs Approved Software as part of their wider offering, which commonly includes payroll and Direct Debit management, among other services.

- 7.50 Bureaux customers have their own SUNs. FM DD providers act as a service user for those businesses that do not have their own SUN to collect and/or administer Direct Debits on their behalf.³⁶³ Some FM DD providers are also set up as Bacs approved bureaux.³⁶⁴

Bureaux/FM DD providers as customers of Bacs Approved Software providers

- 7.51 For both bureaux and FM DD providers, Bacs Approved Software is the only way to make bulk submissions to the Bacs (and FPS) schemes and, unlike direct submitters, they do not have the option of going through alternative channels such as online banking and host-to-host (which are addressed in paragraphs 7.74 to 7.98).
- 7.52 Whilst we note the above distinction, bureaux and FM DD providers can be considered to have more complex requirements as customers of Bacs Approved Software providers: they have some specific needs, which are provided for in 'bureau' and other modules.³⁶⁵ However, they purchase the same Bacs Approved Software and these modules can also be used by direct submitters.³⁶⁶
- 7.53 For this reason, we have not identified a separate market for bureaux and FM DD providers as customers.

Bureaux and FM DD providers as competitors of Bacs Approved Software providers

- 7.54 Bottomline submitted that Bacs-approved bureaux are important players in the market (see further paragraph 8.150).³⁶⁷
- 7.55 There are a number of reasons why customers may choose bureaux and FM DD providers to make Bacs payments instead of making direct submissions. They may only make a small number of Direct Debit and Direct Credit transactions each month or be unable to fulfil all of the criteria to be able to submit directly.³⁶⁸ Going through a bureaux or FM DD can offer added-value services such as payroll and Direct Debit management and greater flexibility in terms of formats that can be sent from back office systems to the bureau

³⁶³ [Bacs website](#), Facilities management providers.

³⁶⁴ Bottomline site visit, main slide deck, slide 16, 21 November 2019

³⁶⁵ Allpay, Response to CMA Questionnaire, 22 November 2019; Call with Paygate, 15 November 2019.

³⁶⁶ [redacted].

³⁶⁷ Bottomline, Response to CMA phase 1 decision, 11 November, paragraph 36.

³⁶⁸ [Bacs website](#), What is a Bacs Bureaux?

providers.³⁶⁹ The customer can collect their own reports or, if their bureau offers this service, the bureau can collect reports on the customer's behalf.³⁷⁰

- 7.56 Evidence we have received from third parties points to bureaux and FM DD services not being suitable alternatives for corporates with more complex Bacs requirements:
- (a) LBG, which runs its own white-label bureau service, told us that bureau services are typically used by customers with low volume and/or requiring a non-technical payment solution.³⁷¹
 - (b) [redacted] told us it would not use bureaux services as they do not offer sufficient levels of control.³⁷² We understand this is because larger corporates would be more likely to have dedicated treasury teams and look for greater control over the payment process. They are also more likely to have automation requirements and multiple authorisation processes.
- 7.57 We also understand that some bureaux only offer a Bacs payment service as part of payroll services and not on a standalone basis.³⁷³
- 7.58 The evidence regarding how software providers view bureaux is mixed but generally points to bureaux and FM DDs not being seen as direct competitors – this is discussed in more detail in paragraph 8.152.
- 7.59 Bottomline submitted that diversion from Bottomline to bureaux accounted for [redacted]% of known customer losses and [redacted]% of revenue losses in the period 2014-2018.³⁷⁴
- 7.60 We have also observed broadly similar levels of switching from using Bacs Approved Software to make direct submissions to using bureaux services for indirect submissions among both Bottomline and EPG's customers using Vocalink data.³⁷⁵ These levels of switching indicate that indirect submissions through bureaux are a viable alternative for some customers. However, given the differences in indirect and direct submissions noted in paragraphs 7.55 and 7.56, we note that some of the switching could be due to changes in customer requirements (prompting a move from choosing between software

³⁶⁹ For example, according to its website, AccessPay's bureau service ensures that files always reach a customer's bank in the correct format and is yet to encounter a file format it cannot work with. ([AccessPay website](#), Bacs approved bureaux solutions)

³⁷⁰ [Bacs website](#), FAQ.

³⁷¹ LBG, Response to CMA Questionnaire, 25 November 2019.

³⁷² [redacted] are an EPG customer who supply telecommunication services to around 6000 business customers.

³⁷³ [redacted]

³⁷⁴ Bottomline, Response to CMA phase 1 decision, 11 November, paragraph 36.

³⁷⁵ See paragraphs 8.33 to 8.47. Switching to FM DD providers where the submissions are being made using the FM DDs own SUN is not possible to include in the switching analysis.

providers to choosing between bureaux/FM DDs) rather than substitution between Bacs Approved Software and bureaux/FM DDs. We are not able to distinguish between these from the data.

Provisional conclusion on bureaux and FM DD providers

- 7.61 In terms of acting as a competitive constraint, the evidence regarding bureaux and FM DD providers is mixed.
- 7.62 We note the customer switching stated by Bottomline and that shown by the data from Vocalink. However, as discussed above (paragraph 7.60), it is not clear whether this represents substitution (switching within the market) or changes in customer requirements (which would be better characterised as changes in the size of the market). On balance, we consider that switching data alone does not provide sufficient evidence that bureaux and FM DD services are significant competitive alternatives to making direct submissions to warrant their inclusion in the relevant market.
- 7.63 In addition, the evidence from Bacs Approved Software providers indicates that bureaux and FM DDs are not generally considered by the wider industry as being in direct competition with software providers. We also note that the fact that bureaux and FM DDs have to purchase Bacs Approved Software means that including their services in the market definition may understate the market strengths of the Bacs Approved Software providers that supply them.
- 7.64 Our provisional finding is therefore that bureaux and FM DDs are not part of the relevant market. However, we do acknowledge that they are an important constraint, especially for the subset of customers with simpler requirements. We take account of this constraint in our competitive assessment.

White-label software offered by banks

- 7.65 White-label software is purchased by banks from Bacs Approved Software providers and resold under the purchasing bank's branding. In a similar manner to our analysis of bureaux and FM DD providers, we examined whether these banks are a distinct customer group for Bacs Approved Software providers and also whether they act as their competitors.
- 7.66 We have received evidence from six banks, of which four had (or were in the process of adopting) Bacs Approved Software that they offered (or planned to offer) to their customers as a white-label product:

(a) [REDACTED];

(b) [REDACTED];

(c) [redacted] and [redacted] are in the process of partnering with Bottomline for PT-X; and

(d) Barclays and [redacted] do not offer a white label product.³⁷⁶

Banks as customers of Bacs Approved Software providers

7.67 There is some evidence that white-label software purchasers may have some different requirements to other customers:

(a) In terms of factors influencing their choice of supplier, all four banks listed above highlighted the importance of branding and track record in the industry, whilst [redacted] and [redacted] pointed specifically to experience in providing Bacs Approved Software to the financial sector on a white-label basis.³⁷⁷

(b) In addition, [redacted] told us that the ability to support direct debit mandate management was important when choosing a Bacs Approved Software provider. We understand that [redacted]'s partnership with Bottomline for PT-X software is primarily for the purposes of Direct Debit management and submission. [redacted] also told us that the ease of integration with existing banking applications was important.³⁷⁸

7.68 We understand that not all Bacs Approved Software providers sell white-label software:

(a) Bottomline told us that currently only a small number of Bacs Approved Software providers - largely Bottomline and Finastra - offer white-label software to banks and that EPG does not supply Bacs Approved Software on a white-label basis to banks.³⁷⁹

(b) AccessPay told us that it had one white-label bank customer.³⁸⁰

(c) Paygate told us that [redacted].³⁸¹

7.69 The fact that banks purchasing white-label software could have different requirements from other purchasers, and there are only a limited number of suppliers, may imply that they represent a distinct customer group.

³⁷⁶ LBG, Response to CMA Questionnaire, 25 November 2019; HSBC, Response to CMA Questionnaire, 6 December 2019; [redacted]; Barclays, Response to CMA Questionnaire, 28 November 2019; [redacted]; [redacted]

³⁷⁷ LBG, Response to CMA Questionnaire, 25 November 2019; HSBC, Response to CMA Questionnaire, 6 December 2019; [redacted]; [redacted]

³⁷⁸ [redacted]

³⁷⁹ Bottomline, Response to CMA s109 Notice (phase 1), 17 May 2019, paragraph 142.

³⁸⁰ Call with AccessPay, 15 November 2019.

³⁸¹ [redacted]

Banks as competitors of Bacs Approved Software providers

- 7.70 We have seen limited evidence of white-label providers competing directly with software providers:
- (a) LBG and [REDACTED] told us that white-label software is largely marketed by banks as part of a wider cash and payments management offer rather than on a standalone basis,³⁸² and that the banks' primary competition is with other banks that offer comparable services rather than with software providers.³⁸³
 - (b) Whilst [REDACTED] and LBG told us that they could win some customers from Bacs Approved Software providers, both banks' white-label Bacs Approved Software would only be available to their respective banking group customers. LBG specifically told us that it did not expect a customer banking with a different institution and using a branded Bacs Approved Software to switch to LBG's white-label product without purchasing other services from LBG.³⁸⁴
- 7.71 We understand that white-label Bacs Approved Software typically offers a more limited choice of modules compared to its respective supplier branded software:
- (a) LBG told us that that its white-label software is aimed at the broader market where customers do not have any complex needs.³⁸⁵
 - (b) [REDACTED] and [REDACTED].³⁸⁶
 - (c) Paygate told us that direct submitters tend to be moving away from white-label software, because they perceive it as a 'lower-end product'. However, Paygate also told us that if banks improved their white-label Bacs Approved Software, it could become a competitive offering in the future.³⁸⁷
- 7.72 Despite some restrictions in terms of the customer groups to whom it is available and suitable, white-label software is Bacs Approved Software. This channel is another means through which Bacs Approved Software providers distribute the product to direct submitters.

³⁸² LBG, Response to CMA Questionnaire, 25 November 2019; Call with LBG, 7 January 2020; [REDACTED]

³⁸³ LBG, Response to CMA Questionnaire, 25 November 2019; [REDACTED]

³⁸⁴ Call with LBG, 7 January 2020; [REDACTED]

³⁸⁵ Call with LBG, 7 January 2020.

³⁸⁶ [REDACTED].

³⁸⁷ Call with Paygate, 15 November 2019.

Provisional conclusion on white-label software offered by banks

7.73 In light of the above assessment, it is therefore our provisional finding that white-label software is an alternative means by which the Bacs Approved Software providers distribute their software and as such is part of the market for the supply of Bacs Approved Software.

Alternative channels for accessing Bacs and FPS

7.74 Bottomline has submitted that customers are able to make Bacs and FPS payments by using an e-banking solution or other bank channels.³⁸⁸

7.75 Bottomline has also submitted that, while there is no single alternative that would suit all customers, all customers could switch to an alternative that is suitable for them. For example:

(a) smaller customers making mainly payments (as opposed to debits) can easily switch to online banking; and

(b) 'larger customers with complex needs' can switch to channel banking solutions such as SWIFT or host-to-host.³⁸⁹

7.76 We have looked at the extent to which these two alternative channels referred to by Bottomline are able to cater to the needs of the customers on the spectrum of complexity.

Online banking

7.77 Bottomline has submitted that online banking should be included in the relevant frame of reference. Bottomline told us that it [REDACTED].³⁹⁰

7.78 Bottomline also submitted that [REDACTED]% of Bottomline and EPG's customer bases make fewer than 12,000 payments per year, and that their needs could very easily be met using online banking solutions, which generally allow a maximum number of payments between 1,000 -10,000 per file upload with no limit on the number of file uploads.³⁹¹

7.79 Bottomline provided an example of [REDACTED] customers which it lost to online banking services in 2015 and 2018.³⁹²

³⁸⁸ Bottomline, Response to phase 1 decision, 11 November 2019, paragraph 7.

³⁸⁹ Bottomline, Response to phase 1 decision, 11 November 2019, paragraph 8. Bottomline also submitted that customers who focus on direct debits can easily switch to FM DD providers or bureaux.

³⁹⁰ Bottomline, Response to phase 1 decision, 11 November, paragraph 30.

³⁹¹ Bottomline, Response to phase 1 decision, 11 November, paragraph 31.

³⁹² [REDACTED]

7.80 We have considered Bottomline’s submissions and consider that there are some advantages to using online banking to make payment submissions:

- (a) There is no need for the Bacs Approved Software providers to be involved. [X] told us that there are some examples of customers switching to [X]’s online banking service from direct payments software providers, which could be because a customer prefers not to pay the fees for using Bacs Approved Software.³⁹³
- (b) Bottomline’s white paper entitled ‘Effective Payment Processing – Internet Banking vs Direct Bacs Solution’, which was published in 2016, notes that online banking provides instant access to account balances, the ability to transfer funds between accounts and the opportunity to make immediate payments.³⁹⁴
- (c) Customers can also use online banking to make batch uploads of FPS transactions as an alternative to FPS DCA.³⁹⁵

7.81 However, other evidence shows that whilst online banking provides an alternative way for businesses to make Bacs submissions, it has a number of limitations compared to making direct (and indirect) submissions through Bacs approved software.

