

Specific Direction 4 on competitive procurement of central infrastructure (LINK)

June 2017

Varied March 2019

Specific Direction 4 (Procurement: LINK)

This document shows the text of Specific Direction 4 (Procurement: LINK) as varied by Specific Direction 4a (March 2019)¹, which changes the date in paragraph 2.1 from 2 April 2021 to 2 October 2021.

1 Recitals

Whereas:

- 1.1** The *operator* of *LINK* has been operating the *LINK* payment system with the use of *central infrastructure* services provided under the *existing central infrastructure contract*. *Central infrastructure* services are provided under this contract is for an initial term of five years, with the contract being subject to termination without incurring early exit fees from 2 April 2021, following 24 months' notice to terminate being given on or after 1 April 2019.
- 1.2** For the reasons set out in its infrastructure market review final report² and remedies decision³, the *Payment Systems Regulator* has concluded that any future contract for *central infrastructure* services must be competitively procured. The *Payment Systems Regulator* also concluded that such a procurement should take place at least every ten years.
- 1.3** The *Payment Systems Regulator* has concluded that in order for the benefits of competition to arise as soon as possible, *central infrastructure* services should be supplied in accordance with a contract selected following a competitive procurement at the earliest practicable opportunity. In accordance with the *existing central infrastructure contract* this is from 2 April 2021.
- 1.4** The *Payment Systems Regulator* recognises that there may be exceptional circumstances where it would be appropriate to grant an exemption from the duty to comply with one or more of the obligations set out in this direction. Section 4 therefore envisages the possibility of such an exemption being granted. This may be an exemption from some of the obligations set out in this direction, such that a more limited procurement exercise is undertaken, or it may be an exemption from all obligations set out in this direction. The latter would delay the requirement to undertake a competitive procurement to such date as is specified by the *Payment Systems Regulator* in its exemption decision, rather than requiring this to occur in accordance with the timeline envisaged in paragraph 1.3.

¹ www.psr.org.uk/psr-publications/policy-statements/PS19-2-SD4a-procurement-link

² PSR MR15/2.3, *Market review into the ownership and competitiveness of infrastructure provision – Final Report* (July 2016).

³ PSR MR15/2.5, *Market review into the ownership and competitiveness of infrastructure provision: remedies decision* (June 2017).

Power exercised and purpose

- 1.5** The *Payment Systems Regulator* makes this specific direction in accordance with section 54(3)(c) (Regulatory and competition functions – directions) of the Financial Services (Banking Reform) Act 2013 (the *Act*). In accordance with section 54(3)(c) this specific direction applies to persons of a specified description.
- 1.6** The *Payment Systems Regulator* has had regard in particular to the following provisions of the *Act*:
- a. sections 49 to 53 (General duties of regulator)
 - b. section 62(2)(a) (Duty to consider exercise of powers under Competition Act 1998)
- 1.7** The *Payment Systems Regulator* makes this direction for the reasons set out in its infrastructure market review final report⁴ and remedies decision⁵.
- 1.8** The purpose of this specific direction is to ensure that if the *operator* of *LINK* procures any *central infrastructure*, it is procured competitively in accordance with this specific direction.

Direction

NOW the PSR gives the following specific direction to the operator of *LINK*:

2 Requirement to procure

- 2.1** Subject to section 4, the *operator* of *LINK* must take such action as is necessary to ensure that any *central infrastructure contract* in place on or after 2 April October 2021, or such later date as specified by the *Payment Systems Regulator* in accordance with section 4 below, has been procured in accordance with paragraph 2.2
- 2.2** The *procurement* must include the following steps:
- a. development of a strategy for the procurement
 - b. consultation with service-users, including PSPs and end users
 - c. fair and transparent engagement with *potential providers*
 - d. development and execution of a transparent and objective process to shortlist *potential providers* for the *competitive tender*

⁴ PSR MR15/2.3, *Market review into the ownership and competitiveness of infrastructure provision – Final Report* (July 2016).

⁵ PSR MR15/2.5, *Market review into the ownership and competitiveness of infrastructure provision: remedies decision* (June 2017).

- e. development and execution of a *competitive tender* that is based on transparent and objectively justified criteria, and is likely to attract two or more bids
- f. selection of the *central infrastructure* provider(s) in accordance with the *competitive tender* described at e)

2.3 The *operator* of *LINK* must ensure that any *central infrastructure contract* it enters into does not provide for the provision of central infrastructure services for a period exceeding ten years.

