

Consultation

Notice of intention to accept binding commitments offered by PayPoint plc in relation to activities in the market for the provision of over-the-counter top-up services to prepayment energy customers.

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In August 2017, the Gas and Electricity Markets Authority (the “**Authority**”)¹ opened an investigation into whether there has been an infringement of Chapter II of the Competition Act 1998 (“**CA98**”), concerning a potential abuse of a dominant position in relation to the market for the provision of over-the-counter top-up services to prepayment energy customers.

Our investigation has examined whether PayPoint plc and three of its wholly-owned subsidiaries (PayPoint Collections Limited, PayPoint Network Limited and PayPoint Retail Solutions Limited) (together, “**PayPoint**”), a UK-based group of companies providing specialist consumer payment and transaction processing services and products, has abused a dominant position in this market. For the purposes of this consultation, the commitments offer is binding on all four entities.

¹ The Office of Gas and Electricity Markets (“**Ofgem**”) is a non-ministerial government department and Great Britain’s independent National Regulatory Authority for the energy sector. It is governed by the Gas and Electricity Markets Authority (“**GEMA**” or “the Authority”). In this publication the terms “Ofgem”, “the Authority” and “we” are used interchangeably.

The Authority is proposing to accept commitments offered by PayPoint to address competition concerns identified by Ofgem during the course of the investigation. This consultation sets out our proposal to accept commitments offered by PayPoint.

As required by paragraph 2 of Schedule 6A of the CA98, the Authority invites representations from interested parties on this proposed course of action. We are inviting interested parties to submit any comments on those commitments in writing no later than 5pm on 15 September 2021.

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1. Introduction

What are we consulting on?

- 1.1. The Authority has the power to investigate potential infringements of the prohibition contained in Chapter II of the CA98 in relation to commercial activities in the gas and electricity sectors. These powers are held concurrently with the Competition and Markets Authority (the "**CMA**"). The other sector regulators who hold concurrent powers in this case are the Financial Conduct Authority (the "**FCA**") and the Payment Systems Regulator (the "**PSR**").
- 1.2. The abuse of a dominant position is prohibited by Chapter II of the CA98.²
- 1.3. Where the Authority has begun an investigation under section 25 of the CA98 but has not made a decision under section 31 of the CA98, section 31A of the CA98 gives it the power to accept commitments from any person (or persons) concerned to take any action (or refrain from taking any action) as the Authority considers appropriate for the purposes of addressing the competition concerns it has identified.
- 1.4. For the reasons set out in this consultation, the Authority is proposing to accept commitments offered by PayPoint, in order to address the competition concerns identified during the course of an investigation into an alleged abuse of a dominant position by PayPoint.
- 1.5. The purpose of this consultation is to give stakeholders the opportunity to comment on this proposal, including whether the proposed commitments address our competition concerns. The Authority will then consider such representations before making its final decision on whether to accept these commitments.

² Section 18 of the CA98 (Chapter II CA98) prohibits any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market if it may affect trade within the United Kingdom.

- 1.6. As required by paragraph 2(1) of Schedule 6A of the CA98, the Authority now invites representations from interested parties on this proposed course of action.
- 1.7. The proposed commitments offered by PayPoint are set out in Annex 1 of this document.
- 1.8. Formal acceptance of the commitments by the Authority would result in the investigation being discontinued with no decision made as to whether Chapter II of the CA98 has been infringed by the undertaking under investigation. Accordingly, any decision by the Authority accepting binding commitments will not include any statement as to whether the conduct of PayPoint that is the subject of this investigation has infringed the CA98 prior to the acceptance of the commitments or once the commitments are in place.
- 1.9. However, accepting the proposed commitments would not prevent the Authority from taking any action in relation to competition concerns which are not addressed by the proposed commitments. Moreover, acceptance of the proposed commitments would not prevent the Authority from continuing the investigation, making an infringement decision or giving a direction in circumstances where the Authority has reasonable grounds for believing that there had been a material change of circumstances since the commitments were accepted, suspecting that one or more terms of the commitments had not been adhered to or suspecting that information that led the Authority to accept the commitments was incomplete, false or misleading in a material particular. If accepted, the proposed commitments would be binding and enforceable under section 31E of the CA98.

Consultation stages

- 1.10. This is a statutory consultation. We invite stakeholders to submit representations by no later than 5pm on 15 September 2021.
- 1.11. We expect to publish our decision by the end of October 2021.

How to respond

- 1.12. We want to hear from anyone interested in this consultation. Please send your response to Sujitra Krishnanandan at projectnile@ofgem.gov.uk

2. Background

PayPoint

- 2.1. PayPoint is a UK-based group of companies providing specialist consumer payment and transaction processing services and products. For offering the services that this investigation relates to PayPoint operated via three wholly-owned subsidiaries: PayPoint Collections Limited ("**PayPoint Collections**"), PayPoint Network Limited ("**PayPoint Network**") and PayPoint Retail Solutions Limited ("**PayPoint Retail**"). We explain the role and operation of each subsidiary in the sections that follow below. For the purposes of this publication PayPoint plc and its subsidiaries are collectively referred to as "**PayPoint**" and the commitments offer is binding on all four entities.
- 2.2. PayPoint provides over-the-counter ("**OTC**") payment services to energy suppliers in GB who have customers who pay for their gas and electricity through a prepayment meter. We refer to these services as the "**Relevant Market**".
- 2.3. The provision of these services facilitate OTC payments to energy suppliers, whereby customers that pay for their energy in advance ("**prepayment**" customers) can add credit to their gas and electricity accounts in person in a local shop. Generally, these payments are made in cash, without the consumer necessarily needing either a bank account or debit/credit card.³
- 2.4. PayPoint also provides non-OTC payments services to energy suppliers which enables prepayment customers to make remote payments, e.g. via a website or an application on a mobile phone.
- 2.5. In acting as an OTC payment services provider, PayPoint is active in a two-sided market, where it brings together two distinct groups of customers. The first group of customers is its network of retailers – convenience stores, local supermarkets or other retail locations where payments can be made in person, using PayPoint's technology.⁴ The

