

**DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002**

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order issued by the Competition and Markets Authority ('CMA') on 21 December 2021.

Acquisition by NEC Software Solutions UK Limited of Capita Secure Solutions and Services ('the Transaction').

We refer to your emails of 9, 20, 23 and 24 December 2021 requesting that the CMA consents to derogations to the Initial Enforcement Order of 21 December 2021 (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, NEC Software Solutions UK Limited ('**NECSWS**') is required to hold separate the NECSWS business from the Capita Secure Solutions and Services ('**Capita SSS**') business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, NECSWS and Capita SSS may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 6(a), 6(j), 6(i) and 6(l) of the Initial Order

The CMA consents to grant a derogation from paragraphs 6(a), 6(j), 6(i) and 6(l) of the Initial Order for a member of NECSWS's legal team, namely [X], to be seconded to Capita SSS in order to provide in-house legal services during the course of the Initial Order (the '**Seconded Lawyer**').

The CMA also consents to grant a derogation from paragraph 6(a) of the Initial Order to permit the Seconded Lawyer to consult the following individual at NECSWS, namely [X] (the '**Designated Lawyer**'), where further expertise is required in order to assist Capita SSS (the '**Permitted Purpose**'). Advice sought in this context will be on a "no-names" basis, and any information shared with the Designated Lawyer

is to be strictly limited to what is necessary for the Permitted Purpose and will not include any commercially sensitive information (the '**Legal Information**').

This derogation is granted to ensure that the Capita SSS business is maintained as a going concern as the provision of in-house legal services is essential to maintain its continued viability.

This derogation is granted on the condition that:

- a) the Seconded Lawyer and Designated Lawyer shall enter into confidentiality undertakings in a form agreed with the CMA;
- b) no changes to the Seconded Lawyer and the Designated Lawyer set out above are permitted without the prior written consent of the CMA (including via email);
- c) disclosure of information to the Seconded Lawyer will be limited to that which is strictly necessary for the purpose of acting as in-house legal counsel for Capita SSS during the course of the CMA's merger investigation.
- d) any information shared with the Designated Lawyer shall be limited to the Legal Information, and no changes to the definition of Legal Information set out above are permitted without the prior written consent of the CMA (including via email);
- e) the Seconded Lawyer's access to NECSWS's IT systems will be restricted during the course of the Initial Order, with the exceptions below:
 - i. the Seconded Lawyer will be permitted to retain access to generic legal resources (namely such resources paid for by NECSWS which are provided by external providers); and
 - ii. the Seconded Lawyer will use a new Capita SSS email address during the course of the Initial Order, which shall be used solely for the purposes of assisting Capita SSS.
 - iii. The Seconded Lawyer will work at one of the Capita SSS premises if not working from home.
- f) NECSWS will implement strict access controls with the Designated Lawyer to prevent unauthorised individuals from accessing any information of the Capita SSS business obtained pursuant to this derogation;
- g) the Seconded Lawyer and Designated Lawyer are prevented from sharing the Legal Information with any individual at NECSWS other than each other;

- h) the Legal Information may only be used for the Permitted Purpose;
- i) the provision of the in-house legal services will have no influence upon the commercial direction of the Capita SSS business during the term of the Initial Order;
- j) should the CMA prohibit the Transaction or require NECSWS to divest all, or part of, the Capita SSS business, the Seconded Lawyer and NECSWS will ensure that any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the Capita SSS business for the Permitted Purpose will be returned to the Capita SSS business and any copies destroyed, except to the extent that record retention is required by law or regulation;
- k) this derogation will not result in any integration between the Capita SSS business and the NECSWS business; and
- l) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

2. Paragraphs 6(a), 6(g) and 6(l) of the Initial Order

The CMA consents to grant a derogation from paragraphs 6(a) and 6(g) of the Initial Order for NECSWS to provide the following categories of insurance coverage to Capita SSS under group insurance policies provided by NECSWS and its parent company NEC Corporation (**'NECJ'**):

- a) professional indemnity insurance;
- b) cyber insurance; and
- c) director and officer insurance (together, the **'Insurance'**).

This derogation is granted to ensure that the Capita SSS business is maintained as a going concern as group insurance is essential to maintain its continued viability.

The CMA also consents to grant a derogation from paragraph 6(l) of the Initial Order to permit the following individuals at NECSWS and NECJ (the **'Named Individuals I'**) to receive limited information from Capita SSS, which is strictly necessary to arrange the Insurance (the **'Permitted Purpose'**). Such information includes any

necessary information required by insurance managers, brokers and insurers when seeking and obtaining the Insurance (the '**Insurance Information**').