7.82 Online banking solutions appear to offer limited scope for automation and configuration. According to Bottomline’s white paper, payments cannot always be scheduled in advance or grouped into batches. Online banking portals may also require re-keying of data, unlike direct submitting software which can import flexible file formats and integrate with internal payroll and accounting systems.³⁹⁶

7.83 We understand that the reporting and analysis functionality of online banking is also more limited. Bottomline’s white paper states that systems which give insights into rejected payments and account changes and which are part of its Bacs Approved Software are not available with online banking.³⁹⁷ This is in line with some of the evidence provided by third parties as set out in paragraphs 8.160.

³⁹³ [X]

³⁹⁴ [Bottomline website](#), Internet Banking.

³⁹⁵ Bottomline, Response to phase 1 decision, 11 November, paragraph 43; [Faster Payments website](#), ‘What type of Payments can be made through Faster Payments?’

³⁹⁶ [Bottomline website](#), Internet Banking.

³⁹⁷ Automated Return of Unapplied Credits Service (ARUCS) gives the reason for a payment not being made and Advice of Wrong Account for Automated Credits Service (AWACS) gives notification of changes to the destination bank account details. [Bottomline website](#), Internet Banking.

7.84 We understand that online banking portals are generally limited in their ability to provide Direct Debit collection services and banks that do offer a Direct Debit collection functionality may have underdeveloped offers:

(a) LBG and [redacted] told us that their online banking systems can be used for Direct Credits only.³⁹⁸

(b) [redacted].³⁹⁹

(c) [redacted] also told us that it was not able to transmit bulk Direct Debit files through its online banking platform.⁴⁰⁰

7.85 Online banking solutions also have limits on the number of transactions per file that can be submitted, which implies that they would be unsuitable for customers with high volumes of transactions.⁴⁰¹

(a) [redacted] told us that whilst there is an individual file limit of 4,000 transactions, the average number submitted in a Bacs file by their online banking customers is between 200 and 500 payments because customers tend to find that level manageable to review and authorise (which has to be done manually prior to submission). [redacted] told us that its online banking business customers are medium sized enterprises.⁴⁰²

(b) LBG told us that Bacs Approved Software is designed with handling volume in mind, whilst online banking solutions cater for lower volumes.⁴⁰³

(c) Bottomline's published material implies that organisations making more than fifty transactions per month will typically achieve significant savings by moving to Bacs approved software.⁴⁰⁴

7.86 With online banking, the customer is confined to using a single bank's application rather than multiple bank accounts for different payments, which, according to Bottomline, would put the organisation at risk if the online banking system goes down.⁴⁰⁵ This therefore limits the functionality of the solution for larger organisations with accounts at multiple banks.

7.87 With regard to batch Faster Payments being an alternative to FPS DCA, Paygate told us that corporates that are already submitting Bacs transactions

³⁹⁸ LBG, Response to CMA Questionnaire, 25 November 2019; [redacted]

³⁹⁹ HSBC, Response to CMA Questionnaire, 6 December 2019.

⁴⁰⁰ [redacted]

⁴⁰¹ Bottomline, Response to phase 1 decision, paragraph 31; Bottomline, Site visit slide deck, slides 24 and 26, 21 November 2019

⁴⁰² [redacted]

⁴⁰³ Call with LBG, 7 January 2020.

⁴⁰⁴ [Bottomline website](#), Internet Banking.

⁴⁰⁵ [Bottomline website](#), Internet Banking.

through Bacstel-IP would – subject to their bank sponsoring it – have a preference to use FPS DCA to connect through Secure-IP to maintain the same audit trail for all transactions.

- 7.88 Paygate also told us that an advantage of FPS DCA over online banking is that it permits batch payment files to be submitted, whilst allowing the user to retain the same level of control in signing off the payment as for Bacs.⁴⁰⁶

Host-to-host channels

- 7.89 Host-to-host solutions allow payments to be made through bank channels as an alternative to Bacs Approved Software. Banks can make submissions on their own behalf through these channels and some banks have also developed these channels to allow corporates to submit into the Bacs and FPS scheme. The channels have been described to us as ‘unattended’ submission channels.⁴⁰⁷

- 7.90 We understand that these channels are suitable for large corporates with high volumes of transactions. For example:

(a) HSBC told us that [REDACTED].⁴⁰⁸

(b) LBG also told us that its host-to-host solution was more suitable for larger customers and that they would market it as being able to achieve many of the same benefits as sophisticated Bacs Approved Software.

- 7.91 Our understanding is that banks are still developing and improving their host-to-host offers and that not all banks are currently able to provide host-to-host connections to Bacs for their corporate customers:

(a) [REDACTED] told us that host-to-host is still a relatively new solution.⁴⁰⁹

(b) LBG told us that whilst almost all of its host-to-host customers are using it for Bacs exclusively, they fully expect LBG to offer further functionality in the future.⁴¹⁰

(c) [REDACTED] told us that its current host-to-host solution does not process Bacs payments.⁴¹¹ It said that [REDACTED].⁴¹²

⁴⁰⁶ Call with Paygate, 15 November 2019.

⁴⁰⁷ Call with RBS, 13 November 2019; Barclays, Response to CMA Questionnaire, 28 November 2019.

⁴⁰⁸ HSBC, Response to CMA Questionnaire, 6 December 2019.

⁴⁰⁹ [REDACTED]

⁴¹⁰ Call with LBG, 7 January 2020.

⁴¹¹ [REDACTED]

⁴¹² [REDACTED]

7.92 The banks which have provided evidence to us have consistently told us that they do not see Bacs Approved Software providers as competitors.⁴¹³ Software providers also do not consider host-to-host to be a significant competitive constraint. We also found there was little awareness of host-to-host channels and their functionality among customers. This evidence is discussed in our assessment of the competitive effects of the merger (see paragraphs 8.162 to 8.165).

Provisional conclusion on alternative channels

7.93 In relation to online banking, our provisional finding is that despite the high volumes of losses to online banking solutions observed by Bottomline, this option will cater only to a specific sub-set of customers – most likely those with low volumes of transactions, no requirement to collect Direct Debit payments and less demanding reporting, security and automation needs.

7.94 In our view, the two ‘high-value’ customers Bottomline lost to online banking since 2015 are insufficient to show that customers with more complex requirements⁴¹⁴ are likely to consistently consider online banking as a realistic alternative to the extent that online banking should be included in the market definition.

7.95 Moreover, the purchase and use of white-label software by a number of banks in itself shows that these banks choose to supplement their online banking services by reselling Bacs Approved Software to their customers, rather than relying solely on an online banking solution to satisfy their Bacs requirements.

7.96 Our understanding is that host-to-host is a relatively new solution, that banks’ host-to-host offerings differ, and some are still developing and improving these solutions. We also understand that host-to-host operates differently to Bacs Approved Software and would take a substantial amount of time and effort to set up.

7.97 Currently, host-to-host does not appear to be a time- or cost- effective alternative to using Bacs Approved Software for submitting payments and is more likely to be set up by corporates with wider requirements than Bacs submissions. Moreover, it may not be suitable for corporates that have multiple accounts with different banks.

7.98 Given these limitations, our provisional finding is that neither online banking nor host-to-host channel services currently offered by banks are significant

⁴¹³ LBG, Response to CMA Questionnaire, 25 November 2019; [REDACTED]; Barclays, Response to CMA Questionnaire, 28 November 2019.

⁴¹⁴ See paragraph 7.33. We further note that Bottomline has submitted there is a weak correlation between the size of customers and the complexity of their requirements.

competitive alternatives available to the customers of direct providers of Bacs Approved Software. Therefore, the product market definition should not be broadened to include these alternative channels. However, we have taken into account the constraints from these channels, where appropriate, in the competitive assessment.

Provisional conclusion on product market definition

7.99 Based on our assessment of the evidence presented above, our provisional finding is that the relevant product market for the purposes of the assessment of the Merger is the market for the supply of Bacs Approved Software.

Geographic market

7.100 Bottomline has submitted that both Bottomline and EPG supply Bacs Approved Software to businesses throughout the UK and notes that all Bacs Approved Software providers are active nationally, rather than regionally or locally.⁴¹⁵

7.101 Bottomline has also told us that no variation by geographic region within the UK exists with regards to price lists or discounts offered to customers.⁴¹⁶

7.102 We note that:

- (a) Bacs and FPS are UK-specific payment systems; and
- (b) we have not received any evidence of suppliers being active or having greater presence in specific regional or local markets.

7.103 Therefore, our provisional finding is that the relevant geographic market is national (UK-wide).

Provisional conclusion on market definition

7.104 In view of the above, our provisional finding is that the relevant market for the assessment of the Merger is the market for the supply of Bacs Approved Software in the UK.

8. Competitive assessment

8.1 This chapter analyses the competitive effects of the Merger.

⁴¹⁵ Bottomline, Response to CMA s109 Notice (phase 1), 18 June 2019, paragraph 42.

⁴¹⁶ Bottomline, Response to CMA s109 Notice (phase 1), 18 June 2019, Paragraph 70.

- 8.2 We begin by setting out our theories of harm before going on to examine how competition occurs in the market for the supply of Bacs Approved Software in the United Kingdom.
- 8.3 We then analyse the market shares and closeness of competition between the Parties, before considering the other competitive constraints that the Merged Entity will continue to face post-Merger.

Theories of harm

- 8.4 Theories of harm are drawn up by the CMA to provide the framework for assessing the effects of a merger and whether or not it may lead to a substantial lessening of competition. They describe possible changes arising from the merger, any impact on rivalry and any harm to customers as compared with the counterfactual.⁴¹⁷
- 8.5 In formulating theories of harm, the CMA will consider how rivalry might be affected. The CMA may set out those aspects of the merger firms' competitive offers to customers over which firms compete and which could worsen as a result of the merger, whether in terms of price or non-price aspects such as the quantity sold, service quality, product range, product quality and innovation. The ability of firms to adjust these aspects, and also the time within which they can do so, will depend upon the market concerned.⁴¹⁸
- 8.6 In this case we based our investigation around the following two theories of harm.

Theory of harm 1: horizontal unilateral effects

- 8.7 Under theory of harm 1 we have considered whether the Merger, by bringing together Bottomline and EPG, may give the Merged Entity the ability and incentive to worsen elements of its competitive offering (unilateral effects). Unilateral effects are more likely where the Parties' products compete closely.
- 8.8 To assess whether a merger results in unilateral effects, the CMA may analyse the change in the pricing incentives of the merger firms created by bringing their differentiated products under common ownership or control.⁴¹⁹ Unilateral effects may arise because a price increase becomes less costly to the merged entity when the products of the two firms are brought under common ownership or control. Without the merger, it is costly for one of the

⁴¹⁷ [Merger Assessment Guidelines](#), paragraph 4.2.1.

⁴¹⁸ [Merger Assessment Guidelines](#), paragraph 4.2.3.

⁴¹⁹ [Merger Assessment Guidelines](#), paragraph 5.4.6.

merger firms to raise its prices because it will lose the profit on diverted sales as a result.

8.9 The cost is composed of two elements:

- (a) the profit on lost sales from customers who switch to the products of the other merger firm; and
- (b) the profit on lost sales from customers who switch to the products of firms other than the other merger firm.⁴²⁰

8.10 After the merger it is no longer as costly for the merged firm to raise the price of any of the products: it will recoup the profit on recaptured sales from those customers who would have switched to the products of the other merger firm.⁴²¹

8.11 In general, for this theory of harm to hold, two conditions need to be met:

- (a) the merger firms are close competitors (i.e. customers consider them to be good alternatives); and
- (b) other suppliers cannot replicate the competitive constraint that the merger firms exert on one another.

8.12 The Merger could give rise to unilateral effects (i.e. giving the Merged Entity the ability to worsen elements of its competitive offering) if, in the counterfactual, EPG was a viable and close outside option⁴²² to Bottomline and/or vice versa. If removing this outside option reduces customers' bargaining strength in negotiations and tenders, the Merger could result in customers accepting a worse deal than absent the Merger (e.g. higher prices, poorer quality and/or service levels).

Theory of harm 2: loss of potential competition

8.13 In the Issues Statement published on 14 November 2019, we also set out a potential competition theory of harm, which was contingent upon an alternative purchaser developing the EPG product offering, such that it could offer a suite of payment products and that this (potential) for increased competition would have been lost as a result of the Merger.

8.14 In Chapter 6 (The counterfactual), we explain our provisional finding that, absent the Merger, the most likely situation is that the alternative purchaser

⁴²⁰ [Merger Assessment Guidelines](#), paragraph 5.4.7.

⁴²¹ [Merger Assessment Guidelines](#), paragraph 5.4.8.

⁴²² An outside option is the alternative (or set of alternatives) available to a firm when negotiating with a given supplier.

would have acquired EPG and that the competitive strategy of EPG under the ownership of the alternative purchaser would have been broadly similar to the prevailing conditions of competition. We provisionally found that the alternative purchaser was not likely to have invested significantly in EPG to bring about a step-change in functionality and growth of EPG's products. Additionally, we have found no evidence that current customers of Bottomline's or EPG's Bacs Approved Software demand, or would be likely to demand, a suite of payment products.

