

Competition Act 1998

Decision of the Director General of Fair Trading

LINK Interchange Network Limited

16 October 2001
(Case CP/0642/00/S)

SUMMARY

The Director General of Fair Trading has concluded that the centrally set multilateral interchange fee in the arrangements for the operation of the LINK network appreciably prevents, restricts or distorts competition but that the requirements for individual exemption are met. The other agreements for the operation of the LINK network which were notified by LINK do not infringe the Chapter I prohibition.

The public were consulted about the Director General of Fair Trading's proposal to issue an individual exemption. A notice was issued on 30 July 2001. No substantive responses to the public consultation were received.

I THE FACTS

A Background

- 1 On 13 April 2000 LINK Interchange Network Limited (LINK) notified certain agreements to the Director General of Fair Trading (the Director) for a decision on the application of the Chapter I prohibition imposed by Section 2 of the Act. LINK requested a decision that the agreements notified do not infringe the Chapter I prohibition or that, in the alternative, the Director grant an individual exemption under Section 4 of the Act.
- 2 A summary of the notification was placed on the Office of Fair Trading's public register on 11 May 2000. It was also published in the Office of Fair Trading's Weekly Gazette.¹ Letters were sent to certain third parties identified as having an interest in the provision of ATM services inviting comment on the notified agreements.
- 3 A notice was issued in accordance with rule 12 of the Director's procedural rules (the Director's rules)² on 30 July 2001. The Director's rules provide that if, on an application under section 14 of the Act for an agreement to be examined, the Director proposes to grant an individual exemption, whether or not subject to conditions or obligations, he must consult the public.³ The notice set out the Director's proposal to grant an unconditional individual exemption to certain of the agreements notified by LINK and the reasons for this proposed action. It also indicated the Director's view that the remainder of the agreements notified did not infringe the Chapter I prohibition. The notice set out the time within which written representations could be made to the Director on these matters. No substantive written representations were received in response to the consultation.
- 4 This decision is issued under the Act in accordance with rule 15 of the Director's rules. It states the facts on which the Director relies and his reasons for the decision.⁴

¹ The OFT Weekly Gazette 6-12 May 2000 issue 11/2000.

² The Competition Act 1998 (Director's rules) Order 2000 SI 2000 No 293. This is available on the Office's website at www.offt.gov.uk/html/comp-act/technical_guidelines/index.htm#rules.

³ Rule 12(1)(a) of the Director's rules.

⁴ Rule 15(1) of the Director's rules.

B The parties

5 LINK operates a branded national network of automated teller machines (ATMs). It is owned by its shareholder members who, in the main, comprise the major financial institutions (i.e. banks and building societies) operating in the UK. The entry on the Office of Fair Trading's public register lists the LINK Members as at the date of the notification. LINK has no overseas interests.

C The agreements notified

6 The agreements that were notified by LINK relate to the establishment, organisation and operation of LINK. The majority of the agreements concern the reorganisation of LINK in 1998 from a company limited by guarantee to a company limited by shares. The agreements that were notified also cover the use of relevant intellectual property rights (such as the LINK logo and trademarks).⁵

7 The agreements that contain the main provisions are the *LINK Operating Rules* as amended by the *Resolution passed by the LINK Board on 23 May 2000*, the *Member Pricing Schedule* as amended by the *Resolution passed by the LINK Board on 29 February 2000*, the *Shareholders Agreement II* and *Network Members Agreement*, both dated 19 February 1999, and the *Resolution passed by the LINK Board on 28 March 2000*. The main terms of these agreements are as follows:

- *LINK Operating Rules (January 1999-version 4.1)*: sets out the eligibility criteria for different forms of LINK membership; the requirements, responsibilities, rights and liabilities of the different participants to each other and to the Network⁶, and of the Network to them; the basis on which shared services are offered, and the policies governing their operation. The *LINK Operating Rules* were amended by a *Resolution passed by the LINK Board on 23 May 2000* that allows for non-bank and non-Financial Institutions to

⁵ The agreements that were notified by LINK include a number that are not dealt with in this decision. Two of these have been terminated: a Shareholders Agreement (terminated 30 November 1998) and a Network Members Agreement as amended (terminated 19 February 1999). A Certified Service Bureau Agreement dated 19 February 1999, the purpose of which was to connect Tesco Personal Finance Limited to the LINK network through the Royal Bank of Scotland plc, acting as a Certified Services Bureau, received a direction under section 21(2) of the Restrictive Trade Practices Act 1976. It is, therefore, excluded from the application of the Chapter I prohibition by Schedule 3, paragraph 2(1) of the Act.