³ The Financial Conduct Authority estimates that, in February 2020, 2.3% of the UK adult population (accounting for 1.2 million people) had no access to a current account or an alternative e-money account. See here: <https://www.fca.org.uk/publication/research/financial-lives-survey-2020.pdf>

⁴ Each retailer in the PayPoint network either hosts a physical PayPoint terminal, or hosts PayPoint software on its own electronic point of sale system, in order to allow OTC payments to be processed in store.

second group are its 'clients' – the companies looking to collect OTC payments from their own customers through the PayPoint network. For prepayment energy OTC payment services, these companies are energy suppliers.⁵

- 2.6. PayPoint offered OTC payment services to energy suppliers under two separate types of contractual arrangements – a "**collections agreement**" and a "**network agreement**".
- 2.7. The collections agreement specified the service that PayPoint would provide in relation to the collection and transfer of payments to energy suppliers. This agreement was between PayPoint Collections and the energy supplier. The network agreement described the service PayPoint would provide in terms of the coverage and performance standards of its network infrastructure. This agreement was between PayPoint Network and the energy supplier.
- 2.8. PayPoint Retail entered into contracts with retailers. These contracts set out PayPoint's obligations, particularly in relation to training and support, the installation and maintenance of terminals, and paying commissions.

⁵ PayPoint also provides OTC payment services to clients outside of the energy sector, including water companies, the BBC, and transport operators.

3. The investigation

- 3.1 In January 2017, we received a complaint from a recent entrant into the energy payment services sector. The market participant complained that PayPoint was using exclusivity terms in its contracts with certain energy suppliers; that this was restricting its ability to compete against PayPoint, despite having lower prices and high service quality; and that the use of exclusivity by PayPoint infringed competition law.
- 3.2 In May 2017, Ofgem decided that there were reasonable grounds for suspecting that there had been a breach of Chapter II of the CA98 and, following discussions with the CMA and the other relevant concurrent regulators, it was agreed that the case would be allocated to Ofgem in accordance with the concurrency arrangements.⁶ Ofgem opened an investigation into PayPoint's conduct in August 2017.
- 3.3 In particular, Ofgem considered that there were reasonable grounds for suspecting that PayPoint had abused or was abusing a dominant position by using exclusivity in its contracts in a way that was likely to restrict or distort competition in the Relevant Market.
- 3.4 After completing the investigation phase, the Authority issued a Statement of Objections ("**SO**") to PayPoint on 29 September 2020. Ofgem provisionally found that PayPoint had abused its dominant position in the Relevant Market for at least the period from 2 April 2009 to 19 October 2018. We refer to this period as the "**Relevant Period**".
- 3.5 In October 2018, the CMA cleared the merger between Post Office and Payzone, who at the time were PayPoint's main competitors for OTC payments. Given the uncertainty about the impact of the Post Office / Payzone merger on PayPoint's market position, we have defined 19 October 2018 as the end of the Relevant Period, provisionally finding that PayPoint held a dominant position until at least this date. While we have defined the Relevant Period as ending in 2018, provisional findings show that PayPoint is likely to continue to enjoy a share of over half of all OTC energy prepayment transactions, should current energy suppliers' contractual arrangements remain in place.

⁶ Regulation 4 of the Competition Act 1998 (Concurrency) Regulations 2014 (SI 2014/536). See also paragraph 1.1 above.

- 3.6 After the Authority issued the SO, PayPoint offered commitments to the Authority on three different occasions.
- 3.7 We did not accept the first two sets of commitments – which were offered on 5 November 2020 and 8 December 2020 - on the basis that they did not address the competition concerns identified by the Authority. PayPoint offered a third, updated set of commitments on 22 February 2021.
- 3.8 After initial consideration of these commitments and further discussions with PayPoint, a final revised set of commitments was offered by PayPoint on 7 May 2021. The Authority, following its initial assessment as to whether these commitments address the identified competition concerns, is proposing to accept those commitments.

4. The Authority's competition concerns

- 4.1 As explained in the SO, the Authority has formed a provisional view that PayPoint used a variety of contractual terms in its agreements which were linked by the common aim of restricting energy suppliers' ability to use rival providers to collect OTC payments by prepayment customers.
- 4.2 It is important to note, though, that the findings set out in the SO are merely provisional and no conclusion should be drawn as to whether or not there has been an infringement of competition law.
- 4.3 In particular, the Authority's provisional view is that there were:
- i. Exclusive purchasing obligations, which placed explicit restrictions on energy suppliers' ability to contract with alternative OTC payment services providers for the duration of the contract;⁷
 - ii. Exclusivity rebates, according to which a supplier was charged a higher transaction fee under its contract, if it used alternative OTC payment services providers in addition to PayPoint;
 - iii. Restrictions on terminating contracts;
 - iv. Restrictions on energy suppliers promoting rival OTC payment services providers with greater prominence than PayPoint; and
 - v. Further contractual terms in PayPoint's agreements with retailers, which reinforced the effect of the exclusivity in excluding its rivals from competing for energy suppliers' business on equal terms ("**non-compete clauses**").

⁷ The initial term of the agreements containing exclusive purchasing obligations was over four years on average – with a large proportion of the agreements having either an initial term or an ultimate duration (following extensions) of five years or more.