3 Reporting requirement

3.1 The *operator* of *LINK* must report to the *Payment Systems Regulator* on its work under this Specific Direction 4 in accordance with paragraph 7.2. Each report must include:

- a. A description of the *operator's* progress in relation to the steps outlined at 6.3.
- b. Evidence demonstrating that, and a description of how, each of the requirements outlined at paragraph 2.2 has been, or will be, fulfilled, including:
 - i. Evidence demonstrating that, and a description of how, the *operator* has taken into account the results of its consultation with service-users.
 - ii. Evidence demonstrating that, and a description of how, the *operator* has taken into account the results of its engagement with *potential providers*.

3.2 Unless otherwise specified by the *Payment Systems Regulator* in writing, the *operator* of *LINK* must submit the reports required by paragraph 7.1 to the *Payment Systems Regulator* every six months, starting on 29 September 2017. The *Payment Systems Regulator* may specify that reports be submitted on particular dates, by reference to particular steps of a procurement process, or that reporting dates may be suspended for a period of time.

4 Exemption for exceptional circumstances

4.1 The *operator* of *LINK* may apply to the *Payment Systems Regulator* for an exemption from the duty to comply with one or more of the obligations set out in this Specific Direction 4. Such applications must include:

- a. the exceptional circumstances which the *operator* maintains justify the application;
- b. the steps which the *operator* is taking in relation to securing the provision of *central infrastructure* services absent full compliance with this Specific Direction 4; and
- c. whether, and when, the *operator* expects to recommence compliance with all of its obligations under this Specific Direction 4.

- 4.2** The *Payment Systems Regulator* will consider the application provided and all facts it considers relevant at the time.
- 4.3** The *Payment Systems Regulator* may reject an application or approve it in whole, or in part, and may make such approval subject to compliance with any conditions.
- 4.4** Where the *Payment Systems Regulator* has approved an application, the *operator* must comply with its obligations under this Specific Direction 4 before such date as the *Payment Systems Regulator* specifies in the approval of the application.

5 Application of Specific Direction 4

- 5.1** This specific direction applies to the *operator* of *LINK*.

6 Commencement and duration

- 6.1** This specific direction comes into force on 20 June 2017.
- 6.2** This specific direction shall continue in force until such time as it is varied or revoked by the *Payment Systems Regulator*.

7 Citation

- 7.1** This specific direction may be cited as Specific Direction 4 (Procurement: LINK).

8 Interpretation

- 8.1** General Provisions GP2 and GP3 are incorporated into this specific direction and are to be read as a direction under section 54 of the *Act* for the purposes of this specific direction.
- 8.2** The headings and titles used in this specific direction are for convenience and have no legal effect.
- 8.3** The Interpretation Act 1978 applies to this specific direction as if it were an Act of Parliament except where words and expressions are expressly defined.
- 8.4** References to any statute or statutory provisions must be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.

8.5 In this specific direction:

Act	Means the Financial Services (Banking Reform) Act 2013
central infrastructure	Means the whole, or any part of, a package of systems and services, comprising hardware and software, provided under contract to an operator for the purposes of operating <i>LINK</i> , including the processing of funds transfers
central infrastructure contract	Means a contract between an <i>operator</i> and another person for the provision of <i>central infrastructure</i>
central infrastructure provider	Means an <i>infrastructure provider</i> when <i>providing central infrastructure</i>
Cheque and Credit	Means the Cheque and Credit <i>regulated payment system</i> designated by HM Treasury under section 43 of the Act in March 2015
competitive tender	Means a process by which an <i>operator</i> invites and evaluates bids for the provision of <i>central infrastructure</i>
existing central infrastructure contract	Means the Switching and Settlement Agreement between VocaLink Limited, LINK Scheme LTD and the present network members of 1 April 2016, relating to the LINK Scheme as amended from time to time
infrastructure provider	Has the meaning given by section 42(4) of the <i>Act</i>
LINK	Means the LINK <i>regulated payment system</i> designated by HM Treasury under section 43 of the <i>Act</i> in March 2015
operator	Has the meaning given by section 42(3) of the <i>Act</i>
payment system	Has the meaning given by section 41 of the <i>Act</i>
Payment Systems Regulator	Means the body corporate established under Part 5 of the <i>Act</i>
potential provider	Means a person who is a <i>central infrastructure provider</i> or who, in future, has the potential to become a <i>central infrastructure provider</i>

procurement	Means the process of entering into a contract for the acquisition, by an <i>operator</i> , of <i>central infrastructure</i> from another person chosen by that <i>operator</i>
regulated payment system	Means a <i>payment system</i> designated by HM Treasury under section 43 of the <i>Act</i> in March 2015

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