8.15 Given the above, we have not analysed this theory of harm further.

Nature of competition

8.16 This section sets out certain characteristics of competition in the market for Bacs Approved Software which are relevant for assessing the competitive effects of the Merger. We:

- (a) give a brief overview of competitive processes; and
- (b) examine the competitive processes in the Bacs Approved Software market, i.e. the way in which prices are agreed with customers, and how customers choose and contract with their supplier.

8.17 We also distinguish between 'ongoing' competition (i.e. the extent to which customers in this market shop around, and switch between, providers in order to obtain a better price); and periods in which there are specific events which can cause typically more 'sticky' customers to shop around (sometimes referred to as 'look-up' moments) during which competition may be more intense.

Overview of competitive processes

8.18 Competition is viewed by the CMA as a process of rivalry between firms seeking to win customers' business over time by offering them a better deal. Rivalry creates incentives for firms to cut price, increase output, improve quality, enhance efficiency, or introduce new and better products because it provides the opportunity for successful firms to take business away from competitors, and poses the threat that firms will lose business to others if they do not compete successfully.⁴²³

8.19 The ability of a firm to win additional customers by improving its competitive offer will depend on customers' willingness to switch suppliers. Customers in

⁴²³ [Merger Assessment Guidelines](#), paragraph 4.1.2.

markets can be thought of as falling into two broad categories, marginal or inframarginal customers:

- (a) Marginal customers are those that are willing and able to engage in search and switching behaviour that drives competition between firms.
- (b) Inframarginal customers are 'sticky' customers who are unlikely to switch away from a firm, and as such the firm potentially has an element of pricing power over them.

- 8.20 In markets where suppliers are unable to price discriminate, the search and switching behaviour of marginal customers will result in better prices for both marginal and inframarginal customers.
- 8.21 In markets, such as the Bacs Approved Software market, where suppliers can use bilateral negotiations to price discriminate among customers, marginal and inframarginal customers will typically receive different prices. When customers and suppliers engage in bilateral negotiations, a supplier can tailor its offer to meet the customer's individual needs. The attractiveness of the offer that a supplier proposes will be affected by how credibly the customer can threaten to (i) reduce volume, or (ii) switch their purchases to an alternative supplier.
- 8.22 In this case we think it is unlikely that a customer will be able to credibly threaten to reduce its volume, as Bacs Approved Software is essential for submitting Bacs Direct Credit and Direct Debit payments. To reduce volume, without partially or fully switching to an alternative supplier, a customer would have to submit fewer Bacs transactions. Since Bacs is a payment method, to do this a customer would need to shrink its overall business (i.e. to submit fewer payroll transactions a customer must either pay its staff less often or employ fewer staff), or find an alternative method for making payments.
- 8.23 A customer's ability to threaten credibly to switch supplier will be determined by (i) the number of credible outside options currently available in the market; (ii) the strength of these outside options including how differentiated they are; and (iii) the ability (i.e. whether they are capacity constrained) and incentive of existing players to expand to serve new customers, or new players to enter and meet a customer's demand.
- 8.24 Therefore, in order to assess the likely competitive effects of the Merger, we need to analyse both closeness of competition between the Parties and the strength of the remaining competitive constraints. This is considered in the competitive effects section below.

Competitive process in the Bacs Approved Software market

- 8.25 Customers engage in bilateral negotiations (and in some cases formal tenders) with providers of Bacs Approved Software.⁴²⁴ [REDACTED].⁴²⁵
- 8.26 We spoke to existing customers of the Parties⁴²⁶ about how they might go about choosing a new supplier of Bacs Approved Software.⁴²⁷ The customers we spoke to told us that they would follow a broadly similar process:
- (a) They would start their search by looking at the centrally maintained list of Bacs Approved Software providers.⁴²⁸ The list of approved software providers is publicly available so it is reasonable to assume that other customers looking for a new provider would also begin with this list.
 - (b) They would then make enquiries to identify which providers could meet their particular requirements. Those Bacs Approved Software providers would then be subject to a more detailed review and evaluation process which could include trialling or demonstration of the product.⁴²⁹
- 8.27 Most customers we have spoken to have indicated that the most important factor when choosing payments software is reliability and/or security.⁴³⁰ Security and authorisation processes were considered to be important because the software is processing large payments which in some cases contain instructions to send millions of pounds. For example:
- (a) [REDACTED] told us that being able to make payments was critical to their business, and if they missed a payment it would have a detrimental effect on their reputation.⁴³¹
 - (b) [REDACTED] told us that it needs 99.5% guaranteed uptime, so it would need to have faith that an alternative supplier could deliver on this.⁴³²

⁴²⁴ Bacs Approved Software is either deployed on a customer's premises or hosted on the cloud. The process of negotiating contracts is the same for both deployed and hosted products.

⁴²⁵ [REDACTED] (Bottomline, Response to CMA s109 Notice, 28 October 2019, Annex 10.2).

⁴²⁶ [REDACTED]; [REDACTED]; [REDACTED]

⁴²⁷ In the course of this investigation we sought views on the Merger from more than 150 customers. We had calls with 15 of the Parties' customers and received written responses to our questionnaires from an additional eight customers. The fact that switching rates in this market are low, and that we have seen some examples of customers migrating from an older version of a company's software to a newer version rather than shopping around, means that despite identifying a number of customers from the Parties' contract data who had recently purchased Bacs Approved Software, and asking a number of them questions, we did not identify any customers who had purchased Bacs Approved Software from a *new* provider within the last two years.

⁴²⁸ [Bacs website](#). There are currently 18 software suppliers who are Bacs-accredited.

⁴²⁹ Further detail on this process is considered from paragraph 8.40.

⁴³⁰ [REDACTED]

⁴³¹ [REDACTED]

⁴³² [REDACTED]

8.28 Other factors that customers [redacted] have indicated would be important in choosing between providers are price,⁴³³ support (including provision of updates),⁴³⁴ and ease of use and automation, particularly the use of automatic HSM modules⁴³⁵ for authenticating payments.⁴³⁶

Ongoing competition and 'look-up' moments

8.29 In this section, we discuss; (i) upfront competition to attract customers; (ii) ongoing competition to attract existing customers (iii) the reasons why search and switching behaviour are low in the Bacs Approved Software market; and (iv) whether there are 'look-up' moments which can cause more 'sticky' customers to shop around.

Upfront competition to attract new customers

8.30 In this market, customers either make a 'one-off' purchase of a piece of software⁴³⁷ or pay a subscription for software 'as a service'⁴³⁸ that they then use regularly to make Bacs transactions.

8.31 Since Bacs is one of the core payment technologies in the United Kingdom, which is widely used in payroll and to make direct debit collections and therefore a well-established market, there are likely to be relatively few new customers available for Bacs Approved Software providers in a given year.⁴³⁹ In support of this, Finastra told us that they believed the market is mature and that it is difficult to win new customers.⁴⁴⁰

8.32 Accordingly, there are not very many instances of upfront competition to attract new customers on the Bacs Approved Software market.

Ongoing competition to attract existing customers

8.33 Bottomline provided an analysis of customer switching based on its contract data⁴⁴¹ showing how often each of the Parties has lost a customer to a rival

⁴³³ [redacted]

⁴³⁴ [redacted]

⁴³⁵ An HSM is a hardware-based security device that generates, stores and protects cryptographic keys. It provides the foundation for a high-level, secure certification authority (source: *How to automate Bacs and Faster Payments*, [AccessPay website](#)).

⁴³⁶ [redacted]

⁴³⁷ Deployed software which is installed on a customers system.

⁴³⁸ Hosted software that is installed on the providers system.

⁴³⁹ In principle there could be more new customers for bulk FPS transactions using Bacs Approved Software. However, as discussed in Chapter 7 (Market definition), use of Bacs Approved Software for FPS transactions is relatively limited.

⁴⁴⁰ Call with Finastra, 11 November 2019.

⁴⁴¹ Bottomline's diversion analysis (phase 1), 10 September 2019.

supplier. Using that data we calculated switching rates for each of the Parties, which were as follows:

- (a) EPG lost [X] customers between 2014 and 2018, equating to an average of [X] customer losses per year. Given it currently has [X] active contracts, this equates to a switching ratio of [X] %.
- (b) Bottomline lost a total of [X]⁴⁴² customers between 2014 and 2018, equating to an average of [X] customers per year. Given Bottomline currently has a total of [X] customers across its deployed and hosted products, this equates to a switching ratio of [X] %.

8.34 Customers may also shop around in search of a better offer and ultimately choose to remain with their current provider, which will not be captured in the switching data. In order to assess the propensity of customers to engage in search activity to get a better price during contract negotiations, we asked customers whether they had shopped around.⁴⁴³ Of the customers who provided a response about shopping around, the majority (nine out of 13) indicated that they had not done so:

- (a) [X], an EPG customer, told us that it has not looked at any alternative providers since it started using EPG in 2004.⁴⁴⁴
- (b) [X], an EPG customer, [X] supplier since it started using EPG in 2005.⁴⁴⁵
- (c) [X], a Bottomline C-series customer, has not tendered, or looked at alternative suppliers with a view to potentially switching supplier since it started using Bottomline C-Series in 2011.⁴⁴⁶
- (d) [X], an EPG customer since 2005, has never threatened to switch as a bargaining tool.⁴⁴⁷
- (e) [X], an EPG customer, has not reviewed its use of EPG since it started using EPG in 2005.⁴⁴⁸

⁴⁴² This does not include customers who switched from Bottomline Bacstel-IP to Bottomline bureaux.

⁴⁴³ We asked about shopping around in all customer questionnaires, to which we received eight responses and in five customer calls.

⁴⁴⁴ [X]

⁴⁴⁵ [X]

⁴⁴⁶ [X]

⁴⁴⁷ [X]

⁴⁴⁸ [X]

- (f) [REDACTED], a Bottomline customer, told us that it believes Bottomline to be very competitive. [REDACTED] is comfortable with the price it currently pays and has never felt it needed to negotiate the price.⁴⁴⁹
- (g) [REDACTED], an EPG customer, told us that it focused on the service provided to it and that cost was less of a factor. It said that provided there is a good service, it will not look around, but if the service level dropped then it would. It has not looked at alternative payment software providers in the last few years.⁴⁵⁰
- (h) [REDACTED], a Bottomline PT-X customer, told us that, given the importance of paying employees' salaries on time, [REDACTED] generally does not consider switching software supplier providing the software continues to work. However, if a supplier offered a product that was equally as good as Bottomline's in terms of reliability, but half the price, [REDACTED] would be encouraged to switch supplier.⁴⁵¹
- (i) [REDACTED], an EPG customer for at least 12 years, told us that despite the fact that four years ago EPG stopped providing its original solution, it has stayed with EPG and did not look for a different supplier.⁴⁵²

8.35 A minority (four out of 13) of customers we received views from on this issue indicated that they had engaged in search activity or retendered but not switched supplier:

- (a) [REDACTED], an EPG customer, told us that its parent company ([REDACTED]) has previously used Bottomline but moved to Experian due to service and cost a few years ago.⁴⁵³
- (b) [REDACTED], a Bottomline PT-X customer, told us that it looked at alternative providers in 2017 but was still under contract so was not eligible to transfer. It renegotiated with Bottomline in 2018, but several suppliers provide a similar service.⁴⁵⁴
- (c) [REDACTED], a Bottomline PT-X customer, told us that after carrying out a procurement exercise in 2016 it decided to stay with Bottomline. This is because it had just started a complex programme to replace its customer

449 [REDACTED]
 450 [REDACTED]
 451 [REDACTED]
 452 [REDACTED]
 453 [REDACTED]
 454 [REDACTED]

relationship management and billing system and a change in provider would have added a degree of risk to this programme.⁴⁵⁵

(d) [REDACTED], an EPG customer, told us that it approached Bottomline and GoCardless in 2016 to check that the rate it was paying EPG was fair.⁴⁵⁶

8.36 Accordingly, the evidence provided to the CMA demonstrates that customers of Bacs Approved Software are engaging in searching and switching to a low extent in the normal course of business.

Reasons why rates of shopping around and switching are low

8.37 When a customer chooses to switch supplier, it is likely to incur some search costs. Search costs are typically not direct financial costs but instead the value of the time which staff must devote to finding a new supplier, which they would otherwise have spent on other activities. The principal search costs in the Bacs Approved Software market are the costs of identifying a supplier and of running a procurement process.

8.38 After shopping around, a customer may then choose to switch supplier. If they do, they will then incur switching costs associated with setting up and integrating the new software into their existing systems and processes.

8.39 As discussed above (paragraph 8.26), the customers we have received views from on this issue have told us that they would begin their search for a new supplier by looking at the list of Bacs Approved Software providers on the Bacs website. However, since there are 18 suppliers on the list, they would need to spend time identifying who would be suitable to meet their requirements, before running a procurement exercise.

8.40 Once a customer has identified a suitable supplier and agreed a price, they will need to work with the supplier to ensure that the software is correctly configured to accept the inputs from their system.⁴⁵⁷ On the basis of the evidence provided to us, the length of time taken for this seems to vary depending on the chosen software:

(a) Bottomline stated that the average lead time from a customer placing an order for PT-X to going live on PT-X was [REDACTED].⁴⁵⁸

⁴⁵⁵ [REDACTED]

⁴⁵⁶ [REDACTED]

⁴⁵⁷ [REDACTED].