- 4.4 The Authority's provisional view is that this combination of contractual terms in PayPoint's individual agreements with both energy suppliers and retailers amounted to a single, continuous abuse by PayPoint of its dominant position in the Relevant Market.
- 4.5 Also, these contractual terms were likely to have foreclosed PayPoint's actual or potential competitors from a significant part of the market ([50-60 %] of prepayment energy legacy OTC transactions and [90-100%] of prepayment energy smart OTC transactions across the period 2010-2018), and reinforced the indirect network effects that characterise OTC payment services, creating a material barrier to entry and expansion.
- 4.6 The Authority's provisional view is that PayPoint placed significant restrictions on energy suppliers' ability to terminate their contracts early, such that they were prevented from doing so in order to use another provider.
- 4.7 The Authority's provisional findings are, therefore, that PayPoint's conduct in relation to the above mentioned contractual terms was capable of restricting, and likely to harm, competition and consumer choice in the prepayment energy OTC payment services market during the Relevant Period, to the detriment of prepayment energy customers and, as such, constitutes an infringement of competition law.
- 4.8 PayPoint also provided non-OTC payment services during the Relevant Period. Where PayPoint entered into agreements for the provision of these services to energy suppliers, in all cases its contracts included exclusive purchasing obligations and, in most cases, these were accompanied by non-compete clauses.
- 4.9 During its investigation the Authority provisionally found that PayPoint was able to introduce exclusivity in its non-OTC contracts when negotiating with challenger energy suppliers⁸ regarding their non-OTC payment services. The Authority has provisionally found that one reason that PayPoint was able to require exclusivity in its non-OTC contracts was likely to have been its dominant position in the OTC payment services market, which was likely to have given it a stronger position than its actual or potential rivals when negotiating with suppliers regarding their non-OTC payment services.

⁸ Challenger suppliers are considered to be energy suppliers entering subsequent to market liberalisation, different to the incumbent "Big 6" suppliers (namely British Gas, EDF Energy, E. ON UK, npower, Scottish Power and SSE).

4.10 The Authority's provisional view is that the exclusivity clauses used by PayPoint in its non-OTC payment services contracts were likely to have affected competition and had the potential to appreciably reduce choice and dampen innovation in the nascent market for the provision of those services. The Authority has therefore provisionally concluded that PayPoint's use of these provisions fell outside of the scope of competition on the merits, and were likely to amount to a further abuse of its dominant position in a related market during the Relevant Period.

5. The proposed commitments

- 5.1 For the purpose of addressing the Authority's competition concerns (as described in chapter 4 above), PayPoint has, without prejudice to their position that there has been no infringement of the CA98, offered binding commitments to the Authority. The full details of the offered commitments and the relevant definitions used within them are contained in Annex 1 of this document and are summarised below. The text highlighted in yellow in Annex 1 denotes a non-confidential version of the relevant text to take account of confidentiality representations and the Authority's consideration of those representations.⁹
- 5.2 In light of the assessment that follows, the Authority provisionally considers that the commitments offered by PayPoint (as set out in Annex 1) address its competition concerns and places requirements on PayPoint to ensure compliance with their obligations under these commitments. The Authority therefore proposes to accept the commitments by means of a formal decision taken pursuant to Section 31A of the CA98.
- 5.3 The commitments proposed are as follows:
- (a) Commitment 1 – OTC energy prepayment:
- (i) All current contracts: PayPoint will, within 30 days of notification of Ofgem's decision to accept the Commitments, write to all of its energy supplier clients which are party to contracts for the provision of OTC energy prepayment services which include exclusive purchase obligations or exclusivity rebate, to seek their written agreement to amend those contracts and to remove such terms for the remainder of the contract term, and to confirm that pending agreement to that amendment, PayPoint will not enforce the relevant contractual provisions. Pricing for "non-exclusive" provision of services will be maintained at the current "exclusive" contract price for the remaining duration of the contract.
 - (ii) All new contracts / renewals commencing in the next 5 years: from the date of Ofgem's decision to accept the Commitments, PayPoint shall not

⁹ Such consideration has been undertaken under the framework of Part 9 of the Enterprise Act 2002.

include or agree to any exclusive purchase obligation or exclusivity rebate terms in its contracts with energy suppliers for the provision of OTC energy prepayment services.

(b) Commitment 2 – non-OTC energy prepayment:

(i) All current contracts: PayPoint will, within 30 days of notification of Ofgem’s decision to accept the Commitments, write to all of its energy supplier clients which are party to contracts for the provision of non-OTC energy prepayment services and which include an exclusive purchase obligation or exclusivity rebate to:

(A) Seek their written agreement to amend such contracts and to remove such terms for the remainder of the contract term, and to confirm that, pending agreement to that amendment, PayPoint will not enforce the relevant contractual provisions. Pricing for “non-exclusive” provision of services will be maintained at the current “exclusive” contract price for the remaining duration of the contract.

(B) Seek their written agreement to amend the contract to include an early right of termination for non-OTC energy prepayment services where such services are provided under the same contract as OTC energy prepayment services.

(C) Seek their written agreement to amend such contracts to clarify that energy suppliers are not prevented from developing and/or deploying their own non-OTC energy prepayment services during the contract term (with no adjustment to be made to the current contract price).

(ii) All new contracts / renewals commencing in the next 5 years: from the date of Ofgem’s decision to accept the Commitments, PayPoint will not:

(A) include or agree to any exclusive purchase obligation or exclusivity rebate terms in its contracts with energy suppliers for the provision of non-OTC energy prepayment services.

