

**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 December 2021, 21 December 2021, 4 January 2022, 7 January 2022, 11 January 2022, and 12 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, NEC Corporation ('**NECJ**') and Capita SSS may carry out the following actions, in respect of the specific paragraphs:

**1. Paragraph 6(a) of the Initial Order**

The CMA understands that following completion of the Transaction, NECSWS is required to change the registered and trading names of the two entities collectively referred to as Capita SSS, namely (i) Capita (SSS) Limited (a UK registered company); and (ii) Capita Software (US) LLC ('**CSUS**') (a US registered company).

NECSWS proposes to change the registered names of Capita SSS as follows:

- i) Capita (SSS) Limited to "SSS Public Safety Limited"; and

- ii) Capita Software (US) LLC to "Secure Solutions USA LLC".

Furthermore, NECSWS proposes to change Capita SSS's trading name to "SSS Public Safety". References in this letter to 'Capita SSS' shall include Capita (SSS) Limited and Capita Software (US) LLC, irrespective of any changes which are made to the registered or trading names of those entities.

The CMA further understands that, following completion of the Transaction on 3 January 2022, Capita SSS must cease to use or display the "Capita" name within one month of completion pursuant to the Share Purchase Agreement ('SPA') entered into by NECSWS and Capita plc ('Capita') on 30 September 2021. Therefore, NECSWS proposes that Capita SSS uses the following domain name during the course of the Initial Order: "*sss-publicsafety.com*".

NECSWS submits that the proposed name changes and domain name do not suggest any link or association with NECSWS and are sufficiently similar to the existing name of Capital SSS so as to not confuse existing customers or suppliers of Capita SSS.

In light of the above, the CMA consents to grant a derogation from paragraph 6(a) of the Initial Order to permit the abovementioned changes on the basis that:

- a) this derogation will not result in any integration between the NECSWS business and the Capita SSS business;
- b) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction; and
- c) this derogation will not impact the viability of the NECSWS or Capita SSS businesses.

## **2. Paragraph 6(l) of the Initial Order**

The CMA understands that NECJ, the ultimate parent company of NECSWS, is listed on the Tokyo Stock Exchange. Due to this, NECJ and its group companies, including NECSWS and Capita SSS, are required to submit certain financial information under the listing regulations issued by the Tokyo Stock Exchange (the '**Listing Rules**').

The CMA consents to grant a derogation from paragraph 6(l) of the Initial Order to permit the individuals at NECSWS and NECJ listed in Annex A (the '**Named Individuals I**') to receive the categories of financial information from Capita SSS listed in Annex B (the '**Financial Information**'). The Financial Information is strictly limited to what is necessary to ensure compliance with the Listing Rules as well as

NECJ's group accounting obligations (the '**Financial Information Permitted Purpose**'). Capita SSS will provide the Financial Information by populating a template that has been approved by the CMA.

This derogation is granted on the basis that:

- a) each of the Named Individuals I shall enter into a confidentiality undertaking in a form agreed with the CMA;
- b) 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);
- c) 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);
- d) 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;
- e) the Named Individuals I are prevented from sharing the Financial Information with any individual at NECSWS or NECJ who is not one of the Named Individuals I;
- f) the Named Individuals I shall only use the Financial Information for the Financial Information Permitted Purpose. For the avoidance of doubt, none of the Named Individuals I shall use the Financial Information in any way to intervene in the management or operation of the NECSWS or Capita SSS businesses;
- g) the Financial Information provided by Capita SSS will not include information on the commercial strategy of the Capita SSS business, and will not contain any commentary on the data provided unless strictly necessary having regard to the Financial Information Permitted Purpose, in which case that commentary will be high level and will not contain information that may be commercially sensitive to Capita SSS;
- h) NECSWS shall maintain a record of the Financial Information shared by Capita SSS with the Named Individuals I, which shall be open to inspection by the CMA at request;
- 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 under this derogation 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.

### **3. Paragraphs 6(a) and 6(l) of the Initial Order**

The CMA consents to grant a derogation from paragraph 6(a) of the Initial Order for the individuals listed below to be informed by Capita SSS of any of the following events (**'Violations and Investigations'**):

- a) violations or suspected violations of any laws or regulations by Capita SSS, or by its directors, officers, employees and/or agents where relevant to Capita SSS's business;
- b) investigations by any authorities for violation by Capita SSS of any laws or regulations in any jurisdiction to which it is subject; and
- c) any critical incidents or accidents which occur at Capita SSS, limited to:
  - (i) Material information security breaches or business continuity incidents;
  - (ii) Material personal data or privacy breaches;
  - (iii) Any claims or allegations of discrimination or harassment whilst at work; and
  - (iv) Any incidents or accidents that may have a material impact on Capita SSS not being able to operate in line with its pre-merger business plans.