⁴⁵⁸ Site visit, Main slide deck, 21 November 2019.

- (b) AccessPay told us that bigger customers who submit higher volumes of payments will find it more difficult to switch (and as a result switching will take longer) as they have complex business processes.⁴⁵⁹
- (c) Paygate told us that simple use customers could take six to eight weeks to switch. For more complex customers it will normally take longer, and it can take eight weeks to switch the HSM module alone.⁴⁶⁰

8.41 We discussed search and switching costs with a number of customers we received views from, in order to try to understand the costs of switching supplier:

- (a) [REDACTED], a Bottomline customer, told us that it does not think it would be difficult to switch away from PT-X in the future as it is a hosted solution. The main barrier to switching is the difficulty for the provider of working out how to map the payment instruction files produced by a company's accounting software to the payment software.⁴⁶¹
- (b) [REDACTED], an EPG customer, told us that the switching process would take between 12 and 18 months and that it would be very costly (at least hundreds of thousands of pounds).⁴⁶²
- (c) [REDACTED], an EPG customer, told us that, the 'testing' phase when switching supplier might take around 12-18 months.⁴⁶³
- (d) [REDACTED], an EPG customer, told us that it would probably take around 80 hours work to decide who to switch to and then around 160 hours work or more to make the actual switch. It would be time-consuming and potentially troublesome – the cost of switching is significant when compared to the actual cost of the software.⁴⁶⁴
- (e) [REDACTED], an EPG customer, told us that the reason why [REDACTED] continued using EPG is due to the costs involved to change the supplier and the fact that the service provided by EPG continues to meet [REDACTED] requirements.⁴⁶⁵

8.42 In summary, the customers who provided evidence to us considered that switching supplier would consume a material amount of staff time. Customers

⁴⁵⁹ Call with AccessPay, 15 November 2019.

⁴⁶⁰ Call with Paygate, 15 November 2019.

⁴⁶¹ [REDACTED].

⁴⁶² [REDACTED]

⁴⁶³ [REDACTED]

⁴⁶⁴ [REDACTED]

⁴⁶⁵ [REDACTED]

did not tend to quantify the cost of switching, but those who did told us that the cost would be high.⁴⁶⁶

- 8.43 If the cost of switching suppliers is significant relative to the cost of the product, customers are less likely to switch, as it would take a long time to recoup the cost of switching.
- 8.44 We have looked at how much Bottomline and EPG customers currently spend on their Bacstel-IP software, in order to assess the materiality of the switching costs relative to the how much the customer is spending on the software:
- (a) EPG has around [redacted] active customers.⁴⁶⁷ Of these, [redacted] paid less than [redacted] per year for the software, with only [redacted] paying over [redacted] and only [redacted] paying over [redacted].
 - (b) Bottomline had around [redacted] active customers using PT-X (its hosted product). Of these, [redacted] paid less than [redacted] per year for the software, with only [redacted] paying over [redacted] and only [redacted] paying over [redacted].⁴⁶⁸
 - (c) Bottomline had around [redacted] active customers using its deployed products. Of these, [redacted] paid less than [redacted] per year for the software, with only ten paying over [redacted] and only [redacted] paying over [redacted].⁴⁶⁹
- 8.45 Engaging in search and switching activities would allow customers to reduce their annual bill, but even if they were able to save 10%⁴⁷⁰ by switching, this would only account for about [redacted] for small customers and about [redacted] for the biggest Bottomline customer.
- 8.46 In addition, as discussed at paragraph 8.27 above, the evidence from the customers who provided evidence to us shows that, for Bacs Approved Software customers, the most important factor when choosing payments software is reliability and/or security, given that making payments is so crucial to their business. It would appear that the risk of something ‘going wrong’ in the process of a switch to an alternative Bacs Approved Software supplier is also a factor in making it unlikely to be worthwhile to switch supplier given the relatively limited financial benefits of doing so.
- 8.47 Based on the evidence set out above, our provisional view is that the costs of switching are likely to be material in comparison to the relatively low cost of

⁴⁶⁶ [redacted] told us that ‘the approximate financial cost of running a replacement programme would be £1 million, which would not include the cost of purchasing the software’.

⁴⁶⁷ CMA calculations (to aggregate customers) based on EPG contract data, Annex 10.1, 16 December 2019.

⁴⁶⁸ Bottomline submission in response to Working Paper.

⁴⁶⁹ Bottomline submission in response to Working Paper.

⁴⁷⁰ This is the upper boundary of a SSNIP (small but significant non-transitory increase in price) test which is used to define economic markets. If a customer could save more than 10% by switching to an alternative product, the products are likely to be in separate economic markets.

the product. This, together with the risk of switching, is likely to explain the low rates of shopping around and switching we observe in this market.

Competition to attract customers at 'look-up' moments

- 8.48 Deployed software products tend to need updating periodically by a customer and can become obsolete if there are changes in technology. Such events can cause customers who would not otherwise have shopped around to engage in search and switching behaviour. We refer to such moments as 'look-up' moments.
- 8.49 There are generally likely to be fewer 'look-up' moments for hosted products than for deployed products, as in the case of hosted products the supplier can modify the software on their server without the customer being aware.
- 8.50 'Look-up' moments can increase the likelihood of switching through two effects:
- (a) increase customers' awareness of the potential limitations in the products that they are currently purchasing; and
 - (b) decrease the relative cost of switching to an alternative product as there is now a cost in the 'do-nothing' scenario.
- 8.51 Whether a 'look-up' moment causes a customer who did not previously shop around to do so will depend on how 'sticky' (inframarginal) that customer is and the nature of the event:
- (a) If the event giving rise to the 'look-up' moment requires an update to the existing software, customers will retain the option of remaining with their existing software, so only a proportion of customers are likely to engage in search behaviour.
 - (b) If the event giving rise to the 'look-up' moment requires the existing software to be replaced with new software, all customers would have to choose a new piece of software so must engage in some search behaviour (at least within their existing supplier, if not across suppliers).
- 8.52 We have identified a 'look-up' moment in 2016, when there was a set of security changes which required providers and customers to update their software. As set in paragraph 8.109, this resulted in a [✂] in the number of customers switching away from Bottomline.
- 8.53 Prior to this, there was a 'look-up' moment in 2004/5 when the Bacs submission protocol changed from a telephone dial-up service to an internet-

based service which required substantial software changes. These changes allowed EPG, which was a new entrant at the time, to acquire what is still the majority of its customer base.

8.54 Although 'look-up' moments can cause customers to shop around, there is some third-party evidence that customers may not do so (even when they are told that their existing software is reaching the end of its life), with them instead choosing to migrate to newer software from the same supplier without shopping around:

(a) [REDACTED] is a Bottomline PT-X customer which previously used C-series. When it was told by Bottomline that C-Series would no longer be supported, it decided to move to PT-X. [REDACTED].⁴⁷¹

(b) [REDACTED] told us, that after ten years using Bacway (a Bottomline product), [REDACTED]. The customer told us that it decided to move to PT-X without looking at alternatives.⁴⁷²

Provisional conclusion on the nature of competition

8.55 Customers engage in bilateral negotiations (and in some cases formal tenders) with providers of Bacs Approved Software and as a result receive individualised prices that vary significantly across customers.

8.56 Given that Bacs is a well-established payment system, the proportion of new customers in the market is likely to be low.

8.57 Looking at competition to supply existing customers, the evidence shows that switching rates are low, with only [REDACTED]% of EPG customers and [REDACTED]% of Bottomline's customers changing supplier in the period from 2014 to 2018. Moreover, the customers we have spoken to have indicated that there would be quite significant costs involved in switching compared to the cost of the software and this, together with the risks of something 'going wrong' with the customers' Bacs payments, results in the majority of customers not shopping around.

8.58 Our provisional view is that, because of the low rates of shopping around and switching, as well as the low proportion of new customers in the market, demand-side pressures on providers of Bacs Approved Software are weak.

⁴⁷¹ [REDACTED]

⁴⁷² [REDACTED]

Competitive effects

- 8.59 The Merger, by bringing together Bottomline and EPG, may give the Merged Entity the ability to deteriorate elements of its competitive offering if the Parties are close competitors and other suppliers cannot replicate the competitive constraint that the Parties exert on one another.
- 8.60 This section starts by setting out market shares of the various firms operating in this market. It then sets out our analyses of the extent of competition between Bottomline and EPG. Finally, it considers the strength of other competitive constraints that they will face post-Merger, including whether competition would be different in a 'look-up' moment.
- 8.61 Our analysis draws on a number of different sources of evidence including contract data provided by the Parties; win/loss data provided by the Parties; data from Vocalink on the monthly volume and software used for Bacs transactions by each Bacs service user; internal documents; and evidence from third parties.⁴⁷³

Market shares

- 8.62 Market shares of firms in the market, both in absolute terms and relative to each other, can give an indication of the potential extent of firm's market power.⁴⁷⁴ This is particularly the case when market shares reflect the current competitive strength of market participants, rather than their historic performance.
- 8.63 Market shares are usually calculated based on value or volume, and in some cases on a count measure such as the number of customers. Market share measures should be chosen based on how well they are able to illustrate the performance of a firm and the extent to which the firm has market power.⁴⁷⁵
- 8.64 Value market shares would be our preferred measure in this market. However, they require information on the overall market size, which is not

⁴⁷³ See discussion of the number of customers contacted / who provided responses to us in the course of this investigation at footnote 427 above.

⁴⁷⁴ [Merger Assessment Guidelines](#), Section 5.3 and paragraph 5.3.4.

⁴⁷⁵ Volume-based market shares are normally used in homogenous goods markets, or where volume is a good proxy for the competitive strength of a firm. In differentiated product markets, where firms can choose to set the price and quality of their product offering at different points on a spectrum, value market shares will be preferred as they take account of both price and volume. Count-based measures, such as share of customers, can be a good proxy for competitive strength in markets where there are bilateral negotiations as they show how well each firm has performed across all negotiations they have taken part in. However, share of customers does not account for differences in customer size, which may mean that a firm that caters predominantly for small customers has a large share of customers but a very small share of volume and revenue.

available in this market.⁴⁷⁶ We have revenue data from some but not all firms in the market, so calculations based on these revenues overestimate market shares.

- 8.65 We have data on the number of transactions submitted using each supplier's software, which allowed us to accurately calculate volume-based market shares. However, because this is a differentiated product market and the evidence shows that transaction volume is not a good proxy for revenue,⁴⁷⁷ volume-based market shares alone are unlikely to give a good measure of competitive strength.
- 8.66 There is no source of customer numbers for the entire market.⁴⁷⁸ We have therefore only presented information on the number of customers held by the Parties and third parties who have told us how many customers they have.
- 8.67 In view of the above, in this analysis we have focused on market shares by volume, since this is the most reliable data available. However, we also presented the information we have on market shares by value and by customer numbers. We considered all three measures of market share before coming to a view in the round.

Share of volume of transactions

- 8.68 Table 9 below presents our estimates of shares by volume of the Bacs Approved Software market.

⁴⁷⁶ Bottomline has been unable to provide an estimate of the size of the Bacs Approved Software market in value terms and it has not been possible for us to identify this data in a source such as an industry report.

⁴⁷⁷ The revenue per transaction differs widely.

⁴⁷⁸ The Vocalink data we have used for volume market shares records data by SUN and some customers have multiple SUNs. There is no source which enables the SUNs to be accurately matched to customers.

Table 9: Volume market shares 2014 to 2019

	Year						%
	2014	2015	2016	2017	2018	2019	
Bottomline	[40-50]	[40-50]	[40-50]	[40-50]	[40-50]	[40-50]	
EPG	[30-40]	[30-40]	[30-40]	[30-40]	[20-30]	[20-30]	
Combined	[80-90]	[80-90]	[70-80]	[70-80]	[70-80]	[70-80]	
[REDACTED]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]*					[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	
[REDACTED]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	

Source: CMA calculations based on Vocalink data on the number of Bacs transactions submitted using each suppliers' Bacs Approved Software in the UK

Notes:

* [REDACTED] entered the market in 2018

- 8.69 Bottomline has a six-year average market share by volume of around [40-50]% and EPG has a market share of around [30-40]%. The Merged Entity has a six-year average market share of around [70-80]%.
 8.70 EPG's market share has declined from [30-40]% in 2014 to [20-30]% in 2019, with an associated [0-5]% decline in transaction volume from 2014 to 2018.⁴⁷⁹ Over the same time, the total number of transactions has increased by [5-10]%.
 8.71 Although we provisionally concluded that bureaux and FM DDs are not part of the relevant market, we acknowledge that they can be an important constraint, especially for the subset of customers with simpler requirements. We have therefore also considered volume market shares including bureaux and FM DDs. To avoid double-counting transactions that are made by a bureau using Bacs Approved Software, we have excluded these transactions from each Bacs Approved Software providers' figures. These market shares are presented in Table 10 below.

⁴⁷⁹ In 2014 [REDACTED] transactions were submitted through EPG. In 2018 the number of transactions submitted through EPG fell to [REDACTED].

