

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

Summary of final report

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1. The Competition and Markets Authority (CMA) has 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. 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

3. 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.

4. 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.
5. 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.
6. The target, EPG, comprises the Experian Payments Gateway software business and related assets. EPG also supplies Bacs Approved Software.
7. Throughout this document we refer to Bottomline and EPG collectively as the Parties and, as applicable, the Merged Entity.
8. 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

9. 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.
10. 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).
11. 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 60 FM DD providers in the UK.
12. There are also alternative channels into the Bacs and FPS payments schemes, including services provided by banks and 'non-bank' electronic and payment institutions.

13. 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.
14. 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.

Jurisdiction

15. The Merger is a completed transaction. We have 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

16. 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 finding on the most likely situation is that Experian would have divested EPG in the absence of a sale to Bottomline.
17. 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.
18. We have therefore 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.
19. 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.
20. Therefore, our 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

21. Our 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.
22. We have defined a single relevant market for Bacs Approved Software comprising software that enables submissions to Bacstel-IP and Secure-IP. In our 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.
23. Our 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

24. 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).
25. Our 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 found that EPG exerts no meaningful competitive constraint on Bottomline.
26. While we have found that Bottomline exerts some competitive constraint on EPG, customer switching evidence shows it is not a close competitor.
27. 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.

28. 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).
29. Our 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.
30. On this basis, we have found that horizontal unilateral effects do not provide a basis for a substantial lessening of competition resulting from the Merger.
31. 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 view is that this theory of harm is no longer credible as it is not supported by our 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.

Conclusion on the substantial lessening of competition test

32. We have 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.
33. We have also 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.