

**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 email of 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, Capita SSS, and NECJ may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 6(c) and 6(i) of the Initial Order

The CMA understands that the current company secretary and statutory directors of Capita (SSS) Limited are due to resign as soon as possible following completion of the Transaction. The statutory directors who are due to resign are as follows (the '**Resigning Directors**')

- Christopher Ashburn;
- Capita Corporate Director Limited.

The company secretary who is due to resign is Capita Group Secretary Limited (the '**Resigning Company Secretary**'). The CMA understands that there is currently no intention to replace the Resigning Company Secretary.

The CMA further understands that Capita (SSS) Limited intends to appoint the following individuals to replace the Resigning Directors as soon as possible following completion (the '**Proposed Directors**')

- Paul Eggleton; and
- Martin Fuller.

NECSWS submits that the Proposed Directors are senior executives of Capita SSS with the requisite knowledge and experience to carry out the role of statutory director of Capita SSS. Furthermore, the proposed changes do not involve any transfer of NECSWS staff to Capita SSS.

In light of the above, the CMA consents to grant a derogation from paragraphs 6(c) and 6(i) of the Initial Order to permit the abovementioned changes.

This derogation is provided on the basis that:

- a) the Proposed Directors have the relevant expertise and experience necessary to perform the role of statutory director;
- b) this derogation does not impact the viability of the Capita SSS business during the term of the Initial Order;
- c) this derogation will not impact the ability of Capita SSS to compete independently of NECSWS;
- d) this derogation will not result in any integration between the Capita SSS business and the NECSWS business; and
- e) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

2. 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 3 September 2021 with LG Energy

Solution, Ltd. (a Korean company) for the sale and purchase of NECJ's US subsidiary, NEC Energy Solutions, Inc. (**'NECES'**). This transaction (the **'NECES Transaction'**) is expected to complete in [✂].

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 NECES Transaction.

This derogation is granted on the basis that:

- a) NECES has no activities in the UK that overlap with the NECSWS and Capita SSS businesses;
- b) the NECES Transaction is entirely unrelated to the Transaction in the UK, and there are no links at all between NECES and NECSWS;
- c) completion of the NECES 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 NECES 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
4 January 2022