## COMPLETED ACQUISITION BY NEC SOFTWARE SOLUTIONS UK LIMITED OF CAPITA SECURE SOLUTIONS AND SERVICES

### ME/6979/21

### **NECSWS' RESPONSE TO ISSUES STATEMENT**

### 1. **INTRODUCTION**

- 1.1 In this submission, NEC Software Solutions UK Limited ("NECSWS") sets out its response to the CMA's Issues Statement published on 14 June 2022. NECSWS and SSS are referred to collectively as the "Parties" and this submission adopts the defined terms used in the Parties' Final Merger Notice ("FMN"), Initial Submission of 31 May 2022 (the "Initial Submission") and Issues Letter response dated 8 April 2022 ("IL Response") unless otherwise specified.
- 1.2 The Initial Submission sets out NECSWS' position on many of the issues referred to in the Issues Statement, including customers' approach to procurement and the impact of public procurement rules; the rise of new technologies which have opened up the market to new suppliers, and the globalisation of standards; the successful entry of new suppliers which have been winning contracts from incumbent suppliers; the fact that the Parties are not close competitors in any of the relevant markets for a variety of reasons; the relevant counterfactual; barriers to entry and expansion, and countervailing buyer power. NECSWS does not intend to repeat its position on these points in detail here, but to highlight certain key points that it considers relevant to the CMA's Phase 2 assessment in light of the Issues Statement.
- 1.3 NECSWS notes that a significant volume of information was collated and provided to the CMA at Phase 1, including detailed empirical analysis of shares of supply and the Parties' Opportunities Data.<sup>1</sup> NECSWS is of the view that the summary analysis in both this document and the Initial Submission, which are based on the work undertaken at Phase 1, are underpinned by thorough empirical analysis.

## 2. NECSWS' RATIONALE FOR THE TRANSACTION

- 2.1 The Transaction comprises the acquisition of a number of products which include, but are not limited to, those which are the focus of the CMA's Phase 2 inquiry (the perimeter of the SSS business having been demarcated by Capita itself).
- 2.2 Although the areas of overlap in the reference markets (namely ICCS, Duties and RMS) are important to NECSWS commercially and are the focus of the CMA's inquiry, the acquisition of **complementary products** to NECSWS' customer offering is also an important driver of the Transaction for NECSWS, providing increased product coverage and growth opportunities, as set out in NECSWS' press release announcing the Transaction.<sup>2</sup>
  - 2.2.1 [※]
  - 2.2.2 The Radio Managed Services aspect of the SSS business comprises the provision of managed services for radio terminals and mobile devices and the provision of

<sup>&</sup>lt;sup>1</sup> The Parties' estimated shares of supply are set out in Section 14 of the FMN and a detailed analysis of the Parties' Opportunities Data was submitted to the CMA in their bidding analysis note ("ME.6979.21 -NECSWS\_SSS - Note on analysis of bidding data - 21 March 2022.PDF") and further, in the Parties' IL Response dated 8 April 2022 and as part of the Issues Meeting presentation. The Parties' position on the key issues as set out in paragraph 1.2 above were also submitted as part of various Phase 1 RFI responses to the CMA.

<sup>&</sup>lt;sup>2</sup> Annex 8.1 to the FMN.

communication solutions. Although NECSWS had not identified this as an area of interest when it first approached SSS in 2020, Radio Managed Services [ $\gg$ ] and provides the opportunity to expand NECSWS' offering to customers of its Public Safety division, including both emergency services customers and other customers with a large estate of radio devices.

