

Consultation paper

Consultation on varying Specific Direction 4 on competitive procurement of central infrastructure

February 2019

We welcome your views on this consultation. If you would like to provide comments, please send these to us by **5pm on 15 February 2019**.

You can email your comments to **infrastructurereview@psr.org.uk** or write to us at:

LINK Specific Direction 4 monitoring team
Payment Systems Regulator
12 Endeavour Square
London E20 1JN

We will consider your comments when preparing our response to this consultation.

We will make all non-confidential responses to this consultation available for public inspection.

We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. If you want to claim commercial confidentiality over specific items in your response, you must identify those specific items which you claim to be commercially confidential. We may nonetheless be required to disclose all responses which include information marked as confidential in order to meet legal obligations, in particular if we are asked to disclose a confidential response under the Freedom of Information Act 2000. We will endeavour to consult you if we receive such a request. Any decision we make not to disclose a response can be reviewed by the Information Commissioner and the Information Rights Tribunal.

You can download this consultation paper from our website:

www.psr.org.uk/psr-publications/consultations/cp19-1-draft-specific-direction-4-infrastructure-procurement

We take our data protection responsibilities seriously and will process any personal data that you provide to us in accordance with the Data Protection Act 2018, the General Data Protection Regulation and our PSR Data Privacy Policy. For more information on how and why we process your personal data, and your rights in respect of the personal data that you provide to us, please see our website privacy policy, available here: <https://www.psr.org.uk/privacy-notice>

Contents

1	Consultation	4
2	Next steps	8

1 Consultation

Introduction

- 1.1** We are proposing to vary our Specific Direction 4¹, to extend the deadline for LINK's central infrastructure services (CIS) to be provided by the winner of a competitive tender process. We propose to change the deadline from 2 April 2021 to 2 October 2021, to allow LINK's operator to resolve outstanding issues before awarding the CIS contract. We are asking for comments on our proposal.
- 1.2** This consultation, together with the associated draft specific direction, is being made available publicly and we will consider all responses. We expect this consultation to be of particular interest to Link Scheme Holdings Ltd (LSHL) (the current operator of LINK), the bidders for LINK's CIS contract, and LINK's members.
- 1.3** The deadline for responses to this consultation is 5pm on 15 February 2019.

Background

- 1.4** The LINK ATM system is the main network that connects UK card issuers and providers of ATMs, enabling card holders to withdraw cash from their bank accounts. The LINK system is not involved when card holders withdraw cash from ATMs belonging to their own bank or building society, but typically is involved if they use any other UK ATM.
- 1.5** We conducted a market review into the ownership and competitiveness of infrastructure that supports LINK and other payments systems. We issued the final report² in July 2016, and our remedies decision³ in June 2017. We concluded that LINK's CIS should be supplied in accordance with a contract selected following a competitive tender, at the earliest practicable opportunity.
- 1.6** We determined that this would be 2 April 2021. This would follow at least 24 months' notice to terminate the existing CIS contract, which LSHL would have to give by 1 April 2019.
- 1.7** We required LSHL to ensure that competitively procured CIS is in place from 2 April 2021 by issuing Specific Direction 4 in June 2017, using our powers under section 54(3)(c) of the Financial Services (Banking Reform) Act 2013 (FSBRA).
- 1.8** In order to comply with Specific Direction 4, LSHL planned its tender process so that it could award a new CIS contract during March 2019 and, following this, serve notice on or before 1 April 2019 to terminate the existing contract.

1 www.psr.org.uk/specific-direction-4

2 PSR MR15/2.3, Market review into the ownership and competitiveness of infrastructure provision: final report (July 2016): www.psr.org.uk/psr-publications/market-reviews/MR1523-final-report-infrastructure-provision

3 PSR MR15/2.5, Market review into the ownership and competitiveness of infrastructure provision: remedies decision (June 2017): www.psr.org.uk/psr-publications/market-reviews/infrastructure-market-review-remedies-decision

LSHL's request and our proposed response

1.9 LSHL has informed the PSR that it now cannot award a new CIS contract under its competitive tender process to that timeframe. It has told us that this is the result of a variety of factors, including:

- a range of outstanding issues to be resolved in its contract negotiations (including being able to assure itself that the new contract will enable it to perform its role as a systemic risk manager)
- amended governance processes with stakeholders which need to be factored into the timetable
- the need for contingency for unanticipated delays

LSHL now expects to award a new CIS contract during August 2019.

1.10 LSHL has asked us for an additional six months to comply with Specific Direction 4.

1.11 We have considered LSHL's request, including the period of time requested. We have concluded, subject to consultation, that it is appropriate to extend the deadline by six months.