This derogation is granted to ensure that NECSWS has appropriate oversight of regulatory and legal compliance at Capita SSS during the period of the Initial Order.

The CMA also consents to grant a derogation from paragraph 6(l) of the Initial Order to permit the individuals at NECSWS and NECJ listed below (the **'Named Individuals II'**) to receive necessary information regarding any and all Violations and Investigations from Capita SSS (the **'Violations and Investigations Information'**):

- a) [✂]

b) [✂]

c) [✂]

d) [✂]

e) [✂]

This derogation is granted on the basis that:

- a) the Named Individuals II listed above do not have any responsibility for the commercial or strategic operations of NECSWS 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 II shall enter into a confidentiality undertaking in a form agreed with the CMA;
- c) 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);
- d) the information to be shared shall be limited to the Violations and Investigations Information, and no changes to the definition of Violations and Investigations 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 II to prevent unauthorised individuals from accessing any information of the Capita SSS business obtained pursuant to this derogation;
- f) the Named Individuals II are prevented from sharing the Violations and Investigations Information with any individual at NECSWS or NECJ who is not one of the Named Individuals II;
- g) the Named Individuals II are limited to those that strictly need to have access to the Violations and Investigations Information for the purpose of this derogation;
- h) this derogation will have no influence upon the commercial direction of the Capita SSS business during the term of the Initial Order;
- i) NECSWS shall maintain a record of the Violations and Investigations Information shared by Capita SSS with the Named Individuals II, which shall be open to inspection by the CMA at its request;

- 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 under this derogation 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.

#### 4. Paragraphs 6(a) and 6(l) of the Initial Order

The CMA understands that according to the SPA, following completion of the Transaction NECSWS must prepare and deliver to Capita final drafts of a Completion Statement and Payment Statement (as defined in the SPA) (the '**Statements**').

The CMA consents to grant a derogation from paragraphs 6(a) and 6(l) of the Initial Order to permit the individuals at NECSWS below (the '**Named Individuals III**') to receive from Capita SSS the necessary information (the '**Completion and Payment Statements Information**') required to complete and negotiate the Statements (the '**Completion and Payment Statements Permitted Purpose**')

- a) [✂]
- b) [✂]
- c) [✂]
- d) [✂]
- e) [✂]
- f) [✂]
- g) [✂]

The Named Individuals III are also permitted to provide the Completion and Payment Statements Information to the following third parties (the '**Authorised Parties**')

- a) NECSWS's professional advisers in this regard, which are [✂]; and
- b) any expert appointed under the expert determination provisions of the SPA to resolve potential disagreements between NECSWS and Capita plc arising from adjustments (if any) to the draft Statements.

This derogation is granted on the basis that:

- a) each of the Named Individuals III shall enter into a confidentiality undertaking in a form agreed with the CMA;
- b) 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);
- c) the information to be shared shall be limited to the Completion and Payment Statements Information, and no changes to the definition of Completion and Payment Statements 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 III to prevent unauthorised individuals from accessing any information of the Capita SSS business obtained pursuant to this derogation;
- e) the Named Individuals III are prevented from sharing the Completion and Payment Statements Information with any individual at NECSWS who is not one of the Named Individuals III;
- f) the Named Individuals III are limited to those that strictly need to have access to the Completion and Payment Statements Information for the Completion and Payment Statements Permitted Purpose;
- g) the use to which the Completion and Payment Statements Information may be put is limited to the Completion and Payment Statements Permitted Purpose;
- h) NECSWS will record a summary of any and all Completion and Payment Statements Information shared by Capita SSS with the Named Individuals III, which shall be open to inspection by the CMA upon its request;
- i) NECSWS will ensure that the Authorised Parties treat the Completion and Payment Statements Information as strictly confidential;
- j) granting this derogation 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 Completion and Payment Statements 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.

## **5. Paragraphs 6(a) and 6(l) of the Initial Order**

In order to ensure that NECSWS is able to exercise some oversight over the commercial activities of Capita SSS to ensure that it is being maintained as a going concern, NECSWS has sought the CMA's consent to enter into a delegation of authority arrangement with Capita SSS in the form set out in Annex C (the '**Delegation of Authority**').

Under the Delegation of Authority, Capita SSS would be required to seek approval from NECSWS for any proposed course of action relating to the Capita SSS business which exceeds their Delegation of Authority. NECSWS expects that the thresholds for such approvals will be triggered only infrequently, if at all and that the Delegation of Authority will not restrict the ability of the Capita SSS business to operate independently from the NECSWS business during the period in which the Initial Order is in force.