# 2.3 The Transaction will also enable NECSWS to make **product improvements in areas of overlap between the Parties**.

- 2.3.1 In general terms, based on general market intelligence, customer feedback and the limited product information made available to NECSWS and its advisers during the due diligence process, NECSWS is aware that several of SSS' solutions are [≫]. As explained to the CMA at NECSWS' site visit, NECSWS does not currently have detailed visibility of SSS' products as such information was not made available to NECSWS during the course of the due diligence process, and NECSWS has not received such information to date (in light of the restrictions under the IEO). NECSWS would need to be able to review existing product roadmaps, detailed information on current functional capabilities, details of third party costs and proposed investment requirements in order to be able to plan specific next steps in relation to each product area.
- 2.3.2 Once such information can be made available to NECSWS, it intends to make a more thorough assessment of which features of each of the Parties' overlapping products are the "best of both" (as referred to in paragraph 2.24 FMN) and could, from a technical perspective, in due course be combined to develop a single product in respect of each area.<sup>3</sup> This could be done by adding features from one of the Parties' existing products to the other Party's overlapping product, or developing a new product which includes the best features of both Parties' overlapping products. A differentiated product with this combination of high-quality features would improve on the Parties' respective solutions currently available to customers, and would enable NECSWS to compete more effectively with more recent entrants which offer contemporary, feature-rich solutions. Combining cost bases for overlapping products could also enable NECSWS to deliver the single product at lower cost for customers than would otherwise have been the case.
  - (A) By way of example, SSS' Duties product, Origin, includes elements of a broader ERP solution which NECSWS' Duties product, CARM, does not have. CARM has a more modern user interface and also has mobile and cloud capabilities [≫]. Combining these capabilities will enable NECSWS to compete more effectively for contracts which include the supply of Duties

<sup>&</sup>lt;sup>3</sup> This, and a number of other benefits that would be brought about by the Transaction, including increased investment and international expansion, are described in NECSWS' initial offer letter to Capita dated March 2021 (Annex 8.3 FMN). NECSWS has taken this approach in the context of previous acquisitions. For example, before NECSWS offered an integrated RMS, it acquired individual modules via the acquisition of third party businesses (Crime and Intelligence modules from the acquisition of Hays CSG in 2003, and Case and Custody from the acquisition of Techsas in 2008). NECSWS assessed the features of both the acquired assets in 2008 when Techsas was acquired, and developed a new modular RMS product which not only included features from each of Hays CSG's product and Techsas' products but also new features (many of which had been requested by customers in their tender documents). This product, GEM, was a predecessor of NECSWS' current CONNECT product.

but also require elements of ERP functionality, a modern user interface, mobile and cloud capabilities.

- (B) With regard to ICCS, there are a number of options for combining the Parties' products, and NECSWS anticipates that elements of SSS' ICCS product could provide operational benefits to customers. [≫]
- (C) With regard to RMS, NECSWS anticipates that there will be areas of functionality which could be extracted from SSS' products and integrated into the NECSWS CONNECT product to provide additional operational benefits to customers. For example, Police Scotland has used UNIFI [≫] and SSS therefore has know-how and experience that could be utilised if NECSWS were to offer CONNECT to Police Scotland in due course.
  - (1) [※]
  - (2) [※]
- 2.4 The Transaction will provide greater scope for NECSWS to invest in product development,  $[\aleph]$ .
  - 2.4.1 [≫]. (This reflects the fact that NEC is an innovative technology company for which ongoing research and development is a commercial necessity, whereas Capita focuses on managed services and therefore NECSWS believes is less incentivised to invest in product development.)<sup>4</sup>
  - 2.4.2 By way of illustration, [≫]% of the SSS business' forecast revenue in FY22 (£[≫]; [≫])<sup>5</sup>, amounts to c. £[≫]. This range is [≫]provided by Capita (which ranged from [≫] in 2020 to a forecast [≫] in 2022 in total across the range of SSS products). In 2023, the SSS business plan provided by Capita indicates a total of £[≫] on product development; under NECSWS' ownership this figure would be more than doubled.
  - 2.4.3 [※]
  - 2.4.4 In areas where the Parties' products overlap,  $[\aleph]$ .
  - 2.4.5 In areas where there is no overlap between the Parties, NECSWS intends to invest in new features and/or better service to make SSS' products more competitive and attractive to customers. In respect of CAD, for example:
    - (A) NECSWS believes that [≫] will be required to make [≫]. This will also enable NECSWS to provide a richer mobile experience for emergency services staff in the field, providing them with a fuller package of information while en route to incidents so that they have full situational awareness before entering potentially high-risk situations;
    - (B) NECSWS intends to embed its advanced artificial intelligence capabilities into the SSS products to ensure that they can compete with those of

<sup>&</sup>lt;sup>4</sup> See, for example, Capita's press release on the sale of SSS (<u>link</u>) which refers to its ongoing strategy to simplify and strengthen Capita.

<sup>&</sup>lt;sup>5</sup> These figures exclude SSS' contract for provision of Radio Managed Services to the [∞], which is due to end in FY22.

competitors who have already added such capabilities to their products (for example, Hexagon); $^{6}$ 

(C) Other new features would include integration with video analytics and surveillance systems, as well as a more seamless integration between the two SSS CAD systems to facilitate better multi-agency working opportunities (both in the UK and overseas).