Table 10: Volume market shares including bureaux 2014 to 2019

Market shares	Years					
	2014	2015	2016	2017	2018	2019
Bottomline	[30-40]	[30-40]	[30-40]	[30-40]	[30-40]	[30-40]
EPG	[20-30]	[20-30]	[20-30]	[20-30]	[10-20]	[10-20]
Combined	[50-60]	[50-60]	[50-60]	[50-60]	[50-60]	[40-50]
☒	[20-30]	[20-30]	[30-40]	[30-40]	[30-40]	[30-40]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[5-10]	[5-10]	[5-10]	[5-10]	[5-10]	[5-10]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
☒	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]

Source: CMA calculations based on Vocalink data

8.72 When bureaux are included in the market share calculation, the Parties' combined market share falls to around [50-60]%, with an increment of around [10-20]%.

8.73 The combined share of the Parties has fallen over the last 5 years by around [0-10] percentage points, whilst the market share of bureaux has been growing, increasing from [20-30]% to [30-40]% between 2014 and 2019. The volume of Bacs transactions made by bureaux increased by [30-40]% between 2014 and 2018⁴⁸⁰ compared with a [10-20]% increase in the total number of Bacs transactions submitted through Vocalink over the same period.⁴⁸¹

Share of value

8.74 Table 11 below presents our estimates of shares by value of the Bacs Approved Software market. As discussed above, we do not have an accurate estimate of the total value of the market. The figures in Table 11 only include those Bacs Approved Software providers that provided data on their sales

⁴⁸⁰ Transaction volume increased from ☒ to ☒ in 2018. 2019 is not used as we do not have a full year's data.

⁴⁸¹ From ☒ to ☒.

values to us. As a consequence, these market shares will be overstated to some degree. However, given the volume market shares, we consider that most of the larger players are included, so the extent of the overstatement is likely to be small.

Table 11: Value based market share for 2018, selected Bacs Approved Software providers

<i>Company</i>	<i>2018 revenue (£)</i>	<i>Market share (%)</i>
Bottomline	[X]	[50-60]
EPG	[X]	[10-20]
Combined	[X]	[70-80]
Finastra	[X]	[10-20]
AccessPay	[X]	[5-10]
Paygate	[X]	[0-5]
SmarterPay	[X]	[0-5]
Mosaic	[X]	[0-5]
Elseware	[X]	[0-5]
Unified Software Ltd	[X]	[0-5]
Total	[X]	

Source: CMA calculations based on submissions by Parties and third parties

8.75 Table 11 shows that Bottomline is by far the largest company with a market share by value of [60-70]%. EPG is the second largest company in the market with a market share of [10-20]%. Therefore, the Merged Entity has a market share by value of around [10-20]% with an increment of [10-20]%.

8.76 Finastra and AccessPay are the third and fourth largest companies with market shares of [10-20]% and [5-10]% respectively. Paygate is the only other company with a market share of around [0-5]% or higher.

Share of customers

8.77 As discussed above, we cannot reliably estimate the number of Bacs customers and we do not know the number of customers for all suppliers in the market. We know that Bottomline has [X] customers,⁴⁸² EPG has [X] customers,⁴⁸³ Paygate has around [X] customers,⁴⁸⁴ and Finastra has around [X] customers.⁴⁸⁵ This means that EPG has a [X]. If the market was only made up of these four firms, EPG's share of customers would be [0-5]%. On the same basis, Bottomline's share would be [50-60]% and Paygate and Finastra would have shares of [0-5]% and [40-50]% respectively.

⁴⁸² CMA calculations to remove duplication, based on Bottomline contract data in Annex 10.2 and 10.3.

⁴⁸³ CMA calculations to remove duplication, based on EPG contract data in Annex 10.1.

⁴⁸⁴ Call with Paygate, 15 November 2019.

⁴⁸⁵ Call with Finastra, 11 November 2019.

Provisional conclusion on market shares

- 8.78 Our provisional view is that Bottomline is the largest company on all metrics, accounting for around half of the market by volume and more by value of transactions.
- 8.79 EPG has [X] customers, but it is the second largest supplier by volume of transactions, with a market share of around [20-30]%. Its market share by value is lower than this.
- 8.80 Additionally, while our information on market shares by value and by customer number is imperfect, market shares clearly vary across the different measures. This shows that there are differences between firms and between customers, and because of this we have focused our assessment on the closeness of competition between the Parties.

Closeness of competition between the parties

EPG's position in the market

- 8.81 Bacs Approved Software is purchased infrequently, with customers staying with a provider for a long time. Since market shares are accrued over time, as firms grow and pick up more customers, current market shares may reflect the firm's historic position in the market rather than its current competitive strength. This is because, if a firm stops winning new customers but retains its existing customers, it may retain a high market share whilst offering a weak competitive constraint in the market – as competition is the ongoing process of rivalry, which depends on how strong the *current* offer of a firm is. If a firm is not able to win customers, it is likely to exert a weak competitive constraint. In such markets we tend to look more closely at when a firm gained its customers and its share of new customers, rather than its overall market share.
- 8.82 EPG's contract data set out in Table 12 below shows that EPG won [X] of its current customer base from 2004 to 2006. These customers account for [X] of these annual renewal fees and include many large customers.⁴⁸⁶ The data also shows that EPG has won few customers in recent years, with only [X] customer wins from 2014, accounting for [X] of renewal fees.⁴⁸⁷ This data implies that EPG's current market share is backward looking and reflects its success in winning customers in the past, particularly in 2004/5.

⁴⁸⁶ Bottomline, Response to CMA request for information, 16 December 2019, Annex B.1.1

⁴⁸⁷ Note that the data in this table is for original purchase date and value where a customer has renewed, so the total renewal fees in this table is not equal to the current turnover.

Table 12: EPG current customers by year they first purchased the software

<i>Purchase year*</i>	<i>Number of customers acquired that year</i>	<i>Number of customers lost</i>	<i>Annual renewal fees from contracts signed in that year (£)†</i>	<i>Renewal fee as a proportion of total annual fees</i>
Unknown	[X]		[X]	[X]
2004	[X]		[X]	[X]
2005	[X]		[X]	[X]
2006	[X]		[X]	[X]
2007	[X]		[X]	[X]
2008	[X]		[X]	[X]
2009	[X]		[X]	[X]
2010	[X]		[X]	[X]
2011	[X]		[X]	[X]
2012	[X]		[X]	[X]
2013	[X]		[X]	[X]
2014	[X]	[X]	[X]	[X]
2015	[X]	[X]	[X]	[X]
2016	[X]	[X]	[X]	[X]
2017	[X]	[X]	[X]	[X]
2018	[X]	[X]	[X]	[X]
Totals	[X]	[X]	[X]	[X]

Source: Bottomline, Response to CMA request for information, 16 December 2019, Annex B.1.1 and Bottomline's diversion analysis, prepared for the Competition and Markets Authority in the context of phase 1 (ME/6830/19), 10 September 2019.

* [X]

8.83 EPG has also been losing more customers than it has been gaining in recent years, with a net loss of [X] customers since 2014, which is equivalent to around [X]% of its current customer base.⁴⁸⁸ This implies that EPG has either not focused on competing for new business or has been unsuccessful at doing so.

8.84 EPG's lack of new clients is reflected in EPG's documents generated during the sales process, with one stating:

- (a) 'Most EPG clients date back to the launch of Bacstel-IP in 2003-05, predating the acquisition of Eiger Systems by Experian. Once embedded in client implementations, EPG clients are [X].
- (b) 'Most sales activity is therefore with small to medium sized clients, where tender processes are increasingly ruling out EPG for lacking hosted services and international payments capabilities. While the value of these is debatable, it reflects the fact that implementing a new payments

⁴⁸⁸ EPG has lost [X] customers between 2014 and 2018. Source: Bottomline's diversion analysis, prepared for the Competition and Markets Authority, 10 September 2019.

gateway is a significant undertaking and one which clients expect to continue serving their needs for a significant number of years.⁴⁸⁹ [REDACTED]

8.85 Experian purchased EPG, along with Bank Wizard, from Eiger Systems in 2006. We spoke to Experian to understand better how it operated EPG, and how it attempted to win new customers. It told us that:

- (a) The EPG business [REDACTED]
- (b) [REDACTED] decision was made to divest.
- (c) Experian [REDACTED]
- (d) EPG.
- (e) EPG [REDACTED].
- (f) [REDACTED].

8.86 We asked other providers of Bacs Approved Software whether they had faced competition from EPG in recent years:

- (a) Paygate told us that EPG is in the market for larger corporates but does not appear to have been actively trying to win new business in recent years. Paygate also told us that, in the market, references to EPG would usually be made in the context of which software supplier potential customers are currently using. Paygate said that it has rarely encountered EPG during tender processes and that it comes across Bottomline and AccessPay more commonly.⁴⁹⁰
- (b) Finastra told us that it views EPG as a competitor as it has some of the larger Bacs users by volume of transactions.⁴⁹¹
- (c) AccessPay was not able to provide any examples where EPG had tried to win a customer from them (while it noted it does not store the details for every prospective customer conversation). It had examples of EPG customers who have come to AccessPay for a quote: EPG retained [REDACTED] of these and lost [REDACTED] to AccessPay. AccessPay also said that it competes against EPG in the supply of Bacs Approved Software to large customers, where, in its view, EPG is the dominant provider.⁴⁹²

⁴⁸⁹ [REDACTED]

⁴⁹⁰ Paygate, Response to CMA request for information, 5 December 2019.

⁴⁹¹ Finastra, Response to CMA request for information, 29 November 2019.

⁴⁹² AccessPay, Response to CMA request for information, 3 December 2019.

(d) Unified Software told us that it does not hold information on who it competes with for particular customers but that, in its experience, customers will normally approach all Bacs Approved Software providers, so it assumes that it competes with EPG. Unified Software believes that EPG is a main competitor to it due to the bank account ownership verification services that are bundled with EPG's product, and which it believes is now licensed to Bottomline.⁴⁹³

8.87 Based on the evidence set out above, taken in round, our provisional view is that EPG is a weak competitive force in the market. As explained in Chapter 6 (The counterfactual), this is explained by the fact that [✂].

8.88 For the reasons set out from paragraph 6.69 our provisional conclusion is that the competitive strategy of EPG in the counterfactual (that is, under the ownership of the alternative purchaser) would have been broadly similar to the prevailing conditions of competition.

Evidence of switching between the Parties

8.89 In this section we examine historical data on switching behaviour, which can be informative of the relative strength of each of the suppliers in the market.

8.90 Our analysis is based on two different sources of data, which have different advantages and disadvantages:

(a) Contract data – this provides an estimate of the number of customers that have switched between the Parties (and the value of the business that has switched). It also captures switching to different channels. However, it is less able to accurately estimate the number of customers who have switched to third parties as it relies on what (if anything) customers have told to the Parties as to who they have switched to.

(b) Vocalink data⁴⁹⁴ – this provides an accurate estimate of the number and volume of transactions of service user numbers (SUNs) that have switched both between the Parties and to third party suppliers of Bacs Approved Software, bureaux and FM DDs.⁴⁹⁵ However, it is less able to accurately estimate the number of customers that have switched (because the data is recorded by SUN, not by customer),⁴⁹⁶ and it does

⁴⁹³ Unified Software, Response to CMA request for information, 28 November 2019.

⁴⁹⁴ See paragraph 8.61.

⁴⁹⁵ Although FM DDs and direct submitters cannot be differentiated in the Vocalink data.

⁴⁹⁶ A single customer may have multiple SUNs. See Appendix B for a summary of the steps we have taken to aggregate SUNs in order to perform customer-level analysis.

not provide information on switching to other channels such as online banking and host-to-host.

- 8.91 We have used both sources of switching evidence to calculate diversion ratios. These measure the proportion of customers (or value / volume of transactions) that have switched to different providers in the past.
- 8.92 We have focused on weighted measures of diversion to reflect the value attached to individual customers.⁴⁹⁷ We have used revenue weighted diversion in the contract data and volume-weighted diversion in the Vocalink data (since value information was not available).
- 8.93 Fewer than [X] customers have switched away from EPG in the past five years, so we are cautious about the weight we can place on these results. In contrast, [X] customers switched away from Bottomline in the past five years, so we have attributed more weight to these results.

Contract data on customers switching over time

- 8.94 Bottomline has submitted its own analysis of the rates of switching between Bottomline and EPG,⁴⁹⁸ based on its contract data. This analysis showed that:
- (a) Only [X] customers moved from Bottomline to EPG between 2014 and 2018, out of a total of [X] customers who left Bottomline in the same period.⁴⁹⁹ This implies a diversion ratio by customer numbers of [X]%⁵⁰⁰ and the estimated diversion ratio by revenue⁵⁰¹ is [X]%.⁵⁰²
- (b) [X] customers moved from EPG to Bottomline between 2014 and 2018, out of a total of [X] customers who left EPG. This implies a diversion ratio by customer numbers of [X]% and the estimated diversion ratio by revenue is [X]%.
- 8.95 We consider that this analysis provides a good estimate of diversion between the Parties, subject to the caveats on EPG diversion ratios in paragraph 8.93.