- (B) combine the provision of OTC and non-OTC energy prepayment services in any one contract with an energy supplier.
 - (C) include contract terms that prevent energy suppliers from developing and/or deploying their own non-OTC prepayment services during the contract term.
- (c) Commitment 3 – Retailer Agreements:
 - (i) All current contracts: PayPoint will, within 30 days of notification of Ofgem’s decision to accept the Commitments, seek written agreement from all Multiple Retailers with which it contracts for the provision of OTC payments for prepayment energy customers to amend those contracts and remove those terms that prohibit the retailer from hosting the equipment of other payment service providers for the processing of OTC payments for prepayment energy customers, and to confirm that, pending agreement to that amendment, PayPoint will not enforce the relevant contractual provisions. PayPoint will also write to all Independent Retailers notifying them that it will remove such terms from the General Retailer Agreement.¹⁰ PayPoint will not amend commission rates payable under the affected contracts.
 - (ii) All new contracts / renewals commencing in the next 5 years: from the date of Ofgem’s decision to accept the Commitments, PayPoint will not include or agree to terms in new, renewed or amended contracts with retailers (including both Multiple Retailers and Independent Retailers) that prohibit retailers hosting the equipment of other payment service providers for the processing of OTC payments for prepayment energy customers.
- (d) Commitment 4 – Donation: PayPoint will, within 30 days of notification of Ofgem’s decision to accept the Commitments, make a donation of £12.5 million to the Energy Saving Trust to support vulnerable energy consumers.

¹⁰ This agreement means PayPoint’s Booklet of Terms for General Retailer Agreements. This is amended as and when needed.

6. The assessment of the proposed commitments

The CMA's guidance as it applies to the Authority

- 6.1 The decision on whether to accept commitments is at the discretion of the Authority. In considering whether and how to exercise that discretion, the Authority has regard to the relevant guidance published by the CMA ("**the Guidance**"). The Guidance sets out the circumstances in which it may be appropriate to accept commitments, as required by section 31D of the CA98.¹¹ Relevant aspects of the Guidance are summarised briefly below. For the purposes of this consultation publication, references to the CMA in the Guidance are replaced by references to the Authority in the interests of clarity.
- 6.2 The Guidance sets out that the Authority is likely to consider it appropriate to accept binding commitments where (a) the competition concerns are readily identifiable, (b) the competition concerns are addressed by the commitments offered, and (c) the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time. Further, it explains that it will not be appropriate to accept binding commitments where compliance with them and their effectiveness would be difficult to discern or where not to complete the investigation would undermine deterrence. The assessment on whether to accept commitments is made on a case-by-case basis, taking into account all the circumstances of a case.

The Authority's assessment of the proposed commitments

- 6.3 The Authority has carefully considered the proposed commitments and whether they address its competition concerns. It has also assessed the appropriateness of accepting the commitments offered by PayPoint in the specific context of the present regulatory environment and on the specific facts of this case.
- 6.4 On the basis of that consideration and assessment, the Authority's preliminary view is that it is appropriate to accept the commitments offered in this case. The Authority's reasons for this view are summarised below.

¹¹ Paragraphs 10.17 to 10.20 of the Guidance on the CMA's investigation procedures in Competition Act 1998 cases: CMA8.

- 6.5 The Authority considers that its competition concerns are readily identifiable, will be fully addressed by the commitments offered, and the proposed commitments can be implemented effectively and within a reasonable period of time. The Authority does not consider that compliance with or the effectiveness of the commitments would be difficult to discern or that accepting the proposed commitments would undermine deterrence.
- 6.6 **The competition concerns are readily identifiable:** During its investigation, and as set out in its SO, the Authority identified specific competition concerns in relation to PayPoint's conduct. These concerns, set out in section 5 above, relate to exclusive purchasing obligations, exclusivity rebates, restrictions on terminating contracts, restrictions on energy suppliers promoting rival OTC payment services providers, and non-compete clauses.
- 6.7 **The proposed commitments address the competition concerns identified:** The Authority has provisionally concluded that the acceptance of the proposed commitments would fully address the competition concerns identified in this case.
- 6.8 Under the terms of the commitments, PayPoint will be obliged to remove exclusivity provisions and exclusivity rebate provisions from current contracts and any future contracts entered into during the next five years. The Authority considers that the 5 year duration of the commitments is appropriate to allow for its competition concerns to be addressed and to reflect a proportionate time limit for application of the commitments in the market-specific circumstances of the case and to take into account market changes that will occur during this period. This duration will allow an opportunity for competitors in this market to establish themselves and expand market share in GB and to make any investments that may be required to ensure that they can continue to compete in the market after the expiry of the commitments.
- 6.9 Prices in current contracts would be maintained at the exclusive contract price and an early right of termination for non-OTC energy prepayment services would be provided. Separate contracts would be provided for the provision of OTC and non-OTC energy prepayment services. This will weaken the incentive for energy suppliers to use PayPoint for both OTC and non-OTC payment services as these services will no longer be offered as a package in a single contract. Energy suppliers and retailers would be free to choose and contract with alternative service providers and to host the equipment of other payment service providers for the processing of OTC payments for prepayment energy customers.

- 6.10 **The proposed commitments are capable of being implemented effectively and within a reasonable period of time:** The Authority is provisionally satisfied that these commitments can be implemented effectively and within a reasonable timescale.
- 6.11 Included within the commitments is a comprehensive set of milestones against which PayPoint will be held accountable. These milestones propose that the majority of actions regarding the implementation of the commitments will occur within 30 days of the Authority notifying PayPoint of its acceptance of the commitments and that the commitments will be fully implemented at the latest within ten months of that date.
- 6.12 PayPoint has also agreed to report to the Authority on a regular basis regarding the implementation of the commitments, appoint a Commitments Compliance Officer who will monitor compliance with the commitments as long as they remain in force, and will report to the Authority within 3 working days any delays or changes in implementation milestones and provide sufficient information for the Authority to assess any such changes.
- 6.13 In light of this, the Authority is satisfied that it will be able to appropriately monitor PayPoint's compliance with its binding commitments.
- 6.14 **Acceptance of the proposed commitments would not undermine deterrence:** The Authority considers that the acceptance of commitments in this case would not undermine deterrence in this market. The proposed commitments address in an effective way the Authority's competition concerns, in particular by removing the distortive effects of the exclusivity provisions more quickly than an infringement decision. The Authority therefore considers that accepting these commitments, in addition to being a timely and efficient use of the Authority's resources, will send a strong signal that the Authority is willing to and will indeed pursue potential breaches of competition law in this market and across the energy sector.
- 6.15 The Authority notes that the initial commitments were offered shortly after the Statement of Objections was issued and in particular before written representations

were submitted, and therefore it is, on this occasion, appropriate to consider the offer and consult upon it at this stage of the case.¹²

