

**COMPLETED ACQUISITION BY
BOTTOMLINE TECHNOLOGIES LIMITED
OF CERTAIN ASSETS OF EXPERIAN LIMITED**

COMMENTS ON CMA'S PROVISIONAL FINDINGS REPORT

6 MARCH 2020

NON-CONFIDENTIAL VERSION

Introduction

1. Bottomline welcomes the opportunity to comment on the CMA's provisional findings as set out in the Provisional Findings Report dated 18 February 2020 (the "PFs").

Overall comments on the PFs

2. Bottomline welcomes – and agrees with – the CMA's provisional conclusion that the Transaction 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.
3. In addition, Bottomline agrees with the key substantive aspects of the CMA's provisional findings,¹ most notably that:
 - (a) Absent the Transaction the competitive strategy of EPG would have been "*broadly similar to the prevailing conditions of competition*"² – and that this is the counterfactual against which the competitive effects of the Transaction must be assessed.
 - (b) Bottomline and EPG were not close competitors prior to the Transaction, with EPG exerting "*no meaningful*" competitive constraint on Bottomline.³

¹ Bottomline does not, however, agree with the CMA's provisional assessment of the statutory timeframe for reference (PFs, §§5.9-5.28). In its Initial Submission Bottomline explained why the Decision was taken after the statutory deadline for a reference had passed. The PFs misstates some elements of Bottomline's submissions and overlooks other elements. In particular: (i) contrary to what is stated in footnote 196 of the PFs, Bottomline provided contemporaneous correspondence from Pay.UK confirming that the Bacs website was updated on 14 March 2019; (ii) not only did Bottomline submit that changes to the Bacs, Bottomline and EPG websites featured very prominently in the results of relevant searches conducted using Google and Bing, as reported in footnote 197 of the PFs, it also provided numerous screenshots to support this; and (iii) §§5.20-5.21 of the PFs mischaracterise elements of Bottomline's submissions by failing to recognise that they were made in response to assertions contained in the Phase 1 Decision that the CMA cannot reasonably be expected to monitor announcements filed with one of the world's major securities regulators by a company listed on one of the world's major stock exchanges (Phase 1 Decision, §37(d)), newswires "*aimed at a professional audience*" (Phase 1 Decision, §37(e)), "*pages within a business's website*" (Phase 1 Decision, §37(f)), or "*a specialist website*" (Phase 1 Decision, §37(g)). The CMA's provisional assessment seemingly rests on the assertion at §5.26 of the PFs that the various sources in which the Transaction was reported had a "*restricted circulation*". The analogy that the CMA seeks to draw with the untested decision of the Office of Fair Trading in *Genus/Breeders* in footnote 204 is a bad one. A hard copy newspaper circulated in Haverfordwest and Pembrokeshire cannot be said to be analogous with publication on a variety of internet sites that are readily accessible by any member of the public anywhere in the UK (let alone dedicated researchers monitoring merger activity pursuant to a statutory function).

² PFs, §6.84.

³ PFs, §§8.114, 8.168 and 8.169.

(c) There are "*sufficient alternative options to the Merged Entity available to customers of Bacs Approved Software*", including "*a number of providers of Bacs Approved Software*" and "*out of market options such as bureaux and ... the products offered by banks*".⁴

4. Given that the key substantive aspects of the CMA's provisional findings are in line with Bottomline's previous submissions, and in order to enable the CMA to proceed to issuing its Final Report as soon as possible, Bottomline has sought to limit its comments. If Bottomline does not comment on a statement contained in the PFs it should not be interpreted to mean that Bottomline agrees with that statement.

FM DD providers

5. Bottomline notes that the primary purpose of an FM DD provider is to collect and/or administer Direct Debits on behalf of its clients, as described in §4.46.⁵
6. At §4.47 of the PFs the CMA refers to there being approximately 50 FM DD providers, citing Bottomline's Response to the CMA's Phase 1 Decision. For the avoidance of doubt, Bottomline was referring to the number of FM DD providers that are accredited by Bacs (and this number is now more than 60⁶).
7. Accreditation of FM DD providers is a relatively new concept, having been introduced by Bacs in December 2018 under the PSR's oversight.⁷ Bottomline believes that there are a large number of existing providers offering DD management services that are not (yet) accredited by Bacs, some of which may have been operating for decades and will likely seek accreditation in the future. As a result, the actual number of FM DD providers is likely much greater than the approximately 50 cited in the PFs.

Banks and EMI

8. At §4.48 of the PFs, the CMA refers to there being 26 Bacs direct participants and 33 FPS direct participants who are able to access to Bacs and FPS respectively. Bottomline notes that, in addition to these direct participants, the majority of smaller banks, building societies, EMIs and PSPs are able to obtain indirect access to Bacs and FPS via agency relationships with clearing banks.⁸

Barriers to switching

9. At §8.47 of the PFs, the CMA states its provisional view that the costs of switching are likely to be material in comparison to the relatively low cost of the product. This provisional view relies on comments from a small number of customers to the effect that it would take between 12 and 18 months to switch supplier and cost at least hundreds of thousands of pounds. In Bottomline's view, this materially overestimates the time and cost associated with switching supplier – and especially so for the vast majority of customers. As far as Bottomline and EPG are aware, the customers cited at §8.41 and §8.42 have not switched supplier within the last five years. As a result, their comments may not be based on recent, real-world experience.

⁴ PFs, §§8.170-8.172.

⁵ See https://www.bacs.co.uk/documentlibrary/direct_debit_facilities_management.pdf, page 4.

⁶ See <https://www.bacs.co.uk/Services/Bacsapprovedservices/Pages/AccreditedFacilitiesManagementProviders.aspx>

⁷ This accreditation process was introduced following a PSR consultation, which resulted in the Specific Direction 7, published in January 2018 and available at https://www.psr.org.uk/sites/default/files/media/PDF/PSR_Specific_Direction_7_Direct_Debit_FM_switching_January_2018_0.pdf

⁸ See <http://www.accesstopaymentsystems.co.uk/access-options>

10. As noted in Bottomline's previous submissions, in Bottomline's experience switching can usually be accomplished reasonably quickly (with Bottomline estimating that the average time taken is around 5-6 months), the costs of switching are low and, with the move to cloud, the time and effort required for customers to switch from one cloud-based solution to another are low.⁹ Bottomline notes that Paygate's experience appears to corroborate that of Bottomline.¹⁰

⁹ Bottomline's Response to the CMA's section 109 notice dated 8 November 2019, §§25.2, 25.3 and 33.3
¹⁰ PFs, §8.40(c).