⁴⁹⁷ In most merger situations, the most useful unit when examining switching is the monetary value of sales. The relevant diversion ratio is therefore the value of sales that are diverted from the target to the acquirer over the total value of lost sales (and vice versa) (*Good practice in the design and presentation of customer survey evidence in merger cases* (CMA789), paragraph 4.16). This is because firms are ultimately concerned about revenue and profits, rather than the number of customers, so their incentives to try to win a customer will relate to the value of the business that that customer generates.

⁴⁹⁸ Bottomline, Diversion analysis provided to the Competition and Markets Authority (phase 1), 10 September 2019

⁴⁹⁹ Bottomline were able to identify where [X] of these customers switched to

⁵⁰⁰ This is calculated using the number of customers who switched between the Parties

⁵⁰¹ This is the revenue generated by Bottomline, not the value of the transactions submitted.

⁵⁰² This is calculated using the value of sales which switched between the Parties as a proportion of the total value of sales lost by the relevant Party.

Vocalink data on customers switching over time

- 8.96 We conducted an analysis of Vocalink data on transaction volumes, the methodology for which is described in Annex B. This analysis shows that:
- (a) [X] customers moved from Bottomline to EPG between 2014 and 2019. We estimate that up to [X] customers left Bottomline for another supplier in the same period,⁵⁰³ which implies a diversion ratio by customers of between [0-5]% and [0-5]%.⁵⁰⁴ We estimate a diversion ratio by volume of [5-10]%.⁵⁰⁵
 - (b) [X]⁵⁰⁶ customers moved from EPG to Bottomline between 2014 and 2019, out of a total of [X] customers who left EPG for another supplier in the same period, which implies a diversion ratio by customers of [20-30]%. We estimate a diversion ratio by volume of [0-5]%.⁵⁰⁷
- 8.97 We noted that, of the [X] customers identified in the Vocalink data as switching away from EPG, only [X] were shown in the EPG contract data as having had a contract with EPG. Since EPG may not have a direct price setting relationship with these customers, we have also calculated switching ratios focussing only on these [X]. We noted that [X] customers⁵⁰⁸ moved from EPG to Bottomline between 2014 and 2019, implying a diversion ratio by customers of [20-30]%. The estimated diversion ratio by volume was [5-10]% on the basis of these customers.

Provisional conclusions on switching data

- 8.98 The two analyses show consistent results. These are as follows.
- (a) EPG exerts no meaningful competitive constraint on Bottomline, with weighted diversion ratios of [5-10]%.
 - (b) Bottomline exerts some competitive constraint on EPG, with weighted diversion ratios of [0-5]% (based on volume data) and around [10-20]% (based on value data).⁵⁰⁹ These figures are much lower than would be

⁵⁰³ As detailed in Annex B, this figure is likely to overstate the number of total switches as we did not manually aggregate customers switching from Bottomline to competitors other than EPG.

⁵⁰⁴ If we use the total number of switches (ie [X]) this gives a diversion ratio of [X]%, but it is likely to underestimate diversion as the denominator is likely to be artificially high. If we use only the number of single homing customers who switch as the denominator, the diversion ratio would be [X]%, which we think is likely to be an over-estimate of diversion.

⁵⁰⁵ As outlined in Annex B, we may have not captured some of the multi-homing switches from Bottomline to other competitors. However, we have likely captured all switches from Bottomline to EPG through the additional manual check. This implies that the [X]% is likely to represent an overestimate of the true volume diversion.

⁵⁰⁶ [X] customers moved to Bottomline Bacstel-IP software and two to Bottomline's bureau

⁵⁰⁷ As detailed in Appendix B we have manually identified and aggregated all switches from EPG to all other competitors. Hence, estimated diversion ratios for EPG are accurate.

⁵⁰⁸ [X] customers moved to Bottomline Bacstel-IP software and [X] to Bottomline's bureau.

⁵⁰⁹ Findings from Vocalink and Bottomline's analysis respectively.

expected given Bottomline's market share and imply that Bottomline is not a close competitor to EPG.

Internal documents

8.99 We have identified relatively few internal documents which discuss the competitive constraints that each of the Parties faces. A number of these documents are also in excess of five years old and as such may not accurately represent current competitive conditions in the market.

8.100 Bottomline's internal documents [REDACTED]:

(a) [REDACTED].⁵¹⁰

(b) [REDACTED].⁵¹¹

(c) In a 2017 document reviewing the competitive landscape for different products, [REDACTED].⁵¹²

(d) [REDACTED].⁵¹³

(e) [REDACTED].⁵¹⁴

8.101 Experian's internal documents show that it viewed Bottomline as a competitor:

(a) Experian provided a document which reviewed competitors to the wider Experian business.⁵¹⁵ It viewed 'Top Tier' competitors as 'those offering a suite of products as part of a Fraud & ID solution, they compete with us across most product areas and will challenge us with top tier prospects.' Bottomline was listed in this top tier.

(b) A document prepared for Experian by Account as part of the preparations for the divestment of EPG describes Bottomline as [REDACTED].⁵¹⁶

⁵¹⁰ Bottomline, Response to CMA s109 Notice, 16 July 2019, Annex A1.3. The date of this document is unclear.

⁵¹¹ Bottomline, Response to CMA s109 Notice, 16 July 2019, Annex A1.3. The date of this document is unclear.

⁵¹² Bottomline, Response to CMA s109 Notice (phase 1), 18 June 2019, Annex 24.03.

⁵¹³ Bottomline, Response to CMA s109 Notice, 19 November 2019, Annex 2.9.1 & Annex 2.9.7

⁵¹⁴ Bottomline, Response to CMA s109 Notice, 19 November 2019, Annex 2.10.11.

⁵¹⁵ Competitor Analysis Payments, Experian, Response to CMA request for information, 4 June 2019.

⁵¹⁶ [REDACTED].

Third party comments

8.102 As discussed in paragraphs 8.34 to 8.36 above, switching rates in this market are low and customers do not often shop around. This lack of engagement explains the fact that we have limited responses from customers.⁵¹⁷

8.103 In total, only nine out of 23 customers who provided evidence to us had either shopped around or switched supplier in the last five years.⁵¹⁸ Of these nine customers:

(a) eight were existing Bottomline customers⁵¹⁹ – seven of these did not look at EPG, and the parent company of the only one who did was already using EPG;⁵²⁰ and

(b) one was an EPG customer⁵²¹ – it looked at Bottomline.

8.104 We spoke to 14 other customers who had not shopped around in the last five years. These customers generally had a low level of awareness of the alternative options currently available to them.

8.105 Of the ten customers who had not shopped around and who were EPG customers:⁵²²

(a) three told us that the Parties were competitors to each other:

(i) [REDACTED] told us it had switched from Bottomline to EPG in 2005 as at that time Bottomline could not handle the volume of payments submitted by [REDACTED]. [REDACTED] said it now considered that only EPG and Bottomline could handle their business.⁵²³

(ii) [REDACTED] told us that they have always considered Bottomline to be a reputable company with a stable product and a rival to EPG but decided not to use them because their product was too expensive and they would not use its functionality.⁵²⁴

⁵¹⁷ As discussed at footnote 427, we received eight responses to our questionnaire (which was sent to 150 customers), and held 15 calls. Due to the low response rate to the questionnaire, there is a likely to be a significant non-response bias, towards those who have more recently engaged with the market.

⁵¹⁸ For completeness, note that this covers the 13 customers who were questioned about whether they have shopped around as well as 10 additional customers who have switched.

⁵¹⁹ [REDACTED]

⁵²⁰ [REDACTED] and [REDACTED].

⁵²¹ [REDACTED] approached Bottomline in 2016 to check that the price they were paying was fair but decided to remain with EPG.

⁵²² [REDACTED] [REDACTED].

⁵²³ [REDACTED]

⁵²⁴ [REDACTED]

(iii) [redacted] said it purchased EPG software about ten years ago, moving from Bottomline (C-Series), and does not consider that there are any other competitors in the market that suit its needs.⁵²⁵

(b) two of customers who had not shopped around in the last five years had at some point in the past switched between the Parties, but did not specifically tell us they were competitors now:

(i) [redacted] [redacted].⁵²⁶

(ii) [redacted] had left Bottomline in 2013 [redacted].⁵²⁷

(c) the remainder did not identify Bottomline as a close competitor.

8.106 Four of the 14 other customers who had not shopped around in the last five years were Bottomline customers.⁵²⁸ They did not identify EPG as a close competitor.

Competition at 'look-up' moments

8.107 As set out above, 'look-up' moments are created by changes to Bacs Approved Software which increase customer engagement with the market and could prompt them to shop around and switch supplier. As such, there may be more competition during 'look-up' moments. In this section we assess whether 'look-up' moments in the past have increased competition between the Parties.

Programme updates

8.108 In 2016, there was a set of changes to a new and more sophisticated level of internet security at Bacs, which included the withdrawal of older connection protocols. This involved a combination of changes to Bacs Approved Software and service users being required to use more up-to-date operating systems and web browsers to be able to continue to access Bacs services.⁵²⁹ This is the most recent example of an industry wide 'look-up' moment.

8.109 Although there was [redacted] in the number of customers switching away from Bottomline in 2016 compared to other years, there was no observable

⁵²⁵ [redacted]

⁵²⁶ [redacted]

⁵²⁷ [redacted]

⁵²⁸ [redacted], [redacted], [redacted].

⁵²⁹ [Bacs website](#).

difference in the number of customers switching from Bottomline to EPG that year.⁵³⁰

- 8.110 Analysis of customer losses similarly shows that there was not a substantial increase in customers switching from EPG to Bottomline, and no overall increase in customers switching away from EPG, in that year:
- (a) EPG lost [REDACTED] customers in 2016, which was the same as 2014 and only slightly above the five-year average of [REDACTED].
 - (b) EPG only lost [REDACTED] customer to Bottomline in 2016, which was below the [REDACTED] year average of [REDACTED] customers per year.
 - (c) None of the EPG customers that we heard from told us that they shopped around in the time period including this look-up event.
- 8.111 Our provisional view is that a 'look-up' moment involving an update to existing software will not change the competitive dynamics between the Parties as EPG does not constrain Bottomline and the evidence indicates that such an event would not cause EPG's 'sticky' customers to switch.

Programme replacement

- 8.112 If the 'look-up' event requires existing software to be replaced with new software, this is unlikely to lead to an increase in competition between the Parties because EPG has only one product. In the counterfactual, we expect that the competitive strategy of EPG under the ownership of the alternative purchaser would have been broadly similar to the prevailing conditions of competition, with the continuation of a deployed EPG product and no development of a hosted product (see paragraph 6.84(a)).
- 8.113 Given the above, we consider that, in the event that EPG software became obsolete at some point in the future:
- (a) EPG customers would be forced to switch supplier. They may switch to Bottomline, but since they would not have the option of using EPG there would no longer be competition between the Parties.
 - (b) Bottomline customers may choose to switch but could not switch to EPG as it would have exited the market.
 - (c) As such, there would no longer be competition between the Parties in these circumstances.

⁵³⁰ [REDACTED].

Provisional conclusion on closeness of competition between the parties

8.114 In view of the above, our provisional view on closeness of competition between the parties is that:

- (a) EPG has not exercised a meaningful competitive constraint on Bottomline, winning very few customers over the past five years, which reflects the lack of investment by Experian. In Chapter 6 (The Counterfactual), we provisionally conclude that the competitive strategy of EPG under a different owner (the alternative purchaser) would have been broadly similar to the prevailing conditions of competition. In addition, as discussed in the next section, there are a number of other competitors that exert a more important constraint on Bottomline than EPG does.
- (b) Bottomline was a competitor to EPG, but the switching evidence demonstrates that it is not a close competitor.
- (c) An event that gives rise to a 'look-up' moment involving software being updated would not trigger additional competition between the Parties.
- (d) EPG customers would be forced to switch if EPG software became obsolete. However, as EPG only has a single product, which it did not plan to develop, it would not be able to continue to operate in the market at this point, so there would no longer be competition between the Parties.

Competition from other Bacs Approved Software suppliers

8.115 In this section we look at other Bacs Approved Software supplier options which will remain for customers after the Merger. We first look at switching evidence to see which suppliers customers switch to and we then go through the evidence we have on the strength of each of these competitors.

Switching evidence

8.116 We have estimated how many customers of the Parties have switched to other suppliers. As explained in paragraph 8.90, the data has some caveats in terms of the aspects of switching that it can demonstrate. In relation to both data sets, the number of customers switching away from EPG is too small to allow for quantitative analysis, so only qualitative results are presented for EPG.

Vocalink switching data on volume

8.117 Our analysis of Vocalink data on volume, the methodology for which is described in Annex B, is set out separately for Bottomline and EPG. For

Bottomline, this analysis shows the volume weighted diversion ratio, to each Bacs Approved Software provider, as well as the total diversion to bureaux. For EPG, the analysis shows the destination of the 20 largest customers to leave EPG.