- 6.16 Separately to the above assessment, as well as addressing the Authority's competition concerns in a timely and effective manner, the Authority also notes that the commitments state that PayPoint will make a donation of £12.5 million to the Energy Saving Trust. The Authority notes that this offer will be beneficial to vulnerable energy customers and will also reinforce the strong deterrence signal this investigation sends: the Authority considers that the payment of a substantial monetary amount will produce a material effect on top of the rest of the commitments and, therefore, it ensures additional deterrence both on PayPoint and on any other payment services provider considering engaging in comparable behaviour.

Intention and invitation to comment

- 6.17 For the reasons set out in this consultation, the Authority is therefore proposing to accept commitments offered by PayPoint, to address competition concerns identified during the course of an investigation into an alleged abuse of a dominant position by PayPoint.
- 6.18 Details on how to comment on the commitments offered by PayPoint can be found in Section 1 above.

¹² Paragraph 10.21 of the Guidance on the CMA's investigation procedures in Competition Act 1998 cases: CMA8 states 'A business under investigation can offer commitments at any time during the investigation, until a decision on infringement is made. However, the Authority is unlikely to consider it appropriate to accept commitments at a very late stage in an investigation, such as after the Authority has considered representations on the Statement of Objections. The Authority has a broad discretion in determining which cases are suitable for commitments.'

Annex 1 – Commitments offered by PayPoint

COMMITMENTS GIVEN BY PAYPOINT PLC, PAYPOINT COLLECTIONS LIMITED, PAYPOINT NETWORK LIMITED AND PAYPOINT RETAIL SOLUTIONS LIMITED PURSUANT TO SECTION 31A OF THE COMPETITION ACT 1998

Introduction

- 1 On 29 September 2020, Ofgem issued a Statement of Objections under the Act to PayPoint Plc, a company that provides OTC payment services to Energy Suppliers concerning prepayment energy customers, alleging that PayPoint Plc and certain of its subsidiaries had breached competition law during the period from 2 April 2009 to 19 October 2018.
- 2 PayPoint Plc and its wholly-owned subsidiaries, PayPoint Collections Limited (**PPCL**), PayPoint Network Limited (**PPNL**) and PayPoint Retail Solutions Limited (**PRSL**), collectively referred to herein as "**PayPoint**", agree to make the following Commitments, on condition that they are accepted by GEMA or Ofgem in a Commitments Decision.
- 3 The Commitments are offered by PayPoint under Section 31A of the Act in order to bring Ofgem's investigation to a close by addressing Ofgem's competition concerns.
- 4 The giving of the Commitments by PayPoint does not constitute an admission of any wrongdoing by PayPoint. In particular, PayPoint has not been the subject of any Ofgem infringement decision and nothing in these Commitments may be construed as implying that PayPoint agrees with any concerns identified by Ofgem in its investigation relating to PayPoint's conduct and the provision of OTC services to prepayment Energy Suppliers in Great Britain.
- 5 These Commitments are without prejudice to PayPoint's position should Ofgem or any other party commence or conduct proceedings or other legal action against PayPoint.

Interpretation

- 6 For the purposes of these Commitments the following definitions apply:

- (a) **Act** means the Competition Act 1998
- (b) **Commitments** means the commitments given by PayPoint hereunder, pursuant to section 31A of the Act
- (c) **Commitments Compliance Officer** means a senior PayPoint employee appointed pursuant to paragraph 17 and with the prior approval of Ofgem whose function is to monitor compliance with the Commitments
- (d) **Commitments Decision** means a formal decision by Ofgem under section 31A of the Act to accept these Commitments such that section 31B of the Act applies with respect to Ofgem’s investigation relating to PayPoint’s conduct in relation to the provision of OTC payment services to prepayment Energy Suppliers
- (e) **Day 30** means the day that is thirty (30) days from the Implementation Date
- (f) **Energy Payment Equipment Prohibition** means contractual terms in PayPoint’s contracts with Retailers that prohibit the hosting of equipment of other payment service providers for the processing of OTC energy payments for prepayment energy customers
- (g) **Energy Supplier** means a person licensed by Ofgem to sell gas and/or electricity to domestic and/or non-domestic customers
- (h) **Exclusive Purchase Obligation** means a contractual provision that directly restricts customers from using alternative providers
- (i) **Exclusivity Rebate** means a contractual provision according to which a conditional discount is applied to the amount paid by a customer should the customer not use services from alternative providers
- (j) **GEMA** means the Gas and Electricity Markets Authority
- (k) **General Retailer Agreement** means PayPoint’s Booklet of Terms for General Retailer Agreements, as amended from time to time
- (l) **Implementation Date** means the date PayPoint is notified of Ofgem’s decision to accept the Commitments

