

## IMPRIVATA, INC./ ISOSEC LIMITED

### SUMMARY OF PHASE 1 DECISION

#### SUMMARY

1. Imprivata, Inc. (**Imprivata**) has agreed to acquire Isosec Limited (**Isosec**) (the **Merger**). Imprivata and Isosec are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Imprivata and Isosec is an enterprise and that these enterprises will cease to be distinct as a result of the Merger. Further, the CMA believes that Isosec is a 'relevant enterprise' under section 23A of the Enterprise Act 2002 (**Act**) and that its UK revenues in its most recent financial year exceed the GBP 1 million threshold set out in section 23(1)(b)(ii) of the Act. The CMA thus believes that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

#### ***Identity and access management solutions for access to the NHS Spine system***

3. Identity and access management (**IAM**) solutions facilitate the secure management of digital identities to give authorised personnel timely access to the correct information resources. IAM solutions use authenticators such as a physical smartcard (**PSC**), or a virtual smartcard (**VSC**), together with software on a local device (eg a PC) that handles requests between applications and the authenticator, to control users' access to resources.
4. The NHS, and other healthcare providers, use IAM solutions to help clinicians operate more efficiently: IAM solutions limit the need for clinicians to re-enter all their credentials each time they use a new workstation. In many healthcare settings, clinicians regularly need to use different workstations as they move between patients or wards, and as such IAM solutions can save considerable time over the course of a working day. Different IAM solutions are used in the NHS to access different parts of the NHS systems.
5. One important system within the NHS is the NHS Spine (**Spine**). Authorised users can access a variety of secure central NHS resources through the Spine. Spine access is granted via NHS-issued 'digital certificates', held on smartcards. NHS smartcards were initially issued only as PSCs, but COVID-19 has led to a surge in NHS demand for VSCs, largely due to a sudden switch to more staff working remotely.

6. Both Parties offer a range of IAM solutions that allow the staff of healthcare customers in England to access information resources more easily and/or quickly than would otherwise be the case. Currently, both Parties offer solutions that facilitate access to Spine-enabled applications. Imprivata offers an add-on to one of its other products that facilitates faster Spine access over the course of a shift for users with an NHS-issued PSC by maintaining a session after their first log in, so that they do not need to log in repeatedly when using different workstations. Isosec began offering a VSC solution that facilitates access to the Spine in 2017 and rapidly increased its customer base in 2020; this solution relies on a VSC to provide faster log in to the Spine at each workstation. Imprivata has plans to develop its business and offer additional solutions in future, including one for Spine access expected to compete more directly with an Isosec solution (namely, Imprivata's own VSC solution).

### ***CMA's approach to assessing the Merger***

7. The CMA's investigation focused primarily on whether the Merger would lead to a loss of competition in the supply of IAM solutions for access to the Spine in England, either today or in the future (ie horizontal unilateral effects).
8. The CMA notes that the Parties' offerings today are somewhat different as the Imprivata solution relies on the use of a PSC, while the Isosec solution relies on the use of a VSC. While PSC and VSC solutions differ somewhat, the CMA found that many customers consider both solution types when purchasing IAM systems and, therefore, these two types of solutions exert a competitive constraint on each other.

### ***Competitive assessment***

9. The only current suppliers of IAM solutions for access to Spine-enabled applications to healthcare customers in England are the Parties, NHS Digital (**NHS-D**), Entrust and, to a more limited extent, Microsoft.
10. While the Parties argued that they currently exert only a limited competitive constraint on each other, the CMA found that these submissions were inconsistent with the Parties' internal documents where Imprivata, in particular, repeatedly identified Isosec as an increasing competitive threat. The CMA also identified that documents relating to the Merger suggested that part of the rationale for the Merger was the removal of a competitive constraint.
11. Many of the Parties' NHS customers told the CMA that they had limited options available when purchasing IAM solutions to access the Spine. Some customers told the CMA that Isosec provided an important, or the only, alternative to

Imprivata. Some customers specifically raised concerns about, for example, increased prices for, and less innovation within, IAM solutions to access the Spine following the Merger.

12. With respect to competition from other suppliers, while NHS-D is the largest supplier of IAM solutions to access the Spine to NHS customers, there was mixed evidence of the constraint it exerts on the Parties. NHS-D provides its PSC-based solutions to NHS customers at no cost, and at least some customers indicated that Isosec's solution, in particular, provided better performance. Evidence from customers and from the Parties' own internal documents indicated that Entrust's VSC solution suffers from limitations that may reduce the constraint it exerts on the Parties. Finally, Microsoft's IAM solution has only been rolled out to a very limited extent and would not currently be suitable for most applications in the NHS.
13. In addition to considering competition in the supply of IAM solutions today, the CMA considered how competition was likely to develop in future. The CMA considered the Parties' internal documents setting out their plans for their businesses, and also spoke to customers and competitors about how they expect the market to develop. The CMA found that, given planned future developments in Imprivata's solutions for Spine access, the Parties were likely to compete even more closely in the future than they do today.
14. The Parties argued that they were likely to face additional constraints from new suppliers offering IAM solutions to the NHS in the next few years, and pointed in particular to plans from NHS-D to roll-out a new NHS authentication service relying on open standards for technology. Although NHS-D has begun the roll-out of parts of this new approach, there is uncertainty about when it will be fully rolled out. Furthermore, the CMA did not receive any compelling evidence to suggest that competitor entry or expansion would offset competition concerns arising from the Merger either as a result of these new standards, or otherwise.

### ***Decision***

15. The CMA found that the Parties exert a competitive constraint on each other today and are likely to exert an even stronger competitive constraint in future. The CMA also found that the Parties' customers, ie the NHS and other healthcare providers, have limited other alternatives available. As a result, the CMA found that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to the supply of IAM solutions for access to Spine-enabled applications to healthcare customers in England. A loss of competition in this segment could

lead to a worse deal for the NHS and other healthcare providers, in the form of higher prices, lower quality, or less innovation.

16. The CMA has the discretion to decide not to refer a transaction for an in-depth Phase 2 investigation by applying the *de minimis* exception.<sup>1</sup> In considering whether to apply the *de minimis* exception, the CMA considers factors such as the size of the affected markets and the potential harm resulting from the competition concerns identified by the CMA.
17. While the CMA considers that the total revenues currently generated from the supply of IAM solutions for access to Spine may be sufficiently small that the *de minimis* exception could be applied, the CMA decided that it would not be appropriate to apply the exception in this case. In reaching this decision, the CMA considered that revenues currently generated from the supply of IAM solutions do not accurately reflect the importance of the market: first, the majority of supply is free of charge supply by NHS-D such that revenues do not reflect the total market size; second, even if the CMA were to focus on revenues generated in this segment, projections show that these revenues (and thus the size of the market) are likely to increase substantially in the next few years. The CMA also took into account the current and future closeness of competition between the Parties, the limited alternatives available to the NHS and other healthcare customers; and evidence indicating that at least part of the rationale for the Merger may be anti-competitive.
18. The CMA is therefore considering whether to accept undertakings under section 73 of the Act. The Parties have until 7 May 2021 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

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<sup>1</sup> Section 33(2)(a) of the Act.