

Completed acquisition by NEC Software Solutions UK Limited of SSS Public Safety Limited and Secure Solutions USA LLC

Directions issued on 30 May 2022 pursuant to paragraph 11 of the Initial Enforcement Order imposed by the Competition and Markets Authority on 21 December 2021 on: NEC Corporation, Garden Private Holdings Limited, NEC Software Solutions UK Limited, SSS Public Safety Limited and Secure Solutions USA LLC

On 3 January 2022, NEC Software Solutions UK Limited acquired the entire issued share capital of SSS Public Safety Limited¹ and Secure Solutions USA LLC² from Capita Secure Information Solutions Limited and Capita (USA) Holdings Inc. (the **Merger**).

On 21 December 2022, the Competition and Markets Authority (**CMA**) made an Initial Enforcement Order (the **Order**) addressed to NEC Corporation, Garden Private Holdings Limited, NEC Software Solutions UK Limited, SSS Public Safety Limited and Secure Solutions USA LLC (collectively the **Addressees**) in accordance with section 72(2) of the Enterprise Act 2002 to prevent pre-emptive action. The Order is still in force.

On 12 May 2022, the CMA referred the Merger to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to conduct a phase 2 investigation pursuant to section 22(1) (the **Investigation**) and in accordance with section 34ZA(2) of the Enterprise Act 2002 (the **Act**). The group must investigate and issue its report on the questions contained in section 35(1) of the Act within a period ending on 26 October 2022.

The CMA now issues written directions under paragraph 11 of the Order that, for the purpose of securing compliance with the Order, the Addressees must appoint a monitoring trustee in accordance with the terms provided for in this Annex and must comply with the obligations set out in the Annex.

[signed]

Lesley Moore

¹ Formerly Capita (SSS) Limited.

² Formerly Capita Software (US) LLC.

Director, Mergers
Competition and Markets Authority
30 May 2022

Annex

Directions to appoint a monitoring trustee

Interpretation

In these Directions:

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| ‘the Act’ | means the Enterprise Act 2002; |
| ‘Addressees’ | refers collectively to: NECJ, GPHL, NECSWS, SSS and SUS; |
| ‘an affiliate’ | of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act; |
| ‘business’ | has the meaning, unless otherwise stated, given by section 129(1) and (3) of the Act; |
| ‘CMA’ | means the Competition and Markets Authority; |
| ‘Derogations’ | means any derogations granted whether before or after the appointment of the MT by the CMA by which the Addressees may undertake certain actions that derogate from the Order; |
| ‘GPHL’ | means Garden Private Holdings Limited, a company registered at 1st Floor, Imex Centre, 575-599 Maxted Road, Hemel Hempstead, Hertfordshire, United Kingdom, HP2 7DX, with company number 11126837; |
| ‘MT’ | means the monitoring trustee appointed in accordance with this Annex; |
| ‘NECJ’ | means NEC Corporation, a company registered at 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan, with company number 7010401022916; |
| ‘NEC business’ | means the business of NECJ and its subsidiaries carried on as at the commencement date; |
| ‘NECSWS’ | means NEC Software Solutions UK Limited, a company registered at 1st Floor, Imex Centre, 575-599 Maxted Road, Hemel Hempstead, Hertfordshire, United Kingdom, HP2 7DX, with company number 00968498; |

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| ‘Order’ | means the initial enforcement order made by the CMA on 21 December 2021 and addressed to the Addressees; |
| ‘the transaction’ | means the transaction by which NECSWS, SSS and SUS will cease to be distinct within the meaning of section 23 of the Act; and |
| ‘SSS’ | means SSS Public Safety Limited, formerly Capita (SSS) Limited, a company registered at Methuen Park, Chippenham, Wiltshire, England, SN14 0TW, with company number 13052116; |
| ‘the SSS business’ | means the business of SSS, SUS and their subsidiaries carried on as at the commencement date; |
| ‘subsidiary’ | unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006. |
| ‘SUS’ | means Secure Solutions USA LLC, formerly Capita Software (US) LLC, a company registered at 16479 Dallas Parkway, Suite 140 Addison TX 75001 United States, with company number 5535075; |

The Interpretation Act 1978 shall apply to these directions as it does to Acts of Parliament.

Terms and expressions defined in the Order have the same meaning in these directions, and the singular shall include the plural and vice versa, unless otherwise specified or unless the context requires otherwise.

Appointment

1. The Addressees must appoint a MT in order to ensure compliance with the Order, in particular to:
 - a. avoid any pre-emptive action (within the meaning of the Act) taking place during the Investigation;
 - b. monitor and report to the CMA on compliance by the Addressees with the Order; and
 - c. support the CMA taking any remedial action which may be required to keep separate the NEC business and the SSS business and maintain each as going concerns.
2. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out their functions to the best of their abilities.
3. The Addressees must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect

and give effect to the functions and obligations of the MT and the obligations of the Addressees as set out in these directions.

