

# COMPLETED ACQUISITION BY NEC SOFTWARE SOLUTIONS UK LIMITED OF SSS PUBLIC SAFETY LIMITED AND SECURE SOLUTIONS USA LLC

## Issues statement

14 June 2022

*The CMA has excluded from the published version of the issues statement, information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Act (specified information: considerations relevant to disclosure). The omissions are indicated by [✂].*

## The reference

1. On 12 May 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under [section 22\(1\)](#) of the Enterprise Act 2002 (the **Act**), referred the completed acquisition (the **Merger**) by NEC Software Solutions UK Limited (**NECSWS**) of SSS Public Safety Limited<sup>1</sup> and Secure Solutions USA LLC<sup>2</sup> (together **SSS** or the **Target**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**).
2. NECSWS acquired SSS from Capita Secure Information Solutions Limited and Capita (USA) Holdings Inc. (**Capita**). NECSWS and SSS are, together, referred to as the **Parties**, or for statements referring to the future, the **Merged Entity**.
3. In exercise of its duty under [section 35\(1\)](#) of the Act, the CMA must decide:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
4. In answering these two questions, we will apply a 'balance of probabilities' threshold to our analysis. That is, we will decide whether it is more likely than not that the Merger will result in an SLC.<sup>3</sup>

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<sup>1</sup> Formerly Capita (SSS) Limited.

<sup>2</sup> Formerly Capita Software (US) LLC.

<sup>3</sup> [Merger Assessment Guidelines \(CMA 129\)](#), paragraph 2.36.

5. An in-depth investigation of this nature is called a Phase 2 Inquiry. It takes place following an initial preliminary investigation by the CMA (**the Phase 1 Investigation**).

## **Purpose of this issues statement**

6. In this issues statement, we set out the main issues we are likely to consider in deciding whether the Merger gives rise to an SLC. The identification of these issues is based on the evidence we have received to date, including during the Phase 1 Investigation.
7. We are publishing this issues statement to assist those who may wish to submit evidence to our inquiry. The CMA's phase 1 decision (**the Phase 1 Decision**) contains further background to this issues statement.
8. We intend to focus our investigation on the areas of most concern identified in the Phase 1 Decision. We are not restricted, however, from considering other issues that may be identified during our inquiry. We invite parties to tell us if there are other relevant issues that we should consider.
9. We intend to investigate whether the Merger will give rise to an SLC, in particular from:
  - (a) Horizontal unilateral effects in the supply of Integrated Communication Control Systems software (**ICCS**) to emergency services (police forces, fire and rescue services, and ambulance trusts) and transport customers in the UK;
  - (b) Horizontal unilateral effects in the supply of Duties Management Systems (**Duties**) (software that enables the planning, scheduling and shift management of emergency service staff) to police customers in the UK; and
  - (c) Horizontal unilateral effects in the supply of Records Management Systems software (**RMS**) to police customers in the UK
10. We explain what we mean by horizontal unilateral effects at paragraphs 29 and 30 below.
11. We will use evidence obtained during the Phase 1 Investigation, but we will also be considering further evidence on these and any other issues that may be identified during the inquiry.

## Background

### *The Parties*

12. NECSWS supplies software and associated services primarily to UK public sector bodies. NECSWS is ultimately owned by NEC Corporation, a global technology business headquartered in Japan. NECSWS's turnover in 2021<sup>4</sup> was approximately [X] in the UK.<sup>5</sup> For the same period NEC Corporation's turnover was approximately £22 billion worldwide of which approximately [X] was generated in the UK.<sup>6</sup>
13. SSS supplies software solutions and managed services primarily to the emergency and justice sectors. SSS's turnover in 2020<sup>7</sup> was approximately [X] in the UK.<sup>8</sup>

### *Business activities and relevant overlap*

14. The Phase 2 Inquiry will be focused on the markets where the Parties both operate and in which the Phase 1 Investigation identified competition concerns from the Merger, as outlined above:
  - (a) ICCS software that enables control room personnel to make and receive phone calls (including 999 and 101) and to communicate with staff over radio networks and in the future the new emergency services network (**ESN**)<sup>9</sup>. This software is used by different emergency services agencies (such as police forces, fire and rescue services, and ambulance trusts) as well as certain transport customers (such as Transport for London).
  - (b) Duties software which enables the planning, scheduling and shift management of emergency service staff.
  - (c) RMS which are used by the police to record and manage case-related information for the processing of people in custody and case file management for prosecutions.

## Our inquiry

15. We set out below some areas of our intended assessment to help those who wish to make representations to us, although these will not be the only areas

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<sup>4</sup> This refers to the financial year ending on 31 March 2021.

<sup>5</sup> Final merger notice submitted by the Parties to the CMA on 1 March 2022 (**FMN**)

<sup>6</sup> FMN

<sup>7</sup> This refers to the financial year ending on 31 December 2020.

