

**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 21 December 2021, 23 December 2021, 11 January 2022 and 26 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 Corporation ('**NECJ**'), Garden Private Holdings Limited ('**GPHL**') and NEC Software Solutions UK Limited ('**NECSWS**') and NECJ's subsidiaries ('**the NEC business**') are required to hold separate the NEC business from Capita (SSS) Limited ('**CSSS**'), Capita Software (US) LCC ('**CSUS**') and their subsidiaries ('**the 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, NECJ may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 5(b), 6(c), 6(d), 6(e), 6(i), 6(k), and 9 of the Initial Order

In this letter:

- '**commencement date**' means 3 January 2022;
- '**Excluded NEC Businesses**' refers to all direct or indirect subsidiaries of NECJ which are not Included NEC Businesses;
- '**Included NEC Businesses**' refers to GPHL; NECSWS; NEC Laboratories Europe GmbH; NEC Australia Pty Ltd; NEC New Zealand Limited; NEC

France S.A.S; NEC Scandinavia AB; NEC Saudi Arabia Ltd; NEC Eastern Europe Kft; NEC XON Holdings Proprietary Limited; NEC Europe Ltd; and NEC Telecommunication and Information Technology, Ltd, Şti, and their subsidiaries, as well as CSSS, CSUS and their subsidiaries;

- **'NEC France S.A.S'** means the NEC group subsidiary (company number N°348 522 236 00135) with the following registered address: 9, rue des Hautes Patures 92000, Nanterre Cedex, France;
- **'NEC Laboratories Europe GmbH'** means the NEC group subsidiary (company number HRB 728558 (W)) with the following registered address: Kurfursten-Anlage 36, 69115 Heidelberg, Germany;
- **'NEC Australia Pty Ltd'** means the NEC group subsidiary (company number ABN 86 001 217 527, ACN 001 217 527) with the following registered address: Level 9 720 Bourke Street Docklands VIC 3008 Australia;
- **'NEC Eastern Europe Kft'** means the NEC group subsidiary (company number Cg. 01-09-705810) with the following registered address: H-1142 Budapest, Ungvar utca 64-66, Hungary;
- **'NEC New Zealand Limited'** means the NEC group subsidiary (company number 948339) with the following registered address: Level 1, Pencarrow House, 1 Willeston Street, Wellington 6011, New Zealand;
- **'NEC Saudi Arabia Ltd'** means the NEC group subsidiary (company number 4030026893) with the following registered address: P.O. Box 15534, Riyadh 11454, Saudi Arabia;
- **'NEC Scandinavia AB'** means the NEC group subsidiary (company number 556335-4728) with the following registered address: Kronborgsgränd 1, SE-164 46 KISTA, Sweden;
- **'NEC XON Holdings Proprietary Limited'** means the NEC group subsidiary (company number 2001/018807/07) with the following registered address: Old Mint Park, Louwlandia, Gauteng, South Africa; and
- **'NEC Telecommunication and Information Technology, Ltd, Şti'** means the NEC group subsidiary (company number 0630-0402-3860-0013) with the following registered address: Dikilitas Emirhan Cad. No:113 Barbaros Plaza Is Merkezi, C Blok Kat:10 Besiktas 34349 Istanbul / Turkey.

- **NEC Europe Ltd** means the NEC group subsidiary (company number 02832014) with the following registered address: Athene Odyssey Business Park, West End Road, South Ruislip, Middlesex, HA4 6QE.

NECJ has sought CMA consent to exclude the Excluded NEC Businesses from paragraphs 5(b), 6(c), 6(d), 6(e), 6(i), 6(k), and 9 of the Initial Order, and to exclude NECJ from paragraphs 5(b), 6(c), 6(e), 6(i), and 6(k) of the Initial Order, except where those obligations relate directly or indirectly (as the case may be) to the Included NEC Businesses.

NECJ submits that:

- a) the exclusion of the Excluded NEC Businesses will not threaten the viability of the Included NEC businesses;
- b) staff within Excluded NEC Businesses are not shared with the Included NEC Businesses or vice versa;
- c) there are no intangible assets (save for NEC branding) or tangible assets that are shared between (i) the Excluded NEC Businesses; and (ii) the Included NEC Businesses;
- d) none of the Excluded NEC Businesses overlap with the Included NEC Businesses' or the Capita SSS business' activities in the UK or globally as regards customer and/or supplier relationships;
- e) the Excluded NEC Businesses do not provide products or services which compete with the Included NEC Businesses or the Capita SSS business, nor do they have plans to do so;
- f) the Included NEC Businesses do not share back office support with any Excluded NEC Businesses or vice versa;
- g) Excluded NEC Businesses do not share IT systems with the Included NEC Businesses or vice versa that are specific or relevant to the Transaction;
- h) there are no other relevant and material links between the Excluded NEC Businesses and the Included NEC Businesses; and
- i) applying the Initial Order to the Excluded NEC Businesses would create an unnecessary administrative burden and would be inappropriate in the context where there is no actual or potential horizontal or vertical overlap between (i)

the Excluded NEC Businesses on the one hand; and (ii) the Included NEC Businesses or the Capita SSS business on the other.

On the basis of the above representations, the CMA consents to exclude the Excluded NEC Businesses from paragraphs 5(b), 6(c), 6(d), 6(e), 6(i), 6(k), and 9 of the Initial Order. The CMA also consents to exclude NECJ from paragraphs 5(b), 6(c), 6(e), 6(i), and 6(k) of the Initial Order, except where those obligations relate directly or indirectly (as the case may be) to the Included NEC Businesses.

This derogation is granted on the basis that:

- a) employees of the NEC business will not contact employees at the Capita SSS business during the period the Initial Order is in force, including by taking reasonable steps to restrict individuals (excluding any individuals that may be permitted to email the Capita SSS business for the purpose of a separate derogation to the Initial Order that has been accepted by the CMA) at the NEC business from communicating with the Capita SSS business in the event that any such individuals were to try to do so;
- b) this derogation will not result in any integration between the Capita SSS business and the NEC business;
- c) this derogation will not cause disruption to the NEC business nor impact its ongoing operation or viability on a standalone basis;
- d) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction;
- e) the Excluded NEC Businesses and NECJ will remain subject to the remaining paragraphs of the Initial Order not subject to this derogation; and
- f) the CMA may at any time amend the definition of Included NEC Businesses and Excluded NEC Businesses by written notice to the NEC Business (including via email).

Lasse Burmester
Assistant Director, Mergers
10 February 2022