In Radio Managed Services, NECSWS intends to make use of its sales and service teams and resources to increase sales and improve service where possible.

- 2.5 The Transaction will also enable NECSWS to **accelerate its international growth strategy**. NECSWS currently generates approximately 10% of its revenue from outside the UK but has the aim of increasing that to [≫] within the next three years. SSS supplies software solutions, radio managed services and additional support services in 15 countries across five continents to customers including police, fire, ambulance and other public safety agencies. NECSWS' international expansion ambitions will benefit from SSS's international customer base and the Parties' combined capabilities, which will enable NECSWS to increase its global reach and allow it to attract and compete for customers in Europe, North America, Latin America, the Middle East and Australia (also supported by NEC Corporation's international resources and its presence in more than 50 countries). The more successful NECSWS is with international customers, the wider the range of capabilities and experiences it can bring back to offer to UK customers; and [≫] as explained in paragraph 2.3 FMN and paragraph 2.4 above.
- 2.6 The Transaction will also give rise to considerable **cost synergies**, particularly as a result of [≫]). As explained in response to Q23 of RFI 2 (Phase 2), as at July 2021 NECSWS anticipated a cost synergy programme which by FY24 would deliver £[≫]of annual ongoing savings across the UK businesses ([≫]). These savings will allow NECSWS to be more competitive by offering a combination of improved products, better customer service and more competitive pricing.<sup>7</sup>
- 2.7 The Transaction will also provide NECSWS with the **opportunity to offer better products** (and additional products) to existing SSS customers when they come to the end of their existing contracts. Customers will of course have a choice as to whether they take up the products NECSWS is offering. As explained in response to Q30 of RFI 2 (Phase 2), in deciding whether to remain with an existing supplier customers will consider whether they are receiving a current, up to date product which is good value for money and is accompanied by good customer service in terms of maintenance and resolving issues with the implementation or operation of the software. Customers would switch away if NECSWS' offering does not meet these criteria; there is clear evidence of customers having changed supplier to take advantage of a better offer. This demonstrates that relationships with existing suppliers are not obstacles to switching and that customers are willing to move to alternative products and suppliers if they are not satisfied (see numerous examples listed in response to Q30 of RFI 2).

### 3. NECSWS' PROCESS FOR UNDERTAKING THE TRANSACTION AND INTENTIONS FOR THE ACQUIRED BUSINESS

3.1 NECSWS evaluated the SSS business and the commercial terms being offered by Capita for the Transaction in some detail prior to making its final offer for the SSS business and entering into the Transaction. NECSWS undertook detailed due diligence between March

<sup>&</sup>lt;sup>6</sup> Hexagon's "Smart Advisor" capability is fully integrated with its CAD system; further information is available on its website (<u>link</u>).

<sup>&</sup>lt;sup>7</sup> See for example the slide deck provided as Annex 158 to RFI 2, slide 4 which notes that "[‰]"

and September 2021 (as far as the information made available by Capita allowed) and  $[\aleph]$ , which were taken into account in NECSWS' evaluation of the Transaction.

- 3.2 [※]
- 3.3 [※]
- 3.4 In the absence of detailed information on SSS' products, NECSWS has only been able to give preliminary consideration as to how products might be combined, improved and developed post-Transaction. Detailed planning will be undertaken, and specific business cases for investment in product development will be prepared, once NECSWS has access to the information it needs to understand the characteristics and functionality of SSS' products in detail and therefore where and how much investment is needed.
- 3.5 NECSWS' proposed approach to combining products and to achieving other cost synergies will reduce costs and underpin further investment, allowing NECSWS to provide an enhanced and differentiated product offering efficiently and at good value for customers.
- 3.6 NECSWS' product offering will also be enriched by:
  - 3.6.1 the additional investment capacity that will be facilitated by [%] and
  - 3.6.2 the range of capabilities and experiences it can bring back to offer to UK customers as a result of further international expansion (as explained in section 2 above).
- 3.7 NECSWS wishes to make clear that post-Transaction NECSWS' and SSS' products will continue to be fully available to customers which have existing contracts for the supply of such products. NECSWS will honour all existing contractual obligations in this regard until the conclusion of such contracts, including any extension options that are available to relevant customers; even after this time, NECSWS would not seek to retire a product unless and until it could offer a better alternative. Customers would also be under no obligation to take up any alternative product offered by NECSWS. Terminating products before the end of existing customer contracts would be commercially unthinkable as it would cause considerable (and irreparable) damage to NECSWS' credibility as a reliable supplier to public sector customers.<sup>8</sup> NECSWS therefore has a very strong commercial incentive not to terminate products in this way, and to maintain and improve rather than undermine its relationships with customers, adapting to meet their evolving needs.