<sup>8</sup> FMN

<sup>9</sup> The ESN is a new digital mobile communications network which will be used by the UK's emergency services (via their ICCS software) and is estimated to be in use by the end of 2026, replacing the current radio based Airwave system.

we look at. For example, we will seek to assess the strength of competition between the Parties and between the Parties and other suppliers, the prospects for new market entry and any other relevant issues to deciding whether an SLC has or will result from the Merger.

## **Jurisdiction**

16. To investigate a merger, we must believe that a relevant merger situation, as defined in the Act, has occurred.
17. In the context of a completed transaction, a relevant merger situation exists where the following conditions are satisfied:<sup>10</sup>
  - (a) Two or more enterprises have ceased to be distinct;
  - (b) Either:
    - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the turnover test); or
    - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the share of supply test).
  - (c) Subject to certain exemptions, the date of the merger must be no more than four months before the day the merger is referred for the Phase 2 Inquiry (the four-month rule).
18. The Phase 1 Decision found that the CMA had jurisdiction to review the Merger on the basis that two enterprises (ie NECSWS and SSS) have ceased to be distinct and that the share of supply test and four-month rule were both met.<sup>11</sup>
19. We shall consider the question of jurisdiction in our inquiry.

## **Counterfactual**

20. To assist our understanding of the Merger, we will assess its impact on competition compared to the situation that would be likely to exist were the Merger to have not taken place. We call this the counterfactual situation.

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<sup>10</sup> Section 23 and 24 of the Act.

<sup>11</sup> The Phase 1 Decision, paragraphs 23-27.

21. The counterfactual is an analytical tool used to help us in answering the question of whether a merger gives rise to an SLC. It is not a legal requirement or test.<sup>12</sup>
22. We consider possible alternative scenarios for the competitive conditions and decide upon the most likely counterfactual based on the facts available to us<sup>13</sup>. We are likely to focus only on significant changes that would make a substantial difference to our assessment.<sup>14</sup>
23. During the Phase 1 Investigation, NECSWS submitted that the appropriate counterfactual should be weaker conditions than the current competitive situation. It stated that there had been underinvestment by Capita in recent years which would affect SSS's ability to compete effectively and that, if unable to sell the business, Capita is likely to have considered winding down and withdrawing SSS's products from the market in the long run.<sup>15</sup>
24. In the Phase 1 Decision, the CMA found the pre-Merger conditions of competition to be the relevant counterfactual and that it was more appropriate to consider the Parties' submissions that SSS was becoming a weaker competitor in its competitive assessment where relevant.
25. In assessing the appropriate counterfactual, we shall consider Capita's rationale for the Merger, within the context of its broader strategic objectives at the time of the transaction and what this informs us about:
  - (a) Capita's ability and incentive to continue to own SSS and compete in the market; and
  - (b) Capita's ability and incentive to sell SSS to an alternative potential purchaser which would compete in the market.

## **Assessment of the competitive effects of the Merger**

### ***Theories of harm***

26. The term 'theory of harm' describes the possible ways in which an SLC could arise because of a merger.<sup>16</sup> The theories of harm provide the outline for our analysis of the competitive effects of a merger.<sup>17</sup>

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<sup>12</sup> [Merger Assessment Guidelines \(CMA 129\)](#), paragraph 3.1.

<sup>13</sup> [Merger Assessment Guidelines \(CMA 129\)](#), paragraph 3.13.

<sup>14</sup> [Merger Assessment Guidelines \(CMA 129\)](#), paragraph 3.9.

<sup>15</sup> Phase 1 Decision, paragraph 39.

<sup>16</sup> [Merger Assessment Guidelines \(CMA 129\)](#), paragraph 2.11.

<sup>17</sup> [Merger Assessment Guidelines \(CMA 129\)](#), paragraph 2.11.

27. While we have identified certain theories of harm in this issues statement, this does not prevent us later finding an SLC on a different basis following receipt of additional evidence or analysis. We welcome views on the theories of harm described below.
28. The CMA currently intends to assess whether the Merger may be expected to result in an SLC as a result of:
- (a) Horizontal unilateral effects in the supply of ICCS to emergency services (police forces, fire and rescue services, and ambulance trusts) and transport customers in the UK;
  - (b) Horizontal unilateral effects in the supply of Duties software to police customers in the UK; and
  - (c) Horizontal unilateral effects in the supply of RMS to police customers in the UK.