⁶ 'Network' is defined in the Network Members Agreement as 'the shared ATM network established by LINK and its Members permitting the customers of Network Members to withdraw cash from their accounts mechanically and electronically and includes that network as altered from time to time by the inclusion or withdrawal of ATMs'.

become full members of LINK. This decision relates to the *LINK Operating Rules* as amended by the *Resolution passed by the LINK Board on 23 May 2000*.

- *Member Pricing Schedule (January 1999)*: sets out transaction, membership and connection fees, plus other miscellaneous charges and the circumstances in which they might be levied on Members. The *Member Pricing Schedule* has been amended by a *Resolution passed by the LINK Board on 29 February 2000*. This replaces Schedules B and C of the *Member Pricing Schedule*. In particular it allows for the introduction of surcharging⁷ for cash withdrawal transactions and a revision of the interchange fee for non-surcharged transactions to a flat rate of 28 pence for branch ATMs and 40 pence for non-branch ATMs (and 50 per cent of those values for non-cash transactions). The *Resolution passed by the LINK Board on 29 February 2000* also provides for mandatory notification of all retail charges at the point of transaction. This decision relates to the *Member Pricing Schedule* as amended by the *Resolution passed by the LINK Board on 29 February 2000*.
- *Shareholders Agreement II (19 February 1999)*: contains the revised arrangements for the operation and ownership of LINK and the respective rights and obligations of the LINK membership.
- *Network Members Agreement (19 February 1999)*: contains the revised terms for regulating the operation of the LINK Network with which its Members must comply.
- *Resolution passed by the LINK Board on 28 March 2000*: provides that no individual debit card transaction should be subject to both issuer and acquirer charging.

D The LINK Network

- 8 There are more than 33,000 ATMs in the UK, nearly all of which are LINK branded. ATMs provided 62 per cent of all cash acquired from accounts in 1999.⁸ As well as distributing cash, ATMs provide a wide range of other services to customers including the ability to check bank balances, and order statements and chequebooks. An ATM is essentially a safe attached to a computer. The computer is linked to a system holding customer account details.

⁷ See paragraph 13 below for an explanation of what is meant by surcharging.

⁸ Source: APACS Payments Market Report 2000.

Customers can use ATMs to withdraw cash from personal current accounts, personal savings accounts and business accounts.⁹

- 9 There are three parties to an ATM transaction: the ATM owner (also known as the acquirer) who dispenses the cash; the card-issuer (who operates the account from which the money is withdrawn); and, the cardholder (who takes the money out). The majority of ATM transactions are 'us-on-us' transactions where the information flow between the acquirer and issuer takes place within one bank or building society ATM network. 'Shared transactions' are ATM transactions where the card-issuer and the ATM owner are different. LINK provides the central switch facility through which the information flow for the shared transactions pass. The agreements notified by LINK relate only to shared transactions (i.e. those transactions that pass through the central LINK switch).
- 10 There are a number of charges associated with a shared ATM transaction. These include fees charged in relation to the part of the transaction which takes place between the card-issuer and acquirer such as the interchange fee, the switching and settlement fee, and the gateway fee and fees charged to the cardholder by the card-issuer and acquirer for services provided.
- 11 The acquirer can charge the card-issuer a fee for the cost of distributing the cash. This is known as an interchange fee. It covers the cost of the services provided by the acquirer to the card-issuer on shared transactions. The LINK notification includes an agreement on a fallback level for the interchange fee. This fallback level is known as a multilateral interchange fee (MIF). Acquirers and card-issuers can negotiate a bilateral interchange fee different from the MIF, but in practice only a small minority do. The current MIF was adopted by the *Resolution passed by the LINK Board on 29 February 2000* and currently stands at a flat rate of 28 pence for branch ATMs; 40 pence for non-branch ATMs; and, 50 per cent of the cash withdrawal MIF for non-cash transactions (14 pence and 20 pence, respectively).
- 12 The switching and settlement fee is the fee paid by the card-issuer to LINK for the costs of routing information about the transaction between the ATM used by the customer and the card-issuer's own computer network. It is paid to LINK by the card-issuer on shared transactions. The switching and settlement fee is set out in Schedule A of the *Member Pricing Schedule*. The switching and settlement fee is the primary means by which LINK covers its costs of operation and the costs of upgrading the processing capacity of the LINK system. The switching and settlement fee is calculated by estimating the number of