# 4. COUNTERFACTUAL

- 4.1 NECSWS understands that SSS has explained to the CMA in previous submissions, and at its site visit, [≫]; those points are not repeated here.
- 4.2 A scenario where SSS remained with Capita *and* received the necessary funds to invest in making its products competitive is not a credible counterfactual, noting the lack of investment by Capita in SSS in recent years (explained in detail in the Counterfactual Paper provided with the IL Response). The only realistic option for SSS' assets to be competitive was therefore a sale to a third party willing to provide the requisite funds and to invest on a long-term basis.
- 4.3 NECSWS sees itself as the natural home for the SSS business. NECSWS believes that it was the most suitable purchaser for SSS from a customer perspective, of those potential purchasers that were interested in acquiring the business. Evidence of NECSWS' suitability is demonstrated by the fact that NECSWS is a highly credible acquirer with considerable sector experience and is seen as a "safe pair of hands", having demonstrated its ability to

<sup>&</sup>lt;sup>8</sup> By way of illustration (although from another business area), [×].

deliver reliable and stable solutions for customers, as well as being willing and able to provide the investment that SSS' products desperately need.

- 4.4 It is also worth noting that customer consents were a pre-requisite to proceeding with completion of the Transaction. [≫]. In practice, this placed tight restrictions on who was considered a suitable potential purchaser. Indeed, the fundamental importance customers place on this was reflected in the Transaction documents [≫].<sup>9</sup> It is not clear that other potential acquirers of SSS would have been able to achieve these consents.
- 4.5 It is difficult to gauge representative views of the customer base regarding the Transaction, but the feedback NECSWS has received on the Transaction to date has been largely positive. As is always the case, some customers may have reservations although these customers may not be [<sup>∞</sup>]. Although it may not be the case that *all* customers universally favour the Transaction, NECSWS is not aware of any alternative outcome that would be universally favoured by customers; once the CMA process has concluded, it also plans to engage with customers to understand any reservations they may have, and to seek to address these. In addition, customers can (and, in practice, will) switch to competing suppliers if they are not content with NECSWS' offering.

## 5. **IMPACT OF THE TRANSACTION**

- 5.1 The Transaction should <u>not</u> be expected to result in a substantial lessening of competition, for all the reasons NECSWS has explained at Phase 1 and in its initial submission at Phase 2. In brief summary (and linking in with a number of the themes described above):
  - 5.1.1 The financial stability, capacity, reliability and efficiency of suppliers play a critical role in public sector software markets. NECSWS has a proven track record of investing to grow and develop the businesses it has acquired, and intends to reverse the trend of underinvestment in SSS by investing to improve SSS' products and services, as explained in more detail in section 2 above.
  - 5.1.2 A key factor driving forward-looking competitive dynamics in the reference markets is the shift towards digital, mobile and cloud-based solutions, which has been prompted by customer demand and has increasingly been shaping customers' procurement decisions and choice of suppliers. In respect of cloud technology in particular:
    - (A) The UK Government's "Cloud First" policy indicates that cloud should be the first option considered by public sector buyers of IT products and services; and the National Policing Digital Strategy sets out an aim that c. 80% of police technology will be hosted on the public cloud within the first five years of the plan.
    - (B) As the CMA acknowledged in its Phase 1 Decision, cloud capability is a factor of increasing importance. For example, in ICCS this is evident from the requirement for a cloud-based solution in recent tenders such as those issued by Dyfed-Powys Police, Warwickshire and Northamptonshire FRS and Kent & Essex Police amongst others.<sup>10</sup>
    - (C) Competitors including Frequentis, Motorola and SAAB (ICCS), SAP, Crown and Totalmobile (Duties) and Niche and Mark43 (RMS) are well-

<sup>&</sup>lt;sup>9</sup> [%].

<sup>&</sup>lt;sup>10</sup> See paragraph 5.26 of the IL Response.

placed to serve demand for cloud-based solutions, and have already enjoyed a degree of success to date as a result.