- (m) **Independent Retailers** means independent convenience stores that contract with PayPoint solely on the terms set out in the General Retailer Agreement
- (n) **Multiple Retailers** means chains of convenience retailers (such as Co-op and McColl's) and major supermarkets that contract with PayPoint on the basis of negotiated contractual terms
- (o) **Ofgem** means the Office of Gas and Electricity Markets, which supports GEMA in its day-to-day work, and is the independent regulator for the energy markets in Great Britain
- (p) **OTC** means over-the-counter
- (q) **OTC energy prepayment services** means services that facilitate OTC payments to Energy Suppliers, whereby customers that pay for their energy in advance (prepayment customers) can add credit to their gas and/or electricity accounts in cash, in person in a local convenience store
- (r) **non-OTC energy prepayment services** means the processing of non-cash top ups made by energy prepayment customers with smart meters via electronic communication channels such as web, mobile app, phone or SMS. PayPoint offers these services as part of its 'MultiPay' product
- (s) **Relevant PayPoint Company** means the company that is the counterparty to the relevant contract with an Energy Supplier or Retailer and provides the relevant OTC energy prepayment services and/or non-OTC energy prepayment services, as the case may be, as well as any other subsidiary of PayPoint which may be party to the relevant contracts
- (t) **Retailers** refers collectively to all retailers with whom PayPoint contracts, including both Multiple Retailers and Independent Retailers
- (u) **Working Day** means any day other than a Saturday, Sunday or any other day that is a public holiday in England

Commencement and Duration

- 7 Having been signed by PayPoint, these Commitments shall take effect from the Implementation Date and will cease to apply on the conclusion of a period of five (5) years commencing on the Implementation Date.
- 8 Without prejudice to the generality of section 31A(4)(b) of the Act, PayPoint may request that Ofgem reviews (with any such review being at Ofgem's discretion) the Commitments with a view to releasing or modifying the Commitments where there has been a material change to the reasons and/or facts on which the Commitments Decision is based and where Ofgem has reasonable grounds for believing that its competition concerns no longer arise.
- 9 PayPoint shall not in any way circumvent, by actions or omissions, any of the Commitments, including, but not limited to, by selling, assigning or otherwise transferring any part of its business relating to the provision of OTC services to prepayment Energy Suppliers in Great Britain to any other entity within its corporate group. PayPoint Plc shall ensure that its subsidiaries that are not party to these Commitments comply with the terms of these Commitments.

The Commitments

Commitment 1: OTC Energy Prepayment

- 10 **Current contracts.** PayPoint undertakes as follows:
 - (a) The Relevant PayPoint Company shall, on or before Day 30, write to all Energy Suppliers that are party to contracts in force at the Implementation Date for the provision of OTC energy prepayment services which include an Exclusive Purchase Obligation or Exclusivity Rebate to seek that Energy Supplier's written agreement to amend such contract to remove such terms for the remainder of the contract term, and to confirm that – pending the agreement of the Energy Supplier to the proposed amendment by return – the Relevant PayPoint Company will not enforce the relevant contractual provision(s) (the **First OTC Letter**). A summary of the affected contracts is included in Part A of Appendix 1.
 - (b) To the extent that any of the Energy Suppliers described in (a) above have not confirmed their agreement to the amendments described therein by the third

calendar month following Day 30, the Relevant PayPoint Company shall write to those parties to remind them of the request set out in the First OTC Letter for agreement to the proposed amendments by return (the **Second OTC Letter**).

- (c) For the avoidance of doubt, the undertaking at (a) above shall also apply to those contracts which permit the use of one additional network operator, namely the Post Office.
- (d) PayPoint shall not seek to amend the pricing terms of the affected contracts as recompense for the removal of the terms described at (a) above. Where two prices are stated in the contract and the Energy Supplier is currently paying the "exclusive price", PayPoint will confirm to the relevant Energy Supplier that the "exclusive" price will continue to apply under non-exclusivity for the remainder of the contract term, and that any "non-exclusive" price will not apply.
- (e) For the avoidance of doubt, PayPoint shall not be required, as a result of this Commitment, to accept any other changes to contractual or commercial terms, nor to act in non-compliance with the specific provisions of any affected contract concerning variation of or amendment to that contract. In addition, PayPoint shall not be required by this Commitment to write to Energy Suppliers that have entered administration processes or whose customers have been otherwise transferred or novated to another Energy Supplier as at the Implementation Date, as summarised in Part B of Appendix 1.

- 11 **Future contracts.** PayPoint shall not include or agree to any Exclusive Purchase Obligation or Exclusivity Rebate terms in its contracts with Energy Suppliers for the provision of OTC energy prepayment services for a period of five (5) years from the Implementation Date. For the avoidance of doubt, contracts with Energy Suppliers for provision of OTC Energy Prepayment that are in negotiation at the Implementation Date will not include an Exclusive Purchase Obligation or Exclusivity Rebate.

Commitment 2: Non-OTC Energy Prepayment

- 12 **Current contracts.** PayPoint undertakes as follows:
- (a) The Relevant PayPoint Company shall, on or before Day 30, write to each Energy Supplier that is party to a contract in force at the Implementation Date for the

provision of non-OTC energy prepayment services which includes an Exclusive Purchase Obligation or Exclusivity Rebate to:

- (i) seek that Energy Supplier's written agreement to amend such contract to remove any Exclusive Purchase Obligation or Exclusivity Rebate for the remainder of the contract term;
- (ii) where the relevant Energy Supplier contracts for the provision of both OTC and non-OTC energy prepayment services in one and the same contract, seek that Energy Supplier's written agreement to amend the contract to include an early right of termination in relation to the non-OTC energy prepayment services provided under the relevant contract; and/or
- (iii) where currently restricted in the relevant contract, seek that Energy Supplier's written agreement to amend such contract to clarify that Energy Suppliers are not prevented from developing and/or deploying their own non-OTC energy prepayment services during the contract term, (the **First Non-OTC Letter**).

A summary of the affected contracts is included in Part A of Appendix 1. The Relevant PayPoint Company will at the time of writing to the relevant Energy Suppliers confirm that – pending the agreement of the Energy Supplier to the proposed amendment by return – the Relevant PayPoint Company will not enforce the relevant contractual provision(s).