⁹ Credit cards can also be used to obtain cash from ATMs.

transactions that are likely to take place in the forthcoming year against the running costs of LINK and its required income level. The fee rate is reviewed and amended annually. LINK also provides its Members with a 'gateway service' to other networks (principally to the Visa and Europay/MasterCard networks). The gateway fee covers the cost of the provision of this service.

- 13 An ATM owner can also charge customers directly for use of its ATM (these are known as acquirer charges) and the card-issuer can charge the customer for transactions made using that card (these are known as issuer charges). The *Resolution passed by the LINK Board on 29 February 2000* provides that both acquirer and issuer charges can be levied for cash withdrawal transactions. The acquirer charge is sometimes referred to as a 'surcharge'. The resolution also provides that if the acquirer imposes a surcharge on the cardholder for use of the ATM, the acquirer cannot then receive any MIF for the service. Similarly, the acquirer cannot impose a surcharge on the cardholder if they receive any MIF in relation to the transaction.

II LEGAL AND ECONOMIC ASSESSMENT

- 14 Section 2(1) of the Act sets out the Chapter I prohibition of agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK. An agreement will however only infringe the Chapter I prohibition if it has as its object or effect an appreciable prevention, restriction or distortion of competition.

A The relevant market

THE RELEVANT PRODUCT MARKET

- 15 The agreements notified by LINK and the restrictions that the Director has identified relate to the purchasing of network functionality for the purpose of enabling a universal ATM service to be provided to cardholders as the final customers. The 'core' services that are the subject of the notified agreements are the provision of services for the switching, transmission transaction and clearing network functionality for ATM services in the UK.
- 16 Although the LINK ATM network covers the majority of ATMs in the UK it faces competition from competing proprietary systems owned by banks and building societies (intersystem competition). Each of the four largest UK banks (Lloyds

TSB, Barclays, Royal Bank of Scotland and HSBC) owns an extensive network of ATMs, as do many of the other LINK Members. These proprietary networks provide an alternative to the LINK network. Most cardholders will use the ATM facilities of the card-issuing bank (i.e. us-on-us transactions). The majority of ATM transactions do not, therefore, pass through the LINK switch.

- 17 The relevant product market encompasses us-on-us ATM transactions and the shared transactions that pass through the LINK switch.

THE RELEVANT GEOGRAPHIC MARKET

- 18 The relevant geographic market is the UK.

B Agreements between undertakings, decisions by associations of undertakings and concerted practices

- 19 LINK is an undertaking as are its shareholder members. The agreements notified by LINK are therefore agreements between undertakings i.e. between LINK and its Members and between each of the Members within the meaning of section 2 of the Act.

C Effect on trade within the UK

- 20 The agreements that have been notified regulate all LINK ATM transactions carried out in the UK. The agreements therefore affect trade within the UK within the meaning of section 2 of the Act.

D The prevention, restriction or distortion of competition in the UK

- 21 The Director has considered the application of the Chapter I prohibition to the membership rules, the MIF, the switching and settlement fee and the gateway fee provided for in the agreements that have been notified.