The individuals at NECSWS that Capita SSS would have to seek approval from are:

1. [✂]; and

2. [✂]

(together the '**Named Individuals IV**')

The CMA consents to a derogation from paragraphs 6(a) and 6(l) of the Initial Order, to permit Capita SSS to seek approval from the relevant Named Individuals IV for any proposed action which exceeds their Delegation of Authority, subject to the implementation of the following safeguards:



- a) each of the Named Individuals IV will enter into a confidentiality undertaking in a form agreed with the CMA;
- b) without prejudice to the Named Individuals IV being permitted to decline or to approve any of the limited matters described in Annex C pursuant to this derogation, the Named Individuals IV shall not use any information provided by the Capita SSS business in any way to intervene in the management or operation of the Capita SSS business or the NECSWS business;
- c) no additions or changes to the Named Individuals IV shall be made under this derogation without the prior written consent (including via email) of the CMA;
- d) NECSWS will implement strict access controls with the Named Individuals IV to prevent anyone else within the NECSWS business accessing information relating to the Capita SSS business obtained pursuant to this derogation. Specifically, the Named Individuals IV will store the information obtained pursuant to this derogation in a specific electronic folder which is inaccessible by those not entitled to have access, and ensure that any physical copies are securely stored;
- e) the Named Individuals IV shall not consult with any other individual within the NECSWS business in taking decisions on the specific matters where Capita SSS's Delegation of Authority has been exceeded;
- f) the CMA can amend the Delegation of Authority at any time in writing (including via email) if it subsequently reaches a view that any one of the actions requiring approval from NECSWS under the Delegation of Authority, as listed in Annex C, is impacting upon the independent operation of the Capita SSS business;
- g) the CMA will be notified at least 24 hours in advance of Capita SSS seeking approval from the Named Individuals IV in each instance where a proposed action exceeds the Delegation of Authority;
- h) the information shared by Capita SSS with the Named Individuals IV is no more than is strictly necessary to allow them to reach a view on the specific matter at hand and shall not include any commercially sensitive information, without the prior written consent (including via email) of the CMA;
- i) NECSWS will record a summary of the information shared by Capita SSS with the Named Individuals IV under this derogation, which shall be open to inspection by the CMA upon its request;
- j) the CMA will be notified of any proposed veto and the reasons for this at least 24 hours in advance of any such veto being exercised;

- k) should the Transaction be prohibited, or remedial action required, 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 by NECSWS from Capita SSS for the purposes of this derogation will be returned to Capita SSS and any copies destroyed, except to the extent that record retention is required by law or regulation; and
- l) this derogation will not result in any integration between the Capita SSS business and the NECSWS business; and this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

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

The CMA understands that CSUS is a Delaware limited liability company and its constitutional operating agreement notes that the business and affairs of CSUS shall be managed by its sole member, which prior to completion of the Transaction was Capita (USA) Holdings inc. ('**Capita USA**'). This means that decisions are required to be taken on behalf of CSUS directly by its sole member. The CMA understands that only officers of Capita USA, and no specific individuals at CSUS, were authorised to manage and sign agreements on CSUS's behalf prior to completion of the Transaction.

Therefore, following completion, the CMA understands that CSUS has no authorised signatories who can enter into agreements on its behalf due to NECSWS, as its new sole member, being currently unable to manage CSUS as a result of the Initial Order.

In light of the above, CMA consents to grant a derogation from paragraphs 6(c) and 6(i) of the Initial Order for NECSWS to appoint the following individuals as officers of CSUS with the authority to sign agreements on its behalf:

- [✂]
- [✂]

(together, the '**Named Individuals V**').

The CMA also consents to grant a derogation from paragraphs 6(c) and 6(i) of the Initial Order for the Named Individuals V to otherwise manage CSUS's day to day business activities during the course of the Initial Order, including undertaking responsibility for signing CSUS's compliance statements, as well as signing any other relevant documentation that is necessary and required for the Transaction and CSUS's day to day business activities.

This derogation is granted to ensure that CSUS continues to operate as a going concern during the term of the Initial Order, as a result of NECSWS being unable to manage the business and affairs of CSUS whilst the Initial Order is in force.

This derogation is provided on the basis that:

- a) the Named Individuals V have the relevant expertise and experience necessary to perform their roles;
- 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.

Lasse Burmester  
Assistant Director, Mergers  
14 January 2022





[✂]	Tokyo Stock Exchange listing requirement
[✂]	Tokyo Stock Exchange listing requirement
[✂]	Tokyo Stock Exchange listing requirement

**ANNEX C – DELEGATION OF AUTHORITY**

The CMA consents to Capita SSS seeking approval from NECSWs for any proposed course of action relating to the Capita SSS business, which exceeds the delegation of authority limits set out below:

<b>Ref</b>	<b>Scope of Delegation of Authority</b>
A.	[✂]
B.	[✂]
C.	[✂]
D.	[✂]
E.	[✂]
F.	[✂]
G.	[✂]
H.	[✂]