General

4. The MT must possess appropriate qualifications and experience to carry out their functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs their objectivity and independence in discharging their duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. The Addressees shall remunerate and reimburse the MT 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 MT's independence or ability to effectively and properly carry out their functions.
7. The Addressees must appoint the MT as soon as is reasonably practicable and in any event by **8 June 2022** and the MT will continue to act either until the CMA reaches a decision to clear the Transaction or until the CMA directs that the MT is no longer required.
8. The appointment of a MT by the Addressees is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
 - a. the name of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable and in any event by **1 June 2022**;
 - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **1 June 2022**; and
 - c. once the MT has been approved by the CMA and appointed, the Addressees must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

9. The functions of the MT will be to:
 - a. ascertain and report to the CMA in relation to the current level of compliance by the Addressees and their subsidiaries with the Order;
 - b. assess and report to the CMA in relation to the arrangements made by the Addressees for compliance with the Order and what changes to those

arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;

- c. identify and supervise if necessary the arrangements made by the Addressees for ensuring compliance with the Order;
 - d. monitor compliance by the Addressees and their subsidiaries with the Order;
 - e. assist the CMA with the consideration of any derogation requests made by the Addressees and monitor compliance by the Addressees and their subsidiaries with any derogations granted by the CMA; and
 - f. without prejudice to the right of the Addressees to contact the CMA, respond to any questions which the Addressees may have in relation to compliance with the Order, in consultation with the CMA.
10. The MT must take such steps as they reasonably consider necessary in order to carry out their functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the NECJ and SSS businesses, such as written and electronic communications, telephone conversations and meetings as may be required.
11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance with the Order.

Obligations of the Addressees

12. The Addressees, their affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge their functions, including but not limited to:
- a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the NECJ business and the SSS business as the MT may reasonably require; and
 - b. the provision of such office and supporting facilities as the MT may reasonably require.
13. If the Addressees are in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification before such action is taken or such communication is made. However, for the avoidance of doubt, the MT has no authority, express or implied, to consent to any derogation or variation of the obligations in the Order, and any opinion of the MT regarding an action or communication does not bind the CMA nor indicate that the CMA has approved or sanctioned the action or communication. Derogations can only be granted by the CMA and will always be granted in writing.

14. If any of the Addressees has any reason to suspect that the Order may have been breached, it must notify the MT and the CMA as soon as reasonably practicable (a) on the day on which it has reason to suspect that there may have been a failure to comply with the Order, or (b) if the day referred to in (a) is on a weekend or national holiday, on the next working day.

Reporting functions

15. The MT is required to provide an initial report to the CMA no later than **5 July 2022**, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:
- a. details of the current extent of compliance with the Order;
 - b. a description of the current arrangements made for the operation of the SSS business and for the preservation of the assets required to operate the SSS business; and
 - c. recommendations as to what changes to those arrangements, if any, are necessary.
16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA every four weeks thereafter (or otherwise as required by the CMA) stating whether or not, in the MT's view, the Addressees and their subsidiaries have complied with the Order. At the same time, the MT must provide the CMA with a report setting out the following:
- a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:
 - i. anything has caused them to be concerned as to whether the Addressees and their subsidiaries have complied with the Order, and if it has, whether those concerns have been resolved and why;
 - ii. they have any remaining doubts or uncertainties as to whether the Addressees and their subsidiaries have complied with the Order; and
 - iii. anything that causes them to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
 - b. details of the performance of the SSS business, including any factors that might indicate asset deterioration;
 - c. whether appropriate steps are being taken to maintain the SSS business as a going concern;
 - d. the extent to which the Addressees and their subsidiaries have cooperated with the MT in their task of monitoring its compliance with the

Order and details of any aspects of the cooperation of the Addressees that they consider could be improved;

- e. the extent to which the MT considers that they are in an appropriate position to monitor the compliance of the Addressees and their subsidiaries with the Order and if there is anything that the MT considers would assist them in monitoring compliance;
- f. any current or anticipated requests for consent to vary the Order; and
- g. the information they used to compile the report.

17. When providing reports to the CMA, the MT must ensure that they do not disclose any information or documents to the CMA which the Addressees would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires the Addressees to produce any information or documents to the MT which are privileged.

18. The MT must immediately notify the CMA in writing if they form a reasonable suspicion that the Order has been breached, or if they consider that they are no longer in a position to effectively carry out their functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).

19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to the Addressees and their subsidiaries, or any other person, save with the prior written consent of the CMA.