MEMBERSHIP

- 22 The membership rules that have been considered are set out in the *LINK Operating Rules*, as amended by the *Resolution passed by the LINK Board of 23 May 2000*. The possibility that these membership rules might operate as a significant barrier to entry is dependent on whether access to the LINK network is necessary to compete in the relevant market identified above. The Director has therefore considered whether, in general terms, membership of LINK is

necessary in order for potential competitors to provide services to their customers.

- 23 The Director has concluded that the membership requirements do not have an appreciable effect on competition in the relevant market. First, LINK faces competition from competing proprietary systems (as noted in paragraph 16 above). In addition :
- There are alternatives to full membership of LINK, principally sponsorship by an existing Member. It is possible for financial institutions and prospective acquirer-only entrants to negotiate bilateral arrangements with a LINK Member (or Members) which confer similar membership benefits (albeit without access to the LINK branding).
 - LINK has stated that the one-off joining fee represents a cost per transaction of less than 0.1 pence.¹¹ The joining fee is relatively small in relation to the LINK operating costs and the amount that successful applicants might expect to earn from surcharges/interchange fees as a full Member.
- 24 The membership rules have also been examined to see whether they give disproportionate voting rights to the four largest banks (Lloyds TSB, Barclays, Royal Bank of Scotland and HSBC). The Director has considered whether the voting rights mean that competition between Members would be restricted or whether the operation of LINK is restricted by the distribution of voting rights.
- 25 Clause 5 of the *Shareholders Agreement II* contains the details of the voting rights of Members. The four largest banks, individually and collectively, do not have sufficient voting rights to exercise majority control of the LINK Board without the support of other Members. As such, the shareholdings of the four largest banks, both individually and collectively, are insufficient for them to be able to exercise a controlling influence over the LINK Board or act to disenfranchise or discriminate against particular classes of Members (for example, through higher fees). The allocation of voting rights in LINK is therefore unlikely appreciably to restrict competition between the Members and does not infringe the Chapter I prohibition.

¹¹ This estimate assumes 50 transactions/ year/ card or 250,000 transactions/ year/ ATM (which is less than the average transaction volume) and a discount rate of 10%.

CENTRAL SETTING OF INTERCHANGE FEES

Multilateral interchange fees

- 26 *The LINK Operating Rules* require Members to pay interchange fees on scales determined by the LINK Board and the Members' Board from time to time. The scales for the MIF are contained in Schedules B and C of the *Member Pricing Schedule*. These were amended and replaced by the *Resolution passed by the LINK Board on 29 February 2000* which provides for a flat rate MIF with separate MIF amounts for branch and non-branch transactions, cash transactions and non-cash transactions. The MIF is the fee paid by the card-issuer to the acquirer on shared transactions and it covers the cost of the services provided by the acquirer to the card-issuer on shared transactions.
- 27 The Director considers that there are three potentially adverse effects raised by an MIF set by a payment system network: the restriction of members' ability to set their own prices; the distortion of members' behaviour towards their customers; and restriction of competition among payment systems.¹²
- 28 Such adverse effects could manifest themselves in a number of ways. The MIF could, for example, restrict the ability of members to determine their own pricing policies, effectively excluding some potential competitors. It could also distort the behaviour of members towards their customers. The MIF could adversely affect competition by reducing the incentives for members to compete for each other's customers, dampening competition between them. In certain circumstances the MIF could act as a common price floor for other banking services.¹³
- 29 The Director has therefore concluded that the agreement on the level of the LINK MIF described in paragraph 26 above may appreciably prevent, restrict or distort competition within the meaning of the Chapter I prohibition. It restricts the freedom of the LINK Members individually to decide their own pricing policies and is restrictive of intra-bank competition.¹⁴

¹² This follows the approach taken by the European Commission in its Notice on the application of the EC competition rules to cross-border credit transfers OJ (1995) C251/3. In the application of the Chapter I prohibition the Director is required to ensure that there is no inconsistency with either the principles laid down by the EC Treaty and the European Court or any relevant decision of the European Court. The Director must also have regard to any relevant decision or statement of the European Commission (section 60 of the Act).