- *Switching from Bottomline*

8.118 The results for Bottomline are set out in Table 13 below.

Table 13: Bottomline volume diversion

Competitor	Year						Total
	2014	2015	2016	2017	2018	2019	
Payment bureaux (non-Bottomline)	[20-30]	[60-70]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
Payment bureau (Bottomline)	[5-10]	[5-10]	[5-10]	[5-10]	[5-10]	[50-60]	[10-20]
[X]	[5-10]	[5-10]	[10-20]	[50-60]	[5-10]	[0-5]	[10-20]
[X]	[10-20]	[10-20]	[30-40]	[5-10]	[5-10]	[0-5]	[10-20]
[X]	[5-10]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
[X]	[20-30]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[5-10]
[X]	[0-5]	[0-5]	[10-20]	[0-5]	[5-10]	[10-20]	[5-10]
[X]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
[X]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
EPG	[20-30]	[0-5]	[0-5]	[5-10]	[0-5]	[0-5]	[5-10]
[X]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
[X]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
[X]					[50-60]	[0-5]	[10-20]
[X]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
[X]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
[X]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]

Source: CMA calculations based on Vocalink data

8.119 These results show that there are active competitors in the market who pose a stronger constraint on Bottomline than EPG. In particular:

- the diversion ratio from Bottomline to [X] is [10-20]% by volume;
- the diversion ratio from Bottomline to [X] is [10-20]% by volume;
- the diversion ratio from Bottomline to [X] is [10-20]% by volume;
- the diversion ratio from Bottomline to [X] is [5-10]% by volume; and
- the diversion ration from Bottomline to payment bureaux (excluding Bottomline bureau) as a group is [10-20]% by volume.

8.120 In contrast, as set out in paragraph 8.96, the volume weighted diversion from Bottomline to EPG was, on average, [5-10]% over the last six years. This

would make EPG only the fifth strongest individual competitor to Bottomline in this period.

- *Switching from EPG*

8.121 In light of the low level of overall switching level from EPG, rather than carrying out a quantitative analysis, we have considered the top twenty largest EPG customers that switched away between 2014 and 2019.

Table 14 – Top 20 customers by volume switching away from EPG 2014 to 2019

<i>Company name</i>	<i>Year of switch</i>	<i>Switched to</i>	<i>Total volume during year of switch</i>
[REDACTED]	2017	Payment bureau (non-Bottomline)	[REDACTED]
[REDACTED]	2014	Payment bureau (non-Bottomline)	[REDACTED]
[REDACTED]	2018	Bottomline	[REDACTED]
[REDACTED]	2016	[REDACTED]	[REDACTED]
[REDACTED]	2015	Payment bureau (non-Bottomline)	[REDACTED]
[REDACTED]	2014	Bottomline	[REDACTED]
[REDACTED]	2019	[REDACTED]	[REDACTED]
[REDACTED]	2014	[REDACTED]	[REDACTED]
[REDACTED]	2018	Bottomline	[REDACTED]
[REDACTED]	2018	Bottomline	[REDACTED]
[REDACTED]	2014	[REDACTED]	[REDACTED]
[REDACTED]	2017	Payment bureau (non-Bottomline)	[REDACTED]
[REDACTED]	2016	[REDACTED]	[REDACTED]
[REDACTED]	2014	Payment bureau (non-Bottomline)	[REDACTED]
[REDACTED]	2018	Payment bureau (non-Bottomline)	[REDACTED]
[REDACTED]	2017	Payment bureau (non-Bottomline)	[REDACTED]
[REDACTED]	2016	Bottomline	[REDACTED]
[REDACTED]	2018	Payment bureau (non-Bottomline)	[REDACTED]
[REDACTED]	2014	Bottomline	[REDACTED]
[REDACTED]	2016	[REDACTED]	[REDACTED]

Source: CMA analysis of Vocalink data

8.122 Table 14 shows that, out of the largest 20 customers to switch away from EPG, 14 switched to competitors other than Bottomline. In particular:

- eight customers switched to a non-Bottomline payment bureau (including three of the five largest customers to switch);
- four customers switched to [REDACTED]; and
- two customers switched to [REDACTED].

Contract switching data on customers and revenue

8.123 Bottomline have submitted analysis on the destination of [redacted] customers who left Bottomline.⁵³¹ These results are presented in Tables 15 and 16 below.⁵³²

Table 15: Customer diversion from Bottomline to third parties

	%					
	2014	2015	2016	2017	2018	Total
EPG	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
AccessPay	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Finastra	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Banks	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Bureaux	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Other	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Source: Bottomline's diversion analysis prepared for the Competition and Markets Authority, 10 September 2019.

Table 16: Revenue diversion from Bottomline to third parties

	%					
	2014	2015	2016	2017	2018	Total
EPG	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
AccessPay	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Finastra	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Banks	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Bureaux	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Other	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Source: Bottomline's diversion analysis prepared for the Competition and Markets Authority, 10 September 2019.

8.124 Tables 15 and 16 show that EPG has the lowest diversion ratio compared to other competitors both in terms of customer ([redacted]%) and revenue ([redacted]%). In particular:

- (a) diversion to AccessPay was [redacted] in terms of customers and [redacted] in terms of revenues;

⁵³¹ Bottomline did not know where a further [redacted] customers had switched to. There were no records available on the destination of customers switching from EPG to other competitors.

⁵³² As discussed at paragraph 8.90(a) above the contract data analysis is less able to accurately estimate the number of customers who have switched to third parties as it relies on what, third Parties correctly reporting to Bottomline who they have switched to. The diversion ratios from Bottomline to EPG are therefore an upper estimate.

- (b) diversion to Finastra was [REDACTED] in terms of customers and [REDACTED] in terms of revenue;
- (c) diversion to bureaux was [REDACTED] in terms of customers and [REDACTED] in terms of revenue; and
- (d) diversion to banks was [REDACTED] in terms of customers and [REDACTED] in terms of revenue.

8.125 These results are consistent with the Vocalink based switching analysis.

Other suppliers of Bacs Approved Software

8.126 In this section we consider the remaining evidence relating to the other main suppliers of Bacs Approved Software.

AccessPay

8.127 AccessPay has supplied Bacs software since 2013, and approximately [REDACTED] of its revenues are generated from provision of Bacs Approved Software. It also supplies software for FPS DCA.⁵³³ It offers hosted software, and focuses on the largest 4,000 to 5,000 SUNs in the market.⁵³⁴ This equates to businesses with annual turnover of £40 million and above.

8.128 Bottomline submitted that [REDACTED].⁵³⁵ It stated that this is reflected in:

- (a) the cancellations data which senior management team use when formulating commercial strategy;
- (b) internal documents [REDACTED];
- (c) [REDACTED].
- (d) AccessPay having recently raised £9 million from private equity investors – the press release announcing the investment stated that AccessPay would ‘use this investment to expand its sales, marketing and engineering teams and further develop its software platform’; and
- (e) AccessPay having attracted more than 500 customers since launching in 2012, including customers of all sizes.⁵³⁶

⁵³³ Call with AccessPay on 15 November 2019.

⁵³⁴ Of the approximately 20,000 direct submission SUNs in the market.

⁵³⁵ Bottomline, Response to CMA phase 1 decision, 11 November 2019

⁵³⁶ [REDACTED]. [REDACTED]

8.129 AccessPay told us⁵³⁷ that its main competitor is Bottomline, and that Bottomline is ‘by far and away the dominant provider’. AccessPay said that it has come across EPG and Corvid Paygate in the market, but it is rare to see other suppliers. It noted that Corvid Paygate is the biggest of the long tail and everyone else is very small. AccessPay told us that it, Bottomline and EPG are different to other suppliers as they can deal with complex workflows.

8.130 AccessPay was considered to be a competitor to Bottomline by Corvid Paygate, Finastra, Smarterpay and Unified Software.

8.131 Amongst the customers who had shopped around in the last five years (see paragraph 8.103), [REDACTED] and [REDACTED] identified AccessPay as an alternative provider.

Paygate

8.132 Paygate is a Bacs’ approved supplier and bureau, accredited to sell Bacs Approved Software solutions.⁵³⁸ It provides services to around [REDACTED] customers across a range of sectors in the UK. Paygate’s main business activity is the provision of Bacs software, both deployed and hosted.⁵³⁹

8.133 Bottomline submitted that [REDACTED].⁵⁴⁰ Bottomline highlighted the following points regarding Paygate’s strength as a competitor:

- (a) Paygate provides services to around [REDACTED] customers across a range of sectors (both deployed and hosted) in the UK. It has a demonstrable ability to attract and service customers of all sizes and complexity of needs.⁵⁴¹
- (b) Paygate was recently acquired by Jonas Software, who also own Constellation Payments and London & Zurich (a well-known FM DD provider).
- (c) Jonas Software describe Paygate as ‘a premium payment processing software provider’. The announcement of the acquisition refers to Paygate as having ‘excellent technology ... [and] better growth prospects with an owner who has specific interests and capability in developing payments processing and software’.

⁵³⁷ Call with AccessPay, 15 November 2019.

⁵³⁸ Call with Paygate on 15 November 2019

⁵³⁹ Call with Paygate on 15 November 2019.

⁵⁴⁰ Bottomline, Response to CMA phase 1 decision, 11 November 2019

⁵⁴¹ Customers include [REDACTED][REDACTED].

8.134 Paygate told us that [REDACTED][REDACTED].

8.135 Paygate considers Bottomline, EPG and AccessPay to be its three main competitors, followed by Finastra.⁵⁴² Paygate has also encountered APT and Mosaic occasionally at the lower end of market, but there are some Bacs-Approved Software providers that Paygate has never encountered.

8.136 Paygate was considered to be a competitor to Bottomline by Finastra, AccessPay and Unified Software.

8.137 Amongst the customers who had shopped around in the last five years (see paragraph 8.103), [REDACTED], [REDACTED] and [REDACTED] identified Paygate as an alternative provider

Finastra

8.138 Finastra is a software company with an annual turnover of \$2bn, around £[REDACTED]m of which is derived from Bacstel-IP software. Finastra's software is hosted on a private cloud – it does not offer a deployed version.

8.139 [REDACTED]⁵⁴³ [REDACTED]. It stated that this is reflected in:

- (a) cancellations data which senior management team uses when formulating commercial strategy;
- (b) [REDACTED];⁵⁴⁴ and
- (c) Finastra's demonstrable ability to attract and service customers of all sizes and complexity of needs.⁵⁴⁵

8.140 Finastra told us⁵⁴⁶ that before the acquisition, EPG was a competitor to Finastra, and that Bottomline, AccessPay and Paygate are also competitors to Finastra in the Bacs space.

8.141 Finastra was considered to be a competitor to Bottomline by Paygate. However, AccessPay told us that Finastra has all the capabilities and should be a significant player but it does not focus on Bacs – it is a small part of their overall business, and Finastra largely focuses on selling white label software to banks and does not focus on large direct submitters.⁵⁴⁷

⁵⁴² In June 2019, Paygate listed Bottomline, Experian, Finastra, AccessPay and Mosaic as its main competitors during a diligence process.

⁵⁴³ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

⁵⁴⁴ Bottomline, Response to CMA s109 Notice (phase 1), 18 June 2019 Annex 24.03.

⁵⁴⁵ Finastra's customers include [REDACTED].

⁵⁴⁶ Call with Finastra, 14 November 2019.

⁵⁴⁷ Call with AccessPay, 15 November 2019

8.142 Amongst the customers who had shopped around in the last five years (see paragraph 8.103), [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] identified Finastra as an alternative provider.

Other competitors

8.143 Bottomline submitted that the [REDACTED].⁵⁴⁸

8.144 Three other competitors responded to us:

(a) Smarterpay, [REDACTED], told us that Bottomline, APT, AccessPay are its top competitors⁵⁴⁹

(b) Elseware, [REDACTED].⁵⁵⁰

(c) Unified Software, which derives around £[REDACTED]k per year from Bacs Approved Software, told us that it competed with Bottomline, EPG, AccessPay, Paygate, and APT.⁵⁵¹

8.145 Of the 5 customers (of those we spoke to) who have shopped around in the last five years:

(a) Smarterpay was identified as an alternative supplier by three customers.⁵⁵²

(b) InterBacs and APT by two customers.⁵⁵³

(c) EFIS AG, Mosaic software, Unified software, WPM and FastPay were each identified by one customer.⁵⁵⁴

Provisional conclusion on other Bacs Approved Software suppliers

8.146 In addition to the facts described in this section, we also refer to the switching evidence discussed above on shopping around and switching. Our provisional conclusion is that post-Merger there will remain a number of suppliers of Bacs Approved Software. The biggest of these are AccessPay, Paygate and Finastra. EPG is not one of the strongest providers of Bacs Approved Software, with its market share substantially overstating its competitive constraint.

⁵⁴⁸ Bottomline, Response to CMA phase 1 decision, 11 November 2019

⁵⁴⁹ Smarterpay, Response to CMA Questionnaire, 11 December 2019.

⁵⁵⁰ Elseware, Response to CMA Questionnaire, 29 November 2019.

⁵⁵¹ Unified Software, Response to CMA Questionnaire, 14 January 2020.