### ***Horizontal unilateral effects***

29. Horizontal mergers are where two merging firms compete at the same stage of the supply chain, and therefore compete head-to-head.<sup>18</sup>
30. Unilateral effects can arise where one firm merges with another firm that previously provided a competitive constraint. The removal of the other firm as a competitor following the merger might allow the Parties profitably to increase prices, lower the quality of their products or customer service, reduce the range of their products/services, and/or reduce innovation.<sup>19</sup>
31. In the Phase 1 Decision, the CMA found that there was a realistic prospect the Merger would lead to a loss of competition in the UK in the supply of ICCS to emergency services and transport customers, the supply of Duties software to police customers and the supply of RMS to police customers.
32. The CMA found that the supply of these services is concentrated, with only a limited number of significant suppliers, and that the Parties compete closely in each of these areas.
33. The CMA normally considers that where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely. Furthermore, in markets with a limited likelihood of entry

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<sup>18</sup> [Merger Assessment Guidelines \(CMA 129\)](#), paragraph 1.10

<sup>19</sup> [Merger Assessment Guidelines \(CMA 129\)](#), paragraph 4.1.

or expansion, any given lessening of competition will give rise to greater competition concerns.

34. As part of our inquiry, we will use the data and information collected in the Phase 1 Investigation and seek to expand this evidence base as appropriate.
35. We expect to examine, among other matters:
- (a) the market structure and the market position of the Parties and their competitors;
  - (b) the criteria and processes customers use to choose a supplier of these software services, including, where relevant, the impact of the public procurement rules on competitive dynamics;
  - (c) customers' requirements for these services, including any relevant changes in these in the foreseeable future;
  - (d) the strength of the Parties and competitors (including, where relevant, smaller competitors) and their respective abilities to win contracts for different services and invest in product development;
  - (e) the current and future closeness of competition between the Parties including through considering tender data, internal documents and third-party evidence; and
  - (f) the current and future remaining competitive constraints post-Merger on the Merged Entity.

### ***Market definition***

36. Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'.<sup>20</sup> The CMA is therefore required to identify the market or markets within which an SLC exists. This is referred to as the 'frame of reference'. An SLC can affect the whole or part of a market or markets. The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.<sup>21</sup>
37. In the Phase 1 Decision, the CMA considered the impact of the Merger within the following frames of reference:<sup>22</sup>

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<sup>20</sup> [The Act](#) section 36(1)(b).

<sup>21</sup> [Merger Assessment Guidelines \(CMA 129\)](#), paragraph 9.1

<sup>22</sup> Phase 1 Decision, paragraph 102. The phase 1 investigation also considered the supply of CAD to emergency service customers in the UK and the supply of live video streaming products to emergency service customers in the UK, but did not find competition concerns in these markets.

- (a) the supply of ICCS to emergency service customers and transport customers in the UK;
  - (b) the supply of Duties software to police customers in the UK;
  - (c) the supply of RMS to police customers in the UK;
- 38. In reaching this conclusion, the CMA considered whether the product frame of reference should be:
  - a) for Duties, widened to include Enterprise Resource Planning (ERP) <sup>23</sup>; and
  - b) For ICCS and Duties, narrowed to reflect segmentation by customer group, namely, police, fire and rescue, ambulance and transport customers.<sup>24</sup>
- 39. With respect to the geographic frame of reference, the CMA assessed the effects of the Merger by reference to a UK frame of reference.<sup>25</sup>
- 40. We will use the frames of reference adopted in the Phase 1 Decision as a starting point for our analysis in the phase 2 inquiry and our view of market definition will be largely drawn from the findings of our competitive assessment. Where relevant, we will consider out-of-market constraints and/or any differences in the degree of competitive constraints on the Merged Entity from different suppliers.

### ***Countervailing factors***

- 41. In some instances, there may be elements that prevent or limit any SLC arising from a merger. These are called countervailing factors.
- 42. We will consider evidence put to us on whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.
- 43. We will consider evidence of entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Merger.<sup>26</sup> In particular, we will

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<sup>23</sup> The CMA found that it would not be appropriate to include ERP in the product market for Duties (Phase 1 Decision, paragraph 87)

<sup>24</sup> The CMA considered that for ICCS the appropriate product frame of reference was the supply of ICCS to emergency service and transport customers without any customer segmentation between those categories. (Phase 1 Decision, paragraph 71.) The CMA considered that for duties it was appropriate to segment the supply of Duties by emergency services customer type (Phase 1 Decision, paragraph 78.)

<sup>25</sup> Phase 1 Decision, paragraph 101.

<sup>26</sup> [Merger Assessment Guidelines \(CMA 129\)](#), paragraph 8.31.



consider the prospects for international entry into the relevant markets and entry from other markets/customer segments in the UK.

## **Possible remedies and relevant customer benefits**

44. Should we conclude that the Merger has resulted, or may be expected to result, in an SLC within any market or markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
45. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits (**RCBs**) that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.<sup>27</sup>

## **Responses to this issues statement**

46. Any party wishing to respond to this issues statement should do so in writing, by **no later than 5pm on 28 June 2022** by emailing [NEC.Capita@cma.gov.uk](mailto:NEC.Capita@cma.gov.uk) or writing to:

Principal Case Officer  
NEC/SSS phase 2 merger inquiry  
Competition and Markets Authority  
The Cabot  
25 Cabot Square  
London  
E14 4QZ

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<sup>27</sup> [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15–3.24.