¹³ Passing on costs to end customers does not necessarily give rise to competition concerns, the exception being in circumstances where the members of a payment system network agree to pass on such costs.

¹⁴ In reaching this conclusion, in accordance with section 60(3) of the Act, the Director has had

Issuer and acquirer charges

- 30 The *Resolution passed by the LINK Board on 29 February 2000* provides that where the acquirer levies a surcharge, the acquirer will not receive an MIF. The LINK agreements that have been notified do not cover retail charges nor do they require Members to impose surcharges. It is a matter for the individual Member concerned whether they choose to surcharge and if so, the level at which the surcharge is set.
- 31 The *Resolution passed by the LINK Board on 28 March 2000* provides that no individual debit card transaction should be subject to both issuer and acquirer charging. It also requires that where such charges are levied they must be non-discriminatory. LINK contends that the purpose of the Resolution is to discourage over recovery.
- 32 The vast majority of Members rely on the centrally set MIF and do not levy either issuer or acquirer charges directly on customers. The prohibitions contained in the *Resolution passed by the LINK Board on 29 February 2000* and the *Resolution passed by the LINK Board on 28 March 2000* do not prevent Members from recovering their costs through other means (for example, through charges for current account services) or prevent Members from making alternative bilateral arrangements with other Members. Neither of the two resolutions imposes an absolute bar on Members levying charges directly on customers: indeed, the ability to levy such charges exercises an important competitive restraint over the level of the centrally set MIF.
- 33 The Director has concluded that the *Resolution passed by the LINK Board on 29 February 2000* and the *Resolution passed by the LINK Board on 28 March 2000* do not of themselves appreciably prevent, restrict or distort competition and, therefore, do not infringe the Chapter I prohibition.

regard to the approach taken by the European Commission in a number of cases in which it has considered MIFs: *Uniform Eurocheques* OJ [1985] L 35/43, [1985] 3 CMLR 434; *Dutch Banks* OJ [1989] L253/1; *Dutch Banks II* OJ [1997] C273/12; *ABI* OJ [1987] L43/51.

OTHER FEES

Switching and settlement fee

- 34 *The LINK Operating Rules* provide for the charging of various fees by the LINK Board. The switching and settlement fee is the fee paid by the card-issuer to LINK for the services LINK provides to its Members. This fee does not constitute a significant part of Members' costs (it equates to approximately 3½ per cent of the total value of MIFs paid by Members to each other). *The LINK Operating Rules* specify the switching and settlement fee paid to LINK in return for providing certain services to LINK Members. There is no agreement here on the fees Members might charge to cardholders or to each other. The Director has concluded that the switching and settlement fee is unlikely appreciably to prevent, restrict or distort competition and does not, therefore, infringe the Chapter I prohibition.

Gateway fee

- 35 LINK provides a connection to both the VISA and Europay/ MasterCard networks via a VISA Access Point and an Europay Access Module, respectively, in addition to offering access to the LINK network. The use of the service is not mandatory for LINK Members. LINK levies a gateway fee on each transaction that crosses the gateway. The gateway fee is set by LINK at a level that covers the cost of providing the gateway service.¹⁵
- 36 Most LINK Members connect directly to the VISA and Europay/Mastercard networks, or use other service providers such as FDR, Experian and EDS, but some (six out of LINK's 39 Members) use the 'gateway' service provided by LINK. Gateway transactions represent about 1 per cent of the total number of LINK transactions and 0.5 per cent of the total number of VISA and Europay/Mastercard transactions in the UK. There are no restrictions in the agreements notified by LINK that might act to prevent LINK Members from either making a direct connection or from using an alternative provider of gateway services.
- 37 The Director has concluded that the gateway fee set out in Schedule 1.2.3 of the *Member Pricing Schedule* is unlikely appreciably to prevent, restrict or distort competition and does not, therefore, infringe the Chapter I prohibition.

¹⁵ Schedule 1.2.3 of the Member Pricing Schedule.

