

**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 made 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 email of 9 December 2021 and 4 January 2022 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(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 take all necessary steps to facilitate the provision of certain pension benefits, including certain death in service benefits ('**DIS**'), for Capita SSS staff who are currently members of Capita plc's ('**Capita**') defined benefit pension scheme (the '**Employees**').

This derogation is granted to ensure that NECSWS and Capita SSS can satisfy obligations under the Employees' contracts of employment, as well as Schedule 12 of the Share Purchase Agreement entered into between NECSWS and Capita (the '**SPA**'). The CMA understands that Schedule 12 of the SPA provides that NECSWS

will use its best endeavours to procure that Capita SSS transfers the Employees to one of the following schemes (the '**Schemes**')

- a) [✂]
- b) [✂]
- c) [✂]

This derogation is granted to ensure that the Capita SSS business is maintained as a going concern as its work force 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 individuals below (the '**Named Individuals**') to receive any necessary information from Capita SSS, which is strictly required to put in place the necessary pension and insurance arrangements (the "**Information**") required by the SPA (the '**Permitted Purpose**')

- a) [✂]
- b) [✂]
- c) [✂]
- d) [✂]

The Named Individuals are also permitted to provide the Information to the following third parties in order to put in place the necessary pension and insurance arrangements pursuant to the SPA (the '**Authorised Parties**')

- a) the pensions scheme providers identified in Schedule 12 of the SPA;
- b) any insurance managers, brokers and insurers as may be necessary should NECSWS need to insure any of the benefits in question;
- c) NECSWS's professional advisers in this regard, which are [✂]; and
- d) individuals from its parent company, NEC Corporation, who are able to provide NECSWS with the authorisation to self-insure relevant Employees, who have certain DIS benefits not covered by the above mentioned schemes, and which cannot be covered by external insurers.

This derogation is granted on the basis that:

- a) each of the Named Individuals shall enter into a confidentiality undertaking in a form agreed with the CMA;
- b) the new Schemes and DIS will offer rights that are broadly comparable to the Employees' existing schemes and insurance;
- c) no changes to the list of Named Individuals 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 Information, and no changes to the definition of 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 to prevent unauthorised individuals from accessing any information of the Capita SSS business obtained pursuant to this derogation;
- f) the Named Individuals are prevented from sharing the Information with any individual at NECSWS who is not one of the Named Individuals;
- g) the Named Individuals are limited to those that strictly need to have access to the Information for the Permitted Purpose;
- h) the use to which the Information may be put is limited to the Permitted Purpose;
- i) NECSWS will ensure that the Authorised Parties treat the Information as strictly confidential;
- j) the provision of the pension and insurance arrangements 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 pension and insurance arrangements made under this derogation can be reversed in the event that the CMA requires this as part of any remedial action.

Lasse Burmester
Assistant Director, Mergers
6 January 2022