

**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 email of 01 April 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. Paragraph 6(I) of the Initial Order

The CMA understands that:

- a) the NEC business aims to incentivise the continued high performance of key managerial staff by including a bonus scheme within their remuneration packages. In particular, the said packages for NECSWS's senior management, namely for [X] and [X], include a bonus scheme linked to certain financial KPIs;

- b) the financial KPIs are [X] (together the '**Financial KPIs**'). Each of the Financial KPIs are combined to determine a final bonus figure (the '**Bonus**'); and
- c) it is NEC group policy that the Bonus is linked to the financial performance of all relevant group subsidiaries, including those recently acquired. Accordingly, NECSWS intends to include, in the calculation of the Bonus for the financial year ending 31 March 2022, Capita SSS's financial performance from the date of acquisition (3 January 2022) to 31 March 2022 and, for the financial year ending 31 March 2023, Capita SSS's financial performance from 1 April 2022 to 31 March 2023.

The CMA further understands that, to calculate the Bonus, NECSWS may require the use of certain financial information received pursuant to the financial information derogation granted by the CMA on 14 January 2022 (the '**Financial Information Derogation**'), namely:

- a) [X];
- b) [X];
- c) [X] (together the '**Financial Information**').

NECSWS therefore applies for a derogation to permit the use of the Financial Information for the purposes of calculating and verifying the Bonus (the '**Permitted Purpose**'). NECSWS further requests that the CMA grants a derogation to allow the named individuals below at NECSWS and NEC to receive and use the Financial Information to calculate and verify the same (the '**Named Individuals**')

NECSWS Individual	Role
[X]	[X]
NEC Individual	Role
[X]	[X]
[X]	[X]
[X]	[X]

[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]

In light of the above, the CMA consents to grant a derogation from paragraph 6(l) of the Initial Order to permit the Named Individuals to access and use the Financial Information where strictly necessary for the Permitted Purpose.

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 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 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 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 Financial Information with any individual at NECSWS or NECJ who is not one of the Named Individuals;
- f) the Named Individuals shall only use the Financial Information for the Permitted Purpose. For the avoidance of doubt, none of the Named Individuals shall use the Financial Information in any way to intervene in the management or operation of the NECSWS or Capita SSS businesses;

- g) NECSWS will record all Information shared by Capita SSS with the Named Individuals, which shall be open to inspection by the CMA upon its request;
- h) granting this derogation will have no influence upon the commercial direction of the Capita SSS business during the term of the Initial Order;
- 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.

Lasse Burmester
Assistant Director, Mergers
14 April 2022