CONCLUSION ON EFFECT ON COMPETITION

- 38 For the reasons set out above, the Director has concluded that the agreement on the level of the MIF provided for by the *Member Pricing Schedule* and the *LINK Operating Rules*, as amended by the *Resolution passed by the LINK Board on 29 February 2000*, has the effect of restricting competition between the LINK Members. The MIF effectively fixes the fees paid by the card-issuer to the owner of the ATM on shared transactions. The other provisions in the notification relating to fees paid by the LINK Members and the Membership rules which have been examined by the Director do not infringe the Chapter I prohibition for the reasons set out above.

III INDIVIDUAL EXEMPTION

A Grounds for exemption

- 39 Section 4 of the Act provides that the Director may grant an individual exemption from the Chapter I prohibition to an agreement where a request for exemption has been made to him under section 14 by a party to the agreement and the agreement is one to which section 9 applies.
- 40 Section 9 applies to any agreement which contributes to improving production or distribution, or promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit; but does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.
- 41 The Director has decided to grant an individual exemption to the *Member Pricing Schedule* and the *LINK Operating Rules*, as amended by the *Resolution passed by the LINK Board on 29 February 2000*.

B Exemption criteria

CONTRIBUTES TO IMPROVING PRODUCTION OR DISTRIBUTION OR PROMOTING TECHNICAL OR ECONOMIC PROGRESS

- 42 A universal network may not be workable without the use of MIFs because of free rider and technical efficiency effects.

- 43 In the absence of any collective agreement on fees, each member of a network individually has the incentive to set their own fee without taking into account the effect of this on the whole system and so to set their fees excessively high. In such a scenario each member hopes to 'free-ride' on other members who have set their fees lower. The member would, therefore, essentially attempt to maximise its income from the customers of other card-issuers which were using its ATMs at the higher fee while also maximising the benefit for its own customers who use the ATMs of other members who have set a lower fee. However, if all members were to act according to their own individual interest, *all* fees would be excessive (and likely to be greater than would collectively be desired as an organisation) and this might prevent the network from working by reducing demand for such services. The absence of a centrally set MIF could also result in fees being set at a higher level.
- 44 An alternative to the default MIF which has been established by LINK would be for the Members to enter into bilateral agreements. It has been argued that this would involve significant transactional costs in terms of negotiation time, search and verification costs. By way of example, LINK estimates that 741¹⁶ separate agreements would be required at an additional cost to the system of (approximately) £18.5 million per annum. LINK has argued that these additional transactional costs would lead to a reduction of network size and would deter market entry on the basis that prospective entrants would be faced with potentially prohibitive transactional costs. LINK also contends that new entrants would have little bargaining power when negotiating bilateral agreements and would also face higher costs as a result of having lower transaction volumes. LINK has contended that the likely administrative and timing difficulties in any changes would lead to systemic problems and ultimately reduce the overall effectiveness of the LINK network.
- 45 Further, while LINK does not compete directly with banks or building societies in the provision of banking services, it does play an important role in the provision of current account facilities to UK cardholders. LINK allows cardholders to access their bank or building society accounts from a wide range of ATMs, including those owned by banks or building societies where they do not have an account. LINK branded ATMs provide cardholders with access to nearly all of the ATMs in the UK. This means that given the extensive membership of the participating institutions, ATMs are accessible to the majority of UK cardholders regardless of the financial institution with whom they hold their current account. In particular it allows smaller institutions to provide their customers with access

¹⁶ The figure is derived by multiplying the number of current members (39) by the amount of separate agreements required (38) divided by 2 (i.e. 1 bilateral agreement suffices to serve 2 Members): i.e. $39 \times 38/2 = 741$.

to a large network of ATMs without having to incur the costs of building such a network themselves. It therefore contributes to improving distribution and accordingly meets this exemption criterion.

ALLOWING CONSUMERS A FAIR SHARE OF THE RESULTING BENEFIT

- 46 LINK Members are able to spread the costs of the provision of ATM services across a larger number of users by providing universal access to cardholders. This means that they are able to increase the number of ATMs that can be used by cardholders without significant investment costs. Spreading the cost of the provision of ATM services also helps to lower the cost of the provision of the network service to the LINK Members as customers of the LINK network. Members will not be prevented from competing over charges to (or interest paid to) their customers, and it can be expected that these benefits will be passed onto cardholders through competition in retail banking.

