

**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 15 February 2022, 4 March 2022 and 8 March 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 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, NEC Australia Pty Ltd ('**NEC AU**'), NEC Telecommunication and Information Technology Ltd. ('**NEC Turkey**'), NECSWS and Capita SSS (as further specified below) 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:

- a) NEC Australia Pty Ltd ('**NEC AU**'), and its subsidiaries NEC IT Solutions Australia Pty Ltd ('**NEC IT Solutions**') and NEC IT Services Australia Pty Ltd ('**NEC IT Services**'), are wholly owned by NECJ; and

- b) a NECJ employee, namely [X], had been seconded to NEC AU, NEC Solutions AU, and NEC Services AU to perform the following roles:
- i. President & CEO – ANZ, NEC AU;
 - ii. Chairman of the Board, NEC IT Solutions;
 - iii. Director of the Board, NEC IT Solutions;
 - iv. Chairman of the Board, NEC IT Services; and
 - v. Director of the Board, NEC IT Services (together referred to as the **‘Outgoing Roles’**).

The CMA understands that [X] is to be transferred back to NECJ, and so will cease to perform the above roles on 31 March 2022 for reasons entirely unrelated to the Transaction.

The CMA further understands that NEC AU intends to appoint [X] (the **‘Proposed Candidate I’**) as a replacement for the Outgoing Roles from 1 April 2022. Specifically, [X] shall assume the following titles:

- a) Executive Chair & CEO – ANZ, NEC AU;
- b) Chairperson of the Board & Executive Chair, NEC IT Solutions;
- c) Director of the Board, NEC IT Solutions;
- d) Chairperson of the Board & Executive Chair, NEC IT Services; and
- e) Director of the Board, NEC IT Services (together, the **‘Replacement Roles’**).

NECJ submits that the Proposed Candidate I has the requisite knowledge and experience to carry out the Replacement Roles.

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 AU, NEC IT Solutions, and NEC IT Services continue to operate as a going concern during the Initial Order.

This derogation is provided on the basis that:

- a) the Proposed Candidate I has the relevant expertise and experience necessary to perform the Replacement Roles;
- 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 AU, NEC Solutions AU, or NEC Services AU management structures or any further changes to key staff at these companies 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.

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

The CMA understands that:

- a) NEC Telecommunication and Information Technology Ltd. ('**NEC Turkey**') is a wholly owned subsidiary of NECJ; and
- b) a NECJ employee, namely [X], had been seconded to NEC Turkey to perform the following roles:
 - i. President and Chairman of the Manager's Board; and
 - ii. Director of the Board (together referred to as the '**NEC Turkey Roles**').

The CMA understands that [X] is to be transferred back to NECJ, and so will cease to perform the above roles on 31 March 2022 for reasons entirely unrelated to the Transaction.

The CMA further understands that NEC Turkey intends to appoint [X] (the '**Proposed Candidate II**') as a replacement for the NEC Turkey Roles from 1 April 2022.

NECJ submits that the Proposed Candidate II has the requisite knowledge and experience to carry out the NEC Turkey Roles.

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 Turkey continues to operate as a going concern during the Initial Order.

This derogation is provided on the basis that:

- a) the Proposed Candidate II has the relevant expertise and experience necessary to perform the NEC Turkey Roles;
- 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 Turkey management structure or any further changes to key staff 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.

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

The CMA understands that [X] currently serves as [X] for NECSWS's Safety business. The CMA further understands that following internal restructuring of the solution architect teams at NECSWS:

- an existing member of staff at NECSWS (the '**Proposed Candidate III**'), namely [X], is intended to take on the responsibilities currently performed by [X]; and
- [X] intends to transfer from his current role to a part-time technical advisor role at NECSWS.

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 III 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 this derogation;
- c) this derogation does not impact the viability of the NEC business during the term of the Initial Order;
- d) this derogation will not impact the ability of Capita SSS to compete independently of the NEC business;
- 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.

4. Paragraph 6(I) of the Initial Order

Pursuant to a Business Transfer Agreement entered into between Capita Secure Information Solutions Limited ('**Capita**') and Capita SSS dated 30 September 2021 (the '**BTA**'), the CMA understands that Capita agreed to transfer its business contracts to Capita SSS as part of the Transaction.

In circumstances where the transfer of a contract cannot be achieved without the consent of the relevant customer, the parties to the BTA agreed that they would use reasonable endeavours to obtain the required consent (the '**Customer Consents**').

The CMA further understands that:

- a) pursuant to a Put and Call Option entered into between NECSWS and Capita dated 30 September 2021 (the '**PCO**'), it was a condition of completion that Capita obtained a certain level of Customer Consents;

- b) at the point of completion, there were a number of customers who had not yet completed the transfer of their contracts to Capita SSS; and
- c) as a result of this, NECJ and NECSWS request a derogation from paragraph 6(l) of the Initial Order in order to be informed of the status of the remaining customer transfers.

The CMA consents to grant a derogation from paragraphs 6(l) of the Initial Order to permit the individuals at NECSWS and NECJ listed below (the '**Named Individuals**') to receive all information from Capita SSS that is strictly necessary for Capita SSS to report the number of Customer Consents it has obtained and the number left outstanding (the '**Information**')

- a) [REDACTED];
- b) [REDACTED]; and
- c) [REDACTED].

This derogation is granted to ensure that NECSWS and NECJ exercise appropriate oversight over the Customer Consent process during the course of the Initial Order (the '**Permitted Purpose**').

This derogation is granted on the basis that:

- a) the Information shall be anonymised so as to not identify any individual customer names;
- b) each of the Named Individuals shall enter into a confidentiality undertaking in a form agreed with the CMA;
- 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 Named Individuals do not have commercial strategy or a commercial decision-making roles at the NEC business;
- e) 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);
- f) 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;

- g) the Named Individuals are prevented from sharing the Information with any individual at the NEC business who is not one of the Named Individuals;
- h) the Named Individuals are limited to those that strictly need to have access to the Information for the Permitted Purpose;
- i) the use to which the Information may be put is limited to the Permitted Purpose;
- j) NECSWS will record a summary of any and all Information shared by Capita SSS with the Named Individuals, which shall be open to inspection by the CMA upon its request;
- k) granting this derogation will have no influence upon the commercial direction of the Capita SSS business during the term of the Initial Order;
- l) 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;
- m) this derogation will not result in any integration between the Capita SSS business and the NEC business; and
- n) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

Lasse Burmester
Assistant Director, Mergers
9 March 2022