- (b) To the extent that any Energy Suppliers described in (a) above have not confirmed their agreement to the amendments described therein by the third calendar month following Day 30, the Relevant PayPoint Company shall write to those parties to remind them of the request set out in the First Non-OTC Letter for agreement to the proposed amendments by return (the **Second Non-OTC Letter**).
- (c) PayPoint shall not seek to amend the pricing terms of the affected contracts as recompense for the amendments described at (a) above. Where two prices are stated in the contract and the Energy Supplier is currently paying the "exclusive price", PayPoint will confirm to the relevant Energy Supplier that the "exclusive" price will continue to apply under non-exclusivity for the remainder of the contract term, and that any "non-exclusive" price will not apply.

- (d) For the avoidance of doubt, PayPoint shall not be required, as a result of this Commitment, to accept any other changes to contractual or commercial terms, nor to act in non-compliance with the specific provisions of any affected contract concerning variation of or amendment to that contract. In addition, PayPoint shall not be required by this Commitment to write to Energy Suppliers that have entered administration processes or whose customers have been otherwise transferred or novated to another Energy Supplier as at the Implementation Date, as summarised in Part B of Appendix 1.

13 **Future contracts.** For a period of five (5) years from the Implementation Date, PayPoint undertakes that it shall not:

- (a) include or agree to any Exclusive Purchase Obligation or Exclusivity Rebate terms in its contracts with Energy Suppliers for the provision of non-OTC energy prepayment services; or
- (b) combine the provision of OTC and non-OTC energy prepayment services in any one single contract with any Energy Supplier; or
- (c) include or agree to any term that prevents an Energy Supplier from developing and/or deploying their own non-OTC prepayment services during the contract term.

For the avoidance of doubt, contracts with Energy Suppliers for provision of non-OTC Energy Prepayment that are in negotiation at the Implementation Date will not include an Exclusive Purchase Obligation or Exclusivity Rebate.

Commitment 3: Retailer Agreements

14 PayPoint undertakes as follows:

- (a) The Relevant PayPoint Company shall, on or before Day 30 – as applicable under the terms of the relevant contract – write to all Multiple Retailers to:
 - (i) unilaterally remove the Energy Payment Equipment Prohibition. Such amendment shall take effect on the day that is 58 days from the

Implementation Date;¹³ or

- (ii) seek that Multiple Retailer's written agreement to the amendment to remove the Energy Payment Equipment Prohibition; or
- (iii) submit a change request to seek that Multiple Retailer's consent to remove the Energy Payment Equipment Prohibition,

(the **First Multiple Retailer Letter**).

The Relevant PayPoint Company shall also confirm in the First Multiple Retailer Letter that – pending the agreement of the Retailer to the proposed amendment by return – PayPoint will not enforce the relevant contractual provision(s). A summary of the affected contracts is included in Part A of Appendix 1.

- (b) To the extent that any Multiple Retailers described in (a) above have not confirmed their agreement to the amendments described therein by the third calendar month following Day 30, the Relevant PayPoint Company shall write again to those parties to remind them of the request set out in the First Retailer Letter for agreement to the proposed amendments by return (the **Second Multiple Retailer Letter**).
- (c) The Relevant PayPoint Company shall, on or before Day 30, notify all Independent Retailers that it will unilaterally remove the term(s) in the General Retailer Agreement that prohibit(s) the hosting of equipment of other payment service providers for the processing of OTC payments for prepayment energy customers. Such amendment shall take effect on the day that is 58 days from the Implementation Date.¹⁴

¹³ On the basis that Clause F.2 of the General Retailer Agreement requires that any variations are made on 28 days' prior written notice to Retailers.

¹⁴ On the basis that Clause F.2 of the General Retailer Agreement requires that any variations are made on 28 days' prior written notice to Retailers.

- (d) PayPoint shall not amend commission rates payable under the affected contracts as recompense for the removal of the terms described at (a) and (b) above.
- (e) For the avoidance of doubt, PayPoint shall not be required, as a result of this Commitment, to accept any other changes to contractual or commercial terms, nor to act in non-compliance with the specific provisions of any affected contract concerning variation of or amendment to that contract.

15 **Period of commitment.** PayPoint shall not include or agree to any terms that prohibit the hosting of equipment of other payment service providers for the processing of OTC payments for prepayment energy customers in its contracts with Retailers for a period of five (5) years from the Implementation Date. For the avoidance of doubt, this shall include contracts with Retailers that are in negotiation at the Implementation Date.

Commitment 4: Supporting Vulnerable Energy Consumers

16 PayPoint shall, on or before Day 30, make a donation of £12.5 million to the Energy Saving Trust to support vulnerable energy consumers.

Monitoring, reporting and compliance

- 17 PayPoint shall appoint a Commitments Compliance Officer whose function will be to:
- (a) monitor compliance with the Commitments for as long as they remain in force; and
 - (b) provide monthly reports to Ofgem against the milestones set out in Appendix 2 for a period of six months following Day 30 (subject to paragraph 19 below). The Commitments Compliance Officer shall report to Ofgem within 3 working days any delays or changes in milestones and provide sufficient information for Ofgem to assess the reasonableness of such changes.
- 18 PayPoint will do everything within its control to meet the milestones included in Appendix 2. Subject to the prior approval of Ofgem, where the timetable is delayed as a result of the actions of third parties (i.e. the relevant contract counterparties), the milestones included in Appendix 2 shall be adjusted to reflect the extent of the delay.

19 PayPoint undertakes to:

- (a) provide Ofgem with written reports on a monthly basis on the progress of the Commitments and milestones set out in Appendix 2;
- (b) provide Ofgem with the report on the first Monday of every calendar month by 5pm UK time, starting from the first Monday following Day 30, for a period of six months, or the date on which all milestones have been met, whichever is the soonest;
- (c) ensure the reports cover the various milestones set out in Appendix 2, an update on progress, and one (1) electronic copy of any contractual amendments to implement the Commitments that have been issued to or agreed with Energy Suppliers and/or Retailers in the previous month; and
- (d) ensure the reports are in a consistent format, clearly presented and sufficiently detailed such that Ofgem is able to assess the progress of the Project against the milestones set out in Appendix 2.