RESTRICTIONS WHICH ARE INDISPENSABLE TO THE ATTAINMENT OF THE OBJECTIVES

- 47 In assessing the issue of indispensability the Director has considered whether the methodology used to derive the MIF would result in an MIF being set higher than it needs to be for cost recovery. The Director considers that the LINK Members must demonstrate that the MIF is set (and revised regularly) at the level of the average additional costs of participating Members. The LINK MIF is based on an annual cost survey of the LINK Membership carried out by independent and reputable firms with relevant experience, on behalf of the LINK Board. The methodology which is employed constructs weighted averages for the relevant cost categories, reflecting the total costs of supporting all activity processed through the ATMs. The cost information gathered from Members is compared for reasonableness and consistency, both between Members and with previous cost reviews. The derived average unit cost is then taken to represent the underlying cost of supporting the total volume of activity across the LINK ATM network.
- 48 Once the MIF has been set, the only way an individual Member relying on the default MIF can increase profitability and its own overall competitiveness vis-à-vis other LINK Members is to become more efficient which in turn reduces the average ATM transaction cost. Such efficiency savings made over the course of the year would feed into the review of costs in the following year so that it feeds into the following year's default MIF, reflecting the lower average cost.

49 The rules on issuer and acquirer charging (see paragraph 30) limit the opportunity for LINK Members to over-recover the ATM transaction cost. Accordingly, while the Director takes the view that the resolutions of 28 February 2000 and 29 March 2000 which set out these rules do not infringe the Chapter I prohibition, he considers that the restrictions discourage Members from levying a default MIF at a level higher than average costs or over-recovering costs (through a combination of both an interchange and a surcharge fee). Members who are unable to cover their costs can choose to surcharge cardholders directly. The ability to surcharge provides an additional safety valve and exercises a competitive restraint on the level of the default MIF. In this particular case, because LINK was set up on the basis of a system of a central MIF, the Director accepts the arguments advanced by LINK and, for the reasons set out above has concluded that the methodology employed is sufficient for the MIF to be capable of fulfilling the indispensability criterion.

THE POSSIBILITY OF ELIMINATING COMPETITION IN RESPECT OF A SUBSTANTIAL PART OF THE PRODUCTS IN QUESTION

50 The majority of cardholders use the ATM facilities of the card-issuing bank. Shared transactions (i.e. transactions passing through the LINK switch) account for a much lower proportion of ATM usage than us-on-us transactions. Each of the four largest banks owns an extensive network of ATMs, as do many of the other LINK Members. These proprietary networks provide an alternative to the LINK network and impose a competitive restraint on LINK's ability to set prices at uncompetitive levels. They also limit the ability of Members to discriminate against any particular class of Member or any potential entrant to the market. The agreements which have been notified by LINK do not contain any restrictions that prohibit membership of other ATM networks or that would prevent any LINK Members from making arrangements to share their own proprietary network of ATMs outside of the LINK arrangements.

IV DECISION

51 The Director has decided that the methodology which is used by LINK and the frequency of review mean that the agreement on the level of the MIF is capable of meeting the exemption criteria set out in section 9 of the Act.

52 On the basis of the facts and for the reasons set out above, the Director has decided pursuant to section 14 of the Act to grant an individual exemption from the Chapter I prohibition to the *Member Pricing Schedule*, and the *LINK Operating Rules* as amended by the *Resolution passed by the LINK Board on 29*

February 2000 in accordance with section 4 of the Act. The exemption will last for a period of five years from the date of this decision.

- 53 The Director has also decided that none of the other agreements that were notified by LINK contain restrictions that prevent, restrict or distort competition to an appreciable extent for the reasons set out in this decision.
- 54 On the basis of the facts and for the reasons set out above, the Director has decided pursuant to section 14 that none of the other agreements that were notified by LINK infringe the prohibition imposed by section 2 of the Act.