⁵⁵² [REDACTED]

⁵⁵³ [REDACTED]

⁵⁵⁴ [REDACTED]

Assessment of out of market constraints

8.147 In paragraphs 7.54 and 7.74 above we identified two types of alternative products and channels that may represent an out of market constraint on Bacs Approved Software:

- (a) bureaux and FM DD providers - these are customers of Bacs Approved Software providers, but provide services to their own customers which are alternatives to those customers purchasing software direct from Bacs Approved Software providers; and
- (b) products offered by banks - namely online banking and host-to-host services.

Bureaux and FM DD providers

8.148 In paragraphs 7.61 to 7.64 above we provisionally found that bureaux and FM DDs are not part of the relevant market, but that they can be an important constraint, especially for the subset of customers with simpler requirements.

8.149 Although bureaux provide customers services that allow them to submit Bacs transactions, they themselves are customers of Bacs Approved Software providers. In theory this may limit the competitive constraint they are able to exert if there were no longer sufficient Bacs Approved Software providers competing to serve them. However, at present this does not appear to be an issue and as such we consider that bureaux are able to exercise an independent constraint on providers of Bacs Approved Software.

8.150 Bottomline submitted⁵⁵⁵ that bureaux are important players in the market and they told us that there is clear evidence that they are competitors:

- (a) Commercial bureaux submissions account for more than a quarter of total Bacs submissions; in terms of SUNs, approximately [X] SUNs ([60-70]%) submit their payments indirectly via a bureau.
- (b) The contract data shows that diversion from Bottomline to bureaux accounted for [X]% of known customer losses and [X]% of revenue losses in the period 2014-2018. This is considerably more than the diversion to EPG.
- (c) Diversion to bureaux accounted for a higher proportion of revenue losses than number of customer losses, implying that bureaux are a viable alternative for large customers. This is supported by the fact that [X]% of

⁵⁵⁵ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

customers lost to bureaux between 2014 and 2018 submitted at least 14,000 transactions in the year prior to leaving Bottomline. In comparison, only [X]% of all Bottomline customers submitted at least 14,000 transactions between June 2018 and May 2019.

- (d) Annual diversion was between [X]% and [X]% for Bottomline in four out of five years in the period between 2014 and 2018, with 2015 being an outlier (with [X]% diversion) due to [X] (a high-volume customer⁵⁵⁶) switching to using a bureau.

8.151 The switching data set out in paragraphs 8.89 to 8.98(b) shows that bureaux impose a competitive constraint on Bottomline, with volume weighted diversion of [10-20]%. However, the data shows that this switching is to a total of [X] individual bureaux, so each individually represents a relatively weak competitive constraint on Bottomline, winning little volume. Since diversion is volume weighted, this is indicative of bureaux mostly winning smaller and medium customers. However, set against this, there are instances of larger customers switching to bureaux, with the largest EPG customer to leave in the last five years moving to bureaux and eight of the top 20 largest EPG customers to switch moving to bureaux (see Table 14) (although seven of these customers still had lower volumes than the average EPG customer).⁵⁵⁷

8.152 Competitors' views on bureaux and FM DDs are mixed but generally point to bureaux and FM DDs not being seen as direct competitors:

- (a) Paygate told us that it does not specifically view bureaux or FM DDs as its most significant direct competitors because these organisations also rely on Bacs Approved Software providers to service their clients and therefore does not overly monitor them. Paygate noted, however, that it is becoming increasingly difficult to obtain direct SUNs from banks, particularly for Direct Debits, which may be prompting a shift towards the indirect model and may affect customer choice on entry.
- (b) AccessPay told us that it competes with bureaux to some extent, but this is mostly for the provision of bureaux services rather than provision of Bacs Approved Software (AccessPay provides bureaux services). AccessPay also told us that the bureaux and FM DD model works at the lower end of the market and that for any customer that needs bespoke

⁵⁵⁶ [X] processed around [X] in 2015. This is the largest customer switching from making direct submissions using Bottomline's software to making indirect submissions via a bureau between 2014 and 2019. By way of comparison, the second largest Bottomline customer switching to a bureau was [X], who switched in 2019 and processed around [X] transactions in that year.

⁵⁵⁷ Based on data included in the EPG customer database submitted by the Parties, EPG customers submitted on average around [X] between September 2018 and August 2019. (Bottomline, Response to CMA s109 Notice, 30 October, paragraph 11.1, annex 11.5.)

workflows (almost all larger corporates, enterprise and high-volume submitters) this option is not viable.

(c) Finastra told us that they come across some bureau providers in competitive 'request for proposal' bids.

(d) SmarterPay told us it does not compete with bureaux.

8.153 Only one of the customers that responded to our investigation had shopped around in the past five years and sought a quote from a bureau.

Provisional conclusion on bureaux and FM DDs

8.154 The switching evidence shows that together, bureaux exert a competitive constraint on Bottomline. However, there are a large number of bureaux, so they are individually a relatively weak constraint. Bacs Approved Software providers told us that they do not consider bureaux to be their close competitors, particularly for more complex customers, although switching data shows that some large⁵⁵⁸ customers have switched to bureaux.

8.155 Therefore, we provisionally conclude that bureaux exercise an important out of market constraint on Bottomline, albeit that this is a weaker constraint than that imposed by Bacs Approved Software providers.

Alternative channels offered by banks

8.156 In Chapter 7 (Market Definition) (paragraphs 7.93 to 7.98) we provisionally found that bank products that utilise alternative channels into the Bacs architecture, namely online banking and host-to-host, are not part of the relevant market. However, we noted the potential out of market constraint that they may impose. We noted that different banking products will be relevant to different customer groups. Online banking is likely to cater only to customers with simple needs (those with low volumes of transactions, no requirement to collect Direct Debit payments and less demanding reporting, security and automation needs), whereas host-to-host is more likely to be set up by corporates with wider requirements than Bacs submissions.

Online banking

8.157 Bottomline submitted⁵⁵⁹ that it has suffered [X] losses to banks winning business from it than to any other software solution provider. Bottomline

⁵⁵⁸ As explained in paragraphs 7.33 to 7.35 complexity of requirements goes beyond volumes, so that a large customer does not necessarily have complex needs.

⁵⁵⁹ Bottomline, Response to CMA phase 1 decision, 11 November 2019.

estimates that, over the period 2014–2018, [redacted]% of its customer losses, where the competitor is known, switched to an internet banking solution, accounting for [redacted]% of all of revenue lost in that time to known competitors. It notes that the customers who have switched from Bottomline to an internet banking solution include [redacted] customers.⁵⁶⁰

8.158 Our switching analysis based on Vocalink data does not capture switching to banks' own products as they lie outside of the Bacstel-IP network.

8.159 In Chapter 7 (Market Definition) at paragraphs 7.77 to 7.92 we found that, while online banking had some advantages, it also had a number of limitations in relation to processing Bacs payments. We also found some evidence showing that online banking is mainly used by businesses for FPS rather than Bacs transactions. In addition, we found that the extent of functionality offered by online banking varies across the different banks.

8.160 Third parties did not generally consider online banking to be a close competitor to Bacs Approved Software:

(a) None of AccessPay, Corvid, Finastra or SmarterPay consider banks (more broadly) as close competitors.

(b) Paygate told us that it finds that customers move away from using online banking because of weaker functionality, in particular on the analysis and additional services side which Bacs Approved Software can provide.⁵⁶¹ As a result, in its view online banking could be an option at the low end of the market.⁵⁶²

(c) LBG told us that online banking differs from Bacs Approved Software in its reporting, with much richer reporting available from the latter and that customers submitting high volumes of transactions would demand richer reporting.⁵⁶³

(d) Pay.UK told us [redacted].⁵⁶⁴

8.161 Of the customers we received feedback from, none who had shopped around in the last 5 years had considered online banking.⁵⁶⁵

⁵⁶⁰ [redacted].

⁵⁶¹ Call with Paygate, 15 November 2019.

⁵⁶² Call with Paygate, 15 November 2019.

⁵⁶³ Call with LBG, 7 January 2020.

⁵⁶⁴ [redacted]

⁵⁶⁵ The following customers who responded to our information requests and/or calls shopped around in the last 5 years [redacted], [redacted] and [redacted]

Host-to-host

8.162 As noted in paragraph 7.92, neither banks nor software providers consider host-to-host to be a significant competitive constraint on Bacs Approved Software, and we found little awareness of host-to-host channels and their functionality among customers.

8.163 The banks which have provided evidence to us have consistently told us that they do not see Bacs Approved Software providers as competitors.⁵⁶⁶ It is our understanding that the banks who provide host-to-host connections do not generally actively market these solutions as being a direct alternative to using Bacs Approved Software, and often point their customers to Bacs Approved Software providers:

- A significant proportion of LBG customers contract directly with Bacs Approved Software providers for Bacs submissions. Where an LBG customer is seeking a Bacs direct submission solution they are directed to the Bacs Approved Software provider directory.⁵⁶⁷
- Barclays told us that, should a client enquire about Bacs/FPS DCA solutions, they will be advised to reach out to a range of software providers so they can compare solutions in order to identify one that best meets their needs.⁵⁶⁸

8.164 Software providers also do not consider host-to-host to be a significant competitive constraint:

- Paygate told us that, whilst banking solutions offered through host-to-host connections may compete with Bacs Approved Software to an extent, customers view the quality of these solutions as being inferior. It said that improved solutions may increase the banks' competitiveness but issues such as split audit trails (that is, requiring different channels for different methods of submission) mean that they would still lack certain aspects of functionality of Bacs Approved Software.⁵⁶⁹
- AccessPay told us that it would not be cost-effective to set up a host-to-host connection with a bank only to make Bacs submissions. A customer would need to have additional requirements to make a host-to-host system

⁵⁶⁶ LBG, Response to CMA Questionnaire, 25 November 2019; [REDACTED], [REDACTED]; Barclays, Response to CMA Questionnaire, 28 November 2019.

⁵⁶⁷ LBG, Response to CMA Questionnaire, 25 November 2019.

⁵⁶⁸ Barclays, Response to CMA Questionnaire, 28 November 2019.

⁵⁶⁹ Call with Paygate, 15 November 2019.

worthwhile, for example automating the Faster Payments or international payments process.⁵⁷⁰

- Finastra told us that it does not consider banks with their own solutions in the Bacs space to be its competitors,⁵⁷¹ although it does mean that their customers do not end up looking at the list of Bacs Approved Software providers as they sign up with their bank.
- SmarterPay had no awareness of host-to-host solutions.⁵⁷²

8.165 We have also asked customers whether they consider host-to-host channels as viable alternatives to using Bacs Approved Software. [✂].

Provisional conclusion on alternative channels offered by banks

8.166 While Bottomline's cancellation data implies that online banking may be a close competitor to Bacs Approved Software, other evidence points to it being a weaker constraint. Its functionality is different from (and more limited than) Bacs Approved Software. In particular, online banking is tied to an individual banking provider, whereas Bacs Approved Software can be used to submit payments from a number of different banks in the same file. Therefore, our provisional view is that online banking is likely to only be an alternative for some customers, and that as a consequence it does not exercise a significant competitive constraint on Bacs Approved Software providers.

8.167 While host-to-host seems to offer more functionality, we have only found evidence of customers choosing to switch to this as part of broader organisational changes. As noted in paragraph 7.91, banks are still developing their host-to-host offers, so it is possible that this channel could become more important in the future. However, our provisional view is that host-to-host does not currently exercise a significant competitive constraint on Bacs Approved Software.

Provisional conclusion on competitive effects

8.168 Our provisional view is that EPG is a weak competitive force in the market. This is explained by the fact that the EPG product has not received investment in recent years and has not been actively promoted by Experian. In the counterfactual, the competitive strategy of EPG under the alternative purchaser would have been broadly similar to that which existed pre-Merger. Although EPG has a high market share by volume, this overstates the

⁵⁷⁰ Call with AccessPay, 15 November 2019.

⁵⁷¹ Call with Finastra, 14 November 2019.

⁵⁷² Call with SmarterPay, 19 December 2019.

competitive constraint it provides as it largely reflects its historic position in the market. We have therefore provisionally found that EPG exerts no meaningful competitive constraint on Bottomline.

- 8.169 While we have provisionally found that Bottomline exerts some competitive constraint on EPG, customer switching evidence shows it is not a close competitor.
- 8.170 Furthermore, post-Merger there will remain a number of providers of Bacs Approved Software, and evidence on customer switching shows that providers such as AccessPay, Paygate and Finastra exercise a stronger competitive constraint on the market than EPG.
- 8.171 In addition, the Merged Entity will be further constrained by out of market options such as bureaux and by competition from the products offered by banks namely host-to-host services and online banking (albeit that these are not significant constraints).
- 8.172 Our provisional view is therefore that there are sufficient alternative options to the Merged Entity available to customers of Bacs Approved Software to offset the limited loss of competition between the Parties resulting from the Merger.
- 8.173 On this basis, we have provisionally found that horizontal unilateral effects do not provide a basis for a substantial lessening of competition resulting from the Merger.

9. Provisional conclusion on the substantial lessening of competition test

- 9.1 In view of the above analysis of the evidence provided to us, we have provisionally concluded that the Merger has not resulted, and may not be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom as a result of:
- (a) horizontal unilateral effects in the supply of Bacs Approved Software in the United Kingdom; and
 - (b) a loss of potential competition in the provision of a wider range of payment software and solutions in the United Kingdom.