20 The obligations at paragraph 19 shall apply for a period of six months following Day 30, or the date on which all milestones have been met, whichever is the soonest (subject to Ofgem's approval that all such milestones have in fact been met). To the extent that all milestones have not been met by the date that is six months from Day 30, PayPoint shall continue to provide monthly reports to Ofgem in the form described in paragraph 19 for a further three month period, or until such date on which all milestones have been met, whichever is the soonest (subject to Ofgem's approval that all such milestones have in fact been met). To the extent that any of the Energy Suppliers or Multiple Retailers contacted by PayPoint pursuant to paragraphs 10, 12 and 14 have not confirmed their agreement to the amendments described therein by the date that is nine months from Day 30, PayPoint's reporting obligations set out in paragraph 19 shall nonetheless cease, subject to Ofgem's approval that every reasonable step to reach an agreement has been taken.

21 PayPoint:

- (a) upon receipt of a written request from Ofgem, shall within 10 days provide (via the Commitments Compliance Officer) to Ofgem any information and documents which Ofgem reasonably requires for the purposes of enabling Ofgem to monitor

and review the operation of the Commitments or any provision of the Commitments. For the avoidance of doubt, such request may include copies of contracts as amended to implement the Commitments;

- (b) will provide to Ofgem a signed Compliance Statement within fifteen (15) Working Days of:
 - (i) the date on which the actions described in paragraphs 10, 12, 14 and 16 are substantially complete; and
 - (ii) each anniversary of the Implementation Date¹⁵, until the fifth anniversary, to confirm that the obligations at paragraph 11, 13 and 15 have been complied with in the relevant year. The Statement must be signed by the CEO of PayPoint Plc on behalf of PayPoint and must be in the form appended to these Commitments (Appendix 3);
- (c) will promptly notify Ofgem, as soon as practicable (and, at the latest within five (5) Working Days) by email if it becomes aware of any breach of the Commitments, and will commit to providing information concerning the nature and duration of the breach; and
- (d) may be required by Ofgem to keep, maintain and produce those records specified in writing by Ofgem that relate to the operation of any provision of the Commitments.

22 Ofgem may take action in accordance with its statutory powers should it become aware of any non-compliance by PayPoint with the Commitments.

23 Any communication from PayPoint to Ofgem relating to the Commitments shall be addressed to: Sujitra Krishnanandan or by email to Sujitra.Krishnanandan@ofgem.gov.uk and projectnile@ofgem.gov.uk or such other postal or email address as Ofgem may direct in writing.

¹⁵ The first Compliance Statement shall be provided to Ofgem within fifteen Working Days of the first anniversary of the Implementation Date, and so on.

- 24 The obligations at paragraph 21 shall apply for the period that the Commitments are in force.

APPENDIX 1

PART A

Summary of affected contracts between PayPoint, Energy Suppliers and Retailers

[X] Due to its commercially sensitive nature this document has been redacted.

PART B

Energy Suppliers in Administration or Subject to Transfer

APPENDIX 2

Project Plan and Milestones

APPENDIX 3

Compliance Statement

Compliance statement relating to Commitments offered by PayPoint

I, [name of PayPoint Plc CEO], confirm on behalf of PayPoint Plc and its wholly-owned subsidiaries, PayPoint Collections Limited (**PPCL**) and PayPoint Network Limited (**PPNL**), and PayPoint Retail Solutions Limited (**PRSL**), collectively referred to herein as "**PayPoint**", that:

- 1 Subject to any matters reported under paragraph (2) below, in the period from [date] to [date] (the **Relevant Period**):
 - (a) PayPoint has complied with the commitments offered by it and accepted by Ofgem on [date] (the **Commitments**);
 - (b) No breach of the Commitments has occurred; and
 - (c) No action has been taken by PayPoint that might prejudice compliance with the Commitments.
- 2 Pursuant to the Commitments, Ofgem has been informed of any breaches of the Commitments that have occurred in the Relevant Period.
- 3 Subject to any disclosures under paragraph (2), PayPoint remains in full compliance with the Commitments and will continue to provide to Ofgem any information and documents as Ofgem may reasonably require for the purpose of monitoring and/or enforcing compliance with the Commitments in accordance with the Commitments.

Signed for and on behalf of PayPoint:

.....

[Name and Title]

On [Date]

At [Place]

Annex 2 – General Feedback

1. We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

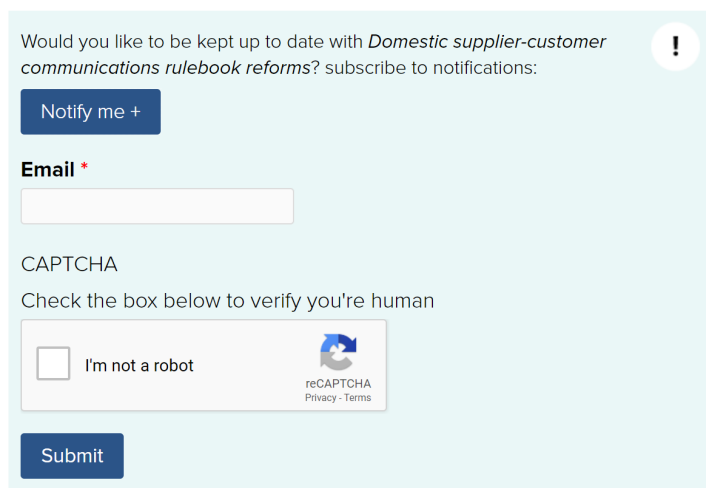
Please send any general feedback comments to stakeholders@ofgem.gov.uk


How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website.

[Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations).

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