

**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 (the ‘Act’) 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 16 January 2022, 7 March 2022, and 11 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, NECSWS 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 following completion of the Transaction, Capita SSS lost access to Capita Group's management team, which previously provided amongst other things general business guidance to Capita SSS, as well as authorisation for transactions and operations that met certain thresholds under Capita Group's delegation of authority (the ‘**Capita DOA**’). NECSWS informed the CMA that the thresholds under the Capita DOA are relatively low, and as such are likely to be triggered during Capita SSS's day to day activities during the Initial Order.

NECSWS therefore requested that a sufficiently experienced individual acts as a replacement for the role previously carried out by the Capita Group management team. NECSWS proposed that [redacted](the '**Proposed Manager**') carries out this role during the Initial Order.

NECSWS submitted that the Proposed Manager's role would be limited to performing the following (the '**Services**')

- i) being the escalation point for sign-offs and decision making previously subject to approval by Capita Group under the Capita DOA;
- ii) assisting the management of Capita SSS to obtain any customer or supplier consents required in connection with the Transaction that had not been obtained at the time of completion of the Transaction;
- iii) requesting approval from NECSWS under the delegation of authority process between Capita SSS and NECSWS, for which permission was granted by the CMA in its consent letter dated 14 January 2022;
- iv) being the point of contact for Capita SSS should it wish to escalate or seek guidance on general business issues that would previously have been provided by Capita Group; and
- v) otherwise exercise general day to day management and control of Capita SSS, including but not limited to ensuring that Capita SSS remains a going concern, complies with the terms of the Initial Order, and continues to actively compete independently of the NEC business.

This reflected feedback from the CMA on 2 March 2022 that there is a risk of pre-emptive action without sufficient safeguards in place and that the Proposed Manager should therefore also perform the role of a hold separate manager, as described in paragraphs 4.13 to 4.15 of the CMA's Guidance on Interim measures in merger investigations (CMA 108).

In light of the above, the CMA consents to a derogation from paragraphs 6(c) and 6(i) of the Initial Order to permit the appointment of the Proposed Manager. The CMA also grants permission for the Proposed Manager to be added to Capita SSS's bank mandate in order to authorise payments that are subject to sign-off or approval under point i) above.

This derogation is granted to ensure amongst other things that Capita SSS continues to operate as a going concern during the course of the Initial Order, and that Capita SSS continues to operate independently from the NEC business.

This derogation is provided on the basis that:

- a) the Proposed Manager's role does not extend beyond the Services;
- b) the Proposed Manager has the relevant expertise, qualifications and experience necessary to perform the Services;
- c) the Proposed Manager shall devote sufficient time to perform the Services (although, for the avoidance of doubt, the Proposed Manager is not prevented from undertaking work outside of this role, save that such work shall not overlap with the services of the Capita SSS business, and shall not impede on the Proposed Manager's ability to perform the Services);
- d) the Proposed Manager shall act on behalf of the CMA and shall carry out the Services to the best of the Proposed Manager's ability;
- e) the NEC business and Capita SSS business shall ensure that the terms and conditions of appointment of the Proposed Manager reflect and give effect to the functions and obligations of a hold separate manager as agreed in advance with the CMA;
- f) the NEC business and Capita SSS business, and their subsidiaries and their employees, officers, directors, advisers and consultants shall cooperate fully with the Proposed Manager, in particular by providing the Proposed Manager with all cooperation, assistance and information as the Proposed Manager may reasonably require in order to discharge its functions;
- g) the Proposed Manager is to assist the CMA in monitoring the extent of compliance by the NEC business and Capita SSS business with the Initial Order (including any direction issued pursuant to it) or any other order issued by the CMA pursuant to section 72 of the Act;
- h) the Proposed Manager shall provide the CMA every four weeks (or otherwise as required by the CMA) a statement stating whether or not the Capita SSS business has complied with the Initial Order;
- i) the Proposed Manager shall perform the Services until the CMA has finally determined the reference (within the meaning of section 79 of the Act) or revoked the Initial Order unless otherwise agreed with the CMA;

- j) any termination of the appointment of the Proposed Manager is subject to the agreement of the CMA;
- k) in the event of a monitoring trustee being appointed by the CMA, the Proposed Manager shall discuss with the monitoring trustee what arrangements have been or should be put in place to ensure: i) the separate operation of the Capita SSS business from the NEC business, and ii) the compliance by the Capita SSS business and NEC businesses with the IEO;
- l) all communications between the Proposed Manager and the CMA are confidential and should not be disclosed to the NEC business, save with the prior written consent of the CMA. The Proposed Manager shall not disclose such communications to third parties, save for external legal advisers provided they are under a similar obligation to keep such communications confidential;
- m) the Proposed Manager shall be remunerated and reimbursed for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Proposed Manager's independence or ability to effectively and properly carry out the Proposed Manager's functions;
- n) the Proposed Manager shall act autonomously from the NEC business during the Initial Order and shall have no contact with the NEC business, other than in relation to invoicing arrangements and any extension of the arrangement that might be required, unless permitted by the CMA;
- o) the Proposed Manager has not been employed by the NEC business, nor do they hold any confidential or commercially sensitive information regarding the NEC business;
- p) the Proposed Manager shall not share any confidential or commercially sensitive information regarding Capita SSS with the NEC business during the course of the Initial Order;
- q) the Proposed Manager shall enter into a confidentiality undertaking in a form acceptable to the CMA prior to performing any of the Services;
- r) this derogation will not lead to the removal of any key staff at Capita SSS;
- s) this derogation does not impact the viability of the Capita SSS business during the term of the Initial Order;

- t) this derogation will not impact the ability of Capita SSS to compete independently of the NEC business;
- u) the Proposed Manager will not solicit directly or indirectly any of Capita SSS's staff or customers for a period of no less than 6 months after the termination of the Services;
- v) the Proposed Manager will not, directly or indirectly, provide services to or undertake any other business, or become an employee, consultant, or agent of any other company, or acquire any financial interest in any other business which provides the same services as Capita SSS whilst performing the Services, unless permitted by the CMA;
- w) the Proposed Manager will seek written consent from the Capita SSS business and the CMA (such consent not to be unreasonably withheld) before providing services or acting in any capacity for a competitor, customer or supplier of the Capita SSS business for a period of 12 months after the termination of the Services;
- x) this derogation will not result in any integration between the Capita SSS business and the NEC business; and
- y) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

Lasse Burmester
Assistant Director, Mergers
17 March 2022