- a) [X];
- b) [X];
- c) [X];
- d) [X]; and
- e) [X].

This derogation is granted on the basis that:

- a) The Named Individuals I listed above do not have any responsibility for the commercial or strategic operations of NECSW and NECJ and shall not use any information provided by Capita SSS in any way to intervene in the management or operation of Capita SSS.
- b) each of the Named Individuals I shall enter into a confidentiality undertaking in a form agreed with the CMA;
- c) no changes to the list of Named Individuals I set out above are permitted without the prior written consent of the CMA (including via email);
- d) the information to be shared shall be limited to the Insurance Information, and no changes to the definition of Insurance Information set out above are permitted without the prior written consent of the CMA (including via email);
- e) NECSWS will implement strict access controls with the Named Individuals I to prevent unauthorised individuals from accessing any information of the Capita SSS business obtained pursuant to this derogation;
- f) the Named Individuals I are prevented from sharing the Insurance Information with any individual at NECSWS who is not one of the Named Individuals I. Notwithstanding, the Named Individuals I are permitted to share the Insurance Information with NECSWS's insurance managers, brokers, and insurers (to the extent strictly necessary for the Permitted Purpose);
- g) the Named Individuals I are limited to those that strictly need to have access to the Insurance Information for the Permitted Purpose;
- h) the Insurance Information may only be used for the Permitted Purpose;

- i) NECSWS will ensure that the third party insurance managers, brokers, and insurers treat the Insurance Information as strictly confidential;
- j) the provision of the Insurance will have no influence upon the commercial direction of the Capita SSS business during the term of the Initial Order;
- k) should the CMA prohibit the Transaction or require NECSWS to divest all, or part of, the Capita SSS business, NECSWS will ensure that any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the Capita SSS business for the Permitted Purpose will be returned to the Capita SSS business and any copies destroyed, except to the extent that record retention is required by law or regulation;
- l) this derogation will not result in any integration between the Capita SSS business and the NECSWS business; and
- m) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction. NECSWS will ensure that the inclusion of Capita SSS on the Insurance policies can be terminated in the event that the CMA requires this as part of any remedial action.

3. Paragraphs 5(a), 6(a), 6(g) and 6(l) of the Initial Order

The CMA consents to grant a derogation from paragraphs 5(a), 6(a) and 6(g) of the Initial Order to permit NECSWS to provide Capita SSS with parent company guarantees ('**PCGs**') where strictly necessary, whereby such PCGs can be entered in to prior to completion, to only take effect at completion, as well as provide PCGs post-completion.

The CMA also consents to grant a derogation from paragraph 6(l) of the Initial Order to permit the following individuals (the '**Named Individuals II**') to receive limited information from Capita SSS, which is strictly necessary to put in place PCGs for Capita SSS (the '**Permitted Purpose**')

- a) [REDACTED];
- b) [REDACTED];
- c) [REDACTED]; and

d) [REDACTED].

The information permitted under this derogation includes any necessary information (save for commercially sensitive information) required to allow NECSWS to assess the details of the PCGs, such as the amount to be guaranteed under the PCG, and the terms of the PCG being entered into (the '**PCG Information**').

This derogation is granted to ensure that the Capita SSS business is maintained as a going concern as the receipt of parent company guarantees is essential to maintain its continued viability.

This derogation is granted on the basis that:

- a) each of the Named Individuals II shall enter into a confidentiality undertaking in a form agreed with the CMA;
- b) no changes to the list of Named Individuals II set out above are permitted without the prior written consent of the CMA (including via email);
- c) the information to be shared shall be limited to the PCG Information, and no changes to the definition of PCG Information set out above are permitted without the prior written consent of the CMA (including via email);
- d) NECSWS will implement strict access controls with the Named Individuals II to prevent unauthorised individuals from accessing any information of the Capita SSS business obtained pursuant to this derogation;
- e) the Named Individuals II are prevented from sharing the PCG Information with any individual at NECSWS who is not one of the Named Individuals II;
- f) the Named Individuals II are limited to those that strictly need to have access to the PCG Information for the Permitted Purpose;
- g) the PCG Information may only be used for the Permitted Purpose;
- h) the provision of the PCGs will have no influence upon the commercial direction of the Capita SSS business during the term of the Initial Order;
- i) should the CMA prohibit the Transaction or require NECSWS to divest all, or part of, the Capita SSS business, NECSWS will ensure that any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the Capita SSS business for the Permitted Purpose will be

returned to the Capita SSS business and any copies destroyed, except to the extent that record retention is required by law or regulation;

- j) this derogation will not result in any integration between the Capita SSS business and the NECSWS business; and
- k) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

4. Paragraphs 5(a), 6(a), 6(e) and 6(l) of the Initial Order

The CMA consents to grant a derogation from paragraphs 5(a), 6(a), and 6(e) of the Initial Order to permit NECSWS to enter into a working capital loan agreement with Capita SSS for the sum of approximately [~~£~~] (the "**Intra-Group Loan**"), which is necessary for Capita SSS to, amongst other things, pay debts owed to Capita Group ("**Capita**") arising out of the Transaction.

