

**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 emails of 2 February and 9 February 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 its subsidiaries ('**the NEC business**') are required to hold separate the NEC business from the Capita (SSS) Limited ('**CSSS**'), Capita Software (US) LCC ('**CSUS**') and its 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, NEC New Zealand Limited ('**NEC NZ**'), NECSWS and CSSS (as further specified below) may carry out the following actions, in respect of the specific paragraphs:

1. Paragraph 6(I) of the Initial Order

NECJ and its subsidiaries, including NECSWS and Capita SSS business, are required to comply with various legal, regulatory and accounting obligations, including listing rules relevant to the Tokyo Stock Exchange and the International Financial Reporting Standards ('**IFRS**') (collectively the '**Obligations**'). The CMA understands that:

- a) the Obligations require NECJ and NECSWS to obtain a purchase price accounting report from a professional accountancy firm (the '**PPA Report**');

- b) NECSWS intends to instruct [REDACTED] to prepare the said report, and that the purpose of the PPA Report is to identify and value intangible assets acquired as part of NECSWS's purchase of Capita SSS business, and to assign part of the purchase price to those assets; and
- c) That [REDACTED] may require certain confidential information from Capita SSS (the '**PPA Information**'), where strictly necessary to prepare the PPA Report in compliance with the Obligations (the '**Permitted Purpose**'), and that the PPA Information will need to be conveyed to NECJ and NECSWS once the PPA Report is finalised.

To this end, the CMA consents to grant a derogation from paragraph 6(l) of the Initial Order to permit the individuals at NECSWS and NECJ below (the '**Named Individuals**') to receive the PPA Information from Capita SSS:

- a) [REDACTED];
- b) [REDACTED];
- c) [REDACTED];
- d) [REDACTED];
- e) [REDACTED];
- f) [REDACTED];
- g) [REDACTED];
- h) [REDACTED];
- i) [REDACTED];
- j) [REDACTED]; and
- k) [REDACTED].

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) no changes to the list of Named Individuals 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 PPA Information, and no changes to the definition of PPA Information set out above are permitted without the prior written consent of the CMA (including via email);
- d) the NEC business 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;
- e) the Named Individuals are prevented from sharing the PPA Information with any individual at the NEC business who is not one of the Named Individuals;
- f) the Named Individuals are limited to those that strictly need to have access to the PPA Information for the Permitted Purpose;
- g) the PPA Information may only be used for the Permitted Purpose;
- h) the Named Individuals do not, save as disclosed, have commercial strategy or commercial decision-making roles at the NEC business;
- i) granting this derogation 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 the NEC business to divest all, or part of, the Capita SSS business, the NEC business 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 NEC business; and
- l) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

2. Paragraph 6(e) of the Initial Order

The CMA understands that Medical Imaging UK Limited ('MIUL') is a wholly owned subsidiary of NECSWS, which provides diabetic eye screening services in the UK.

The CMA further understands that MIUL currently owns certain solar panels and associated equipment (the 'Assets') located on a site previously occupied by MIUL (the 'Site').

Having vacated the Site, MIUL no longer has need for the Assets. NECSWS therefore plans to transfer the Assets to the owner of the Site, namely: [REDACTED] (the 'MIUL Transaction').

The CMA consents to grant a derogation from paragraph 6(e) of the Initial Order to permit the abovementioned change on the basis that:

- a) MIUL's business is entirely unrelated to any areas of potential overlap between the NEC business and Capita SSS business;
- b) the Assets and the MIUL Transaction are entirely unrelated to the Transaction;
- c) this derogation will not result in any integration between the NEC business and the Capita SSS business;
- d) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction;
- e) the MIUL Transaction will have no influence upon the commercial direction of NEC business or Capita SSS business; and
- f) this derogation will not impact the viability of the NEC business or Capita SSS business.

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

The CMA understands that the following individuals at NECSWS have informed NEC of their intention to resign from their roles for reasons that are entirely unrelated to the Transaction:

- [REDACTED]; and
- [REDACTED].

The CMA further understands that:

- NECSWS does not intend to seek a replacement for [X] on the basis that [X] can be effectively managed without the said replacement; and
- An existing member of staff at NECSWS (the '**Proposed Candidate**') is intended to take on the responsibilities currently performed by [X].

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 granted to ensure that NECSWS continues to operate as a going concern during the course of the Initial Order.

This derogation is provided on the basis that:

- a) the Proposed Candidate has the relevant expertise and experience necessary to perform their role;
- b) save for the changes described above, no other organisational or key staff changes will be made to the NEC business as a result of the resignation of the above individuals and the additional responsibilities of the Proposed Candidate
- c) the Proposed Candidate's ability to perform their existing responsibilities shall not be impaired as a result of their taking on [X] responsibilities;
- d) this derogation does not impact the viability of the NEC business during the term of the Initial Order;
- e) this derogation will not impact the ability of Capita SSS to compete independently of the NEC business;
- f) this derogation will not result in any integration between the Capita SSS business and the NEC business; and
- g) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

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

The CMA understands that [X] has informed NEC of his intention to resign from his positions as a statutory director and the Managing Director of NEC NZ, a wholly owned subsidiary of NECJ, for reasons that are entirely unrelated to the Transaction. He will cease these positions in April 2022.

The CMA further understands that NEC NZ intends to appoint [X] (the '**Proposed Director**') as the new Managing Director of NEC NZ from 1 April 2022, which will require [X] to also be appointed as a statutory director of NEC NZ on or prior to her appointment as the Managing Director.

NEC NZ submits that the Proposed Director is currently a senior member of staff at NEC NZ who has the requisite knowledge and experience to carry out the role of statutory director and Managing Director of NEC NZ.

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 granted to ensure that NEC NZ may continue to operate as a going concern during the course of the Initial Order.

This derogation is provided on the basis that:

- a) the Proposed Director has the relevant expertise and experience necessary to perform the role of statutory director and Managing Director at NEC NZ;
- b) this derogation does not impact the viability of the NEC business during the term of the Initial Order;
- c) this derogation will not impact the ability of the Capita SSS business to compete independently of the NEC business;
- d) this derogation will not lead to any changes to the NEC NZ management structure or any further changes to key staff at NEC NZ other than those described above;
- e) this derogation will not result in any integration between the Capita SSS business and the NEC 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
18 February 2022