

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

Variation of Specific Direction 4 (Procurement: LINK)

February 2019

DRAFT Variation of Specific Direction 4 (Procurement: LINK).

1 Recitals

Whereas:

- 1.1 For the reasons set out in its infrastructure market review final report¹ and remedies decision², the *Payment Systems Regulator* (PSR) concluded that any future contract for *central infrastructure services* in respect of *LINK* must be the subject of a *competitive tender*.
- 1.2 The PSR also 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 tender* at the earliest practicable opportunity.
- 1.3 Therefore, in June 2017, the PSR gave the operator of *LINK* a specific direction (*Specific Direction 4*³) requiring it to ensure that any *central infrastructure contract* in place on or after 2 April 2021 has been procured in accordance with certain requirements (set out in paragraph 2.2 of that specific direction). *Specific Direction 4* allowed for the PSR to grant an exemption if exceptional circumstances made it appropriate.
- 1.4 The deadline of 2 April 2021 was imposed because the current *central infrastructure contract* is subject to termination following 24 months' notice without incurring early exit fees. At the time the PSR issued *Specific Direction 4*, the operator of *LINK* believed it could complete the competitive tender process by 1 April 2019. This meant 2 April 2021 would be the earliest practicable date that the existing contract could be terminated and the supply of services under the competitively tendered contract could begin.
- 1.5 The *operator* of *LINK* recently informed the PSR that it would not now be able to complete the competitive tender, and therefore appoint a supplier, before 1 April 2019. The operator asked for a six-month extension for compliance with *Specific Direction 4*.
- 1.6 As a result of the request, the PSR has considered whether the deadline for the *operator* of *LINK* to have in place a *central infrastructure contract* that has been the subject of a competitive tender, currently 2 April 2021, should be extended by six months. It concluded that, while there were not exceptional reasons for extending the deadline (and therefore an exemption under section 4 of *Specific Direction 4* was not appropriate), *Specific Direction 4* should be varied by means of a further specific direction so that the deadline becomes 2 October 2021.

1 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

2 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

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

- 1.7** In doing so the PSR has taken account of the material put forward by the *operator* of *LINK* for an extension, and in particular the reasons why the *operator* considers it will not be able to complete the competitive tender by 1 April 2019. The PSR has concluded that it is unlikely the *operator* of *LINK* will now be able to complete the competitive tender by 1 April 2019.
- 1.8** The PSR has also considered the factors against and for extending the deadline.
- 1.9** The PSR has, in particular, had regard, as a factor against extending the deadline, to the potential for a six-month delay in having a competitively procured *central infrastructure contract* in place, and the consequent delay to the associated benefits being realised.
- 1.10** The PSR has, in particular, had regard to these factors favouring extending the deadline:
- a. It would maintain a minimum two-year period between the award of the contract and the beginning of the supply of services under that contract.
 - b. It would continue to allow the operator of LINK to give notice to the existing supplier after it has awarded the new contract.
- 1.11** The PSR considers that reducing the minimum period to less than two years and having the operator of LINK give notice before awarding the new contract increases the risk that the introduction of the new competitively tendered contract will not be successful. This would be contrary to the purpose of *Specific Direction 4*.
- 1.12** The PSR has concluded that the benefits of extending the deadline by six months outweigh the downsides.

2 Powers exercised and purpose

- 2.1** The PSR makes this specific direction in accordance with section 54(2)(a) of the Financial Services (Banking Reform) Act 2013 (the Act). In accordance with section 54(3)(c) of the Act this specific direction applies to the operator of LINK.
- 2.2** The PSR has had regard in particular to the following provisions of the Act as appropriate:
- a. sections 49 to 53 (General duties of the Regulator)
 - b. section 62(2)(a) (Duty to consider exercise of powers under the Competition Act 1998)

The purpose of this specific direction is to vary the date by which any central infrastructure contract must have been procured in accordance with paragraph 2.2 of *Specific Direction 4*.

Direction

NOW the Payment Systems Regulator gives the following specific direction to the operator of LINK:

3 Variation of date

The date specified in paragraph 2.1 of *Specific Direction 4* is 2 October 2021 instead of 2 April 2021.

4 Application

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

5 Commencement and duration

This specific direction comes into force on [DATE] 2019.

This specific direction shall continue in force until such time as it is varied or revoked by the PSR.

6 Citation

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

7 Interpretation

- 7.1** '*Specific Direction 4*' means the specific direction given by the PSR in June 2017 to the operator of *LINK* in accordance with section 54(3)(c) of the Act.
- 7.2** All words and phrases used in this specific direction which are defined in *Specific Direction 4* have the same meaning as in that Specific Direction (and any such words and phrases are, together with *Specific Direction 4*, shown in italics in this specific direction).
- 7.3** The headings and titles used in this specific direction are for convenience and have no legal effect.
- 7.4** 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.
- 7.5** 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.

Made on [DATE]

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