The CMA also consents to grant a derogation from paragraphs 5(a), 6(a), and 6(e) of the Initial Order to permit NECSWS to provide Capita SSS with a comfort letter, in order to confirm that NECSWS will make funding available to Capita SSS should it be necessary to maintain Capita SSS as a going concern (the "**Comfort Letter**").

Based on the above, the CMA understands that:

- a) In the absence of the Intra-Group Loan, Capita SSS would not be able to repay the sums due to Capita, and seeking external debt at this stage would be unduly burdensome for Capita SSS;
- b) The terms of the Intra-Group Loan are based on the standard terms used for NECSWS intra-group loans; and
- c) The granting of the Intra-Group Loan will allow NECSWS to maintain Capita SSS as a going concern, and will ensure that sufficient resources are available for the development of Capita SSS's business based on its pre-merger business plan, in accordance with paragraph 6(b) of the Initial Order.

This derogation is therefore granted to ensure that the Capita SSS business is maintained as a going concern by ensuring it has sufficient resources to maintain its continued viability.

The CMA also consents to grant a derogation from paragraph 6(l) of the Initial Order to permit the named individuals below (the '**Named Individuals III**') to receive limited financial information from Capita SSS (the '**Financial Information**'), which is strictly necessary to put in place the Intra-Group Loan (the '**Permitted Purpose**')

- a) [X]; and
- b) [X].

This derogation is granted on the basis that:

- a) the Named Individuals III listed above do not have any responsibility for the commercial or strategic operations of NECSW and NECJ and shall not use any information provided by Capita SSS in any way to intervene in the management or operation of Capita SSS.
- b) each of the Named Individuals III shall enter into a confidentiality undertaking in a form agreed with the CMA;
- c) no changes to the list of Named Individuals III set out above are permitted without the prior written consent of the CMA (including via email);
- d) the information to be shared shall be limited to the Financial Information, and no changes to the definition of Financial Information set out above are permitted without the prior written consent of the CMA (including via email);
- e) NECSWS will implement strict access controls with the Named Individuals III to prevent unauthorised individuals from accessing any information of the Capita SSS business obtained pursuant to this derogation;
- f) the Named Individuals III are prevented from sharing the Financial Information with any individual at NECSWS who is not one of the Named Individuals III;
- g) the Named Individuals III are limited to those that strictly need to have access to the Financial Information for the Permitted Purpose;
- h) the Financial Information may only be used for the Permitted Purpose;
- i) the provision of the Intra-Group Loan will have no influence upon the commercial direction of the Capita SSS business during the term of the Initial Order;
- j) should the CMA prohibit the Transaction or require NECSWS to divest all, or part of, the Capita SSS business, NECSWS will ensure that any records or

copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the Capita SSS business for the Permitted Purpose will be returned to the Capita SSS business and any copies destroyed, except to the extent that record retention is required by law or regulation;

- k) this derogation will not result in any integration between the Capita SSS business and the NECSWS business; and
- l) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

5. Paragraphs 5(b) and 6(e) of the Initial Order

NEC Corporation ('**NECJ**'), which is NECSWS's ultimate parent company outside the United Kingdom, signed an agreement dated 30 July 2021 with Anritsu Corporation (a Tokyo listed company) for the sale and purchase of NECJ's Japanese subsidiary, Takasago Limited (the '**Takasago Transaction**'). This transaction is expected to complete on [✂].

The CMA consents to grant a derogation from paragraphs 5(b) and 6(e) of the Initial Order to permit NECJ to take all necessary steps required in order to complete the Takasago Transaction.

This derogation is granted on the basis that:

- a) Takasago Limited has no activities in the UK;
- b) the Takasago Transaction is entirely unrelated to the Transaction in the UK, and there are no links at all between Takasago Limited and NECSWS;
- c) completion of the Takasago Transaction will have no influence upon the commercial direction of the NECSWS or Capita SSS businesses during the term of the Initial Order;
- d) completion of the Takasago Transaction will not impact the viability of the NECSWS, NECJ or Capita SSS during the term of the Initial Order;
- e) this derogation will not result in any integration between the Capita SSS business and the NECSWS business; and

- f) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

Lasse Burmester
Assistant Director Mergers
24 December 2021