The basis for our proposed response

1.12 We have taken account of the relevant information available, including that provided by LSHL in relation to why it is now unlikely to be able to complete the competitive tender by 1 April 2019 (but will be able to do so by 1 October 2019).

1.13 We may vary the date in paragraph 2.1 of Specific Direction 4 from 2 April 2021 to 2 October 2021 by giving a further specific direction. In deciding to do this (subject to this consultation), we have had regard to the information that LINK has given us about the progress they have made so far on the tender process.

1.14 We have also considered the benefits and disadvantages of varying the date.

1.15 The most obvious disadvantage is that it may put back the date by which a competitively tendered CIS contract will be in place by up to six months.

1.16 The most obvious benefits of changing the date are that doing so would:

- a. maintain a minimum two-year period between the award of the contract and the beginning of the supply of services under that contract
- b. continue to allow LSHL to give notice to the existing supplier after it has awarded the new contract
- c. allow a short contingency period

- 1.17** In relation to paragraph 1.16a, we consider this to be desirable because a period of two years between the award of the contract and the beginning of the supply of services under that contract allows for an appropriate period of time for any transition where required. The consequence of maintaining the deadline of 2 April 2021 would be to shorten the length of time available for this transition period. We consider that shortening the period at this late stage in the procurement process could adversely affect the competitive dynamics of the procurement process, and therefore interfere with the purpose of Specific Direction 4.
- 1.18** In relation to paragraph 1.16b, we consider this to be desirable because if LSHL is required to give notice to the existing supplier before appointing the new supplier, the risk to certainty of supply for LINK's CIS is increased.
- 1.19** In relation to paragraph 1.16c, we considered whether to allow a period for contingency. We consider that the six-month period on which we are consulting allows a sensible period for contingency, and will help to avoid unexpected issues requiring us to consider a further short extension. The Payment Systems Regulator (PSR) having to consider a further short extension could create uncertainty and would be likely to impose administrative burden on us, LINK, and possibly also the bidders.
- 1.20** We currently consider that the benefits of changing the date as proposed outweigh the disadvantages. Therefore, we propose to vary paragraph 2.1 of Specific Direction 4 by giving a further specific direction changing the deadline for a competitively procured contract to be in place from 2 April 2021 to 2 October 2021. This will allow LSHL to serve notice on its existing CIS contract on or before 1 October 2019, after it has awarded the new contract, and maintains the two-year transition period.

Other considerations

- 1.21** Section 62(2)(a) of FSBRA requires us to consider whether we should exercise powers under the Competition Act 1998 (CA98) rather than give the direction under section 54 of FSBRA as proposed. We do not consider it would be more appropriate to proceed under CA98. The proposal is to vary an existing variation made under section 54 of FSBRA and, in any event, the overall outcome for which Specific Direction 4 was given, namely putting in place a competitively procured CIS contract, is best achieved through giving a direction under section 54 FSBRA.
- 1.22** We are required under section 149 of the Equality Act 2010 to have due regard to the need to:
- a. eliminate discrimination, harassment, victimisation and other prohibited conduct
 - b. advance equality of opportunity between those who share a relevant protected characteristic and those who do not
 - c. foster good relations between those who share a relevant protected characteristic and those who do not
- 1.23** Based on the current information we have, we do not believe our proposal to vary the date from 2 April 2021 to 2 October 2021 raises any issue relevant to the matters we are required to have due regard to.

Consultation questions

- Question 1** Do you agree that the PSR should vary Specific Direction 4 by extending the deadline for CIS services to be in place? If you do not agree, please set out why you consider the change inappropriate or whether you consider the deadline could be extended by another method (and if so, please give details of that method).
- Question 2** If you believe there should be an extension, do you agree that it should be six months? If you do not agree, please set out why you consider a different extension period to be more appropriate.
- Question 3** Do you have any comments on how the draft specific direction is drafted?
- Question 4** Do you agree that the proposal raises no issue relevant to the matters we are required to have due regard to under section 149 of the Equality Act 2010? If not, please set out the relevant issue and the reasons for your view.
- Question 5** Do you have any other comments relevant to the PSR's considerations as set out in this consultation paper?

2 Next steps

2.1 The consultation is open to receive feedback until 5pm on 15 February 2019. Please send us your comments on the questions in this consultation paper.

2.2 You can email us at infrastructurereview@psr.org.uk or write to us at:

The LINK Specific Direction 4 Monitoring Team
Payment Systems Regulator
12 Endeavour Square
Stratford
London
E20 1JN

Confidentiality

2.3 Generally, we seek to publish views or submissions, including those made in response to a consultation, in full or in part.

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London E20 1JN
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