- (D) [≫]
- 5.1.3 Linked to this, another important driver of competition across the reference markets has been, and continues to be, the success of new entrants and the credible threat of potential entry (including by international suppliers), on which see section 6 below. For example, Mark43's very recent actual entry into supply of RMS in the UK illustrates that the threat of new entry is a real constraint, not a notional one;
- 5.1.4 In ICCS, the Parties' Opportunities Data shows that the Parties compete more closely with third party suppliers than with each other, and significant competition from several strong players who have modern and contemporary offerings (Frequentis, Motorola, SAAB and Systel) will continue to constrain the Parties post-Merger.
  - (A) The Parties are not close competitors in the supply of ICCS. Of the [≫] ICCS opportunities since 2017 where at least two bidders were identified, NECSWS participated in [≫] and SSS participated in [≫] opportunities but both participated in the same opportunity on only [≫] occasions.
  - (B) Motorola and Frequentis are closer competitors to each of the Parties than the Parties are to each other. Motorola bid more often against NECSWS than SSS did; and both Motorola and Frequentis bid more frequently against SSS than NECSWS did. Frequentis and Motorola have also established their presence as strong competitors in ICCS, having won a number of significant ICCS contracts such as the 2017 contract to supply all ambulance customers in England, Wales and Scotland and a 2021 tender by West Yorkshire Police to establish the North East Police and Fire Framework respectively.
  - (C) NECSWS has not lost a customer to SSS since 2017, but has lost [≫] customers to Motorola and [≫] to each of SAAB and Systel. SSS has lost [≫] customers to Frequentis, <sup>11</sup> [≫]to NECSWS, and [≫] to each of Motorola, Systel and SAAB since 2017.
  - (D) [%]
- 5.1.5 In Duties, the Parties' Opportunities Data provides clear evidence that the Parties are not close competitors, and that there exists a range of actual competitors (including ERP suppliers). There is also a number of credible potential competitors which will continue to exert a strong constraint on the Parties.
  - (A) [X]
  - (B) [≫]
  - (C) In addition, [%].
  - (D) International ERP suppliers supply or have recently supplied Duties to emergency services customers in the UK. For example, Oracle currently supplies Duties to Staffordshire FRS and, until 2020, supplied Duties to Hertfordshire Police, demonstrating that Oracle has Duties capabilities,

<sup>&</sup>lt;sup>11</sup> Assuming the ARP ICCS opportunity is counted as a single customer, as proposed in the IL.

and SAP has been the longstanding Duties supplier for the  $[\ensuremath{\mathbb{M}}]$  police forces.

- (E) NECSWS also believes there have been numerous instances of Duties suppliers moving into supplying emergency services customers using their prior non-emergency services experience (for example Allocate Software, Zellis and Midland HR).
- 5.1.6 In RMS, [≫], in light of the impact of substantial and high-profile implementation issues with its PoliceWorks product at GMP on SSS' business and reputation, and the [≫] of SSS' UNIFI product.<sup>12</sup> The Parties are not close competitors; actual competitors (including Niche and now Mark43) and credible potential competitors will continue to impose a strong constraint on the Parties post-Merger, and customers can (and have) sponsored new entry.
  - (A) [X]
  - (B) As explained in the Parties' Note on analysis of bidding data, following GMP's award to SSS in 2016 there have been nine opportunities that involved a tender process. SSS has only bid for [≫] of these opportunities <sup>13</sup> whilst NECSWS and Niche bid for [≫] of these opportunities. NECSWS and SSS only participated in the same bid in [≫] opportunities. This is consistent with NECSWS' view that [≫].
  - (C) Niche has exerted, and will continue to exert, a strong competitive constraint post-Merger. By way of recent example, [≫].
  - (D) As discussed at NECSWS' site visit, international suppliers of RMS are well-placed to enter the UK market. For example, Niche uses the same RMS software to supply customers in the US, Canada, Australia and the UK; and the recent entry of Mark43 also illustrates that a North American supplier can win UK customers. Other international RMS suppliers who are also highly credible potential entrants in relation to the UK market include Hexagon, Motorola and HCL
- 5.1.7 The relevant counterfactual, being the most likely conditions of competition absent the Merger, is the scenario in which SSS is a substantially weakened competitive force, with significant underinvestment by Capita having materially impacted SSS' ability to compete effectively on an ongoing basis particularly in the context of customer demand for [≫], and the ongoing investment required to develop products in the reference markets and ensure they meet evolving demand. The evidence points to significant underinvestment by Capita in the SSS business [≫] and SSS failing to secure the necessary investment to maintain its competitive position (as explained in detail in the Counterfactual Paper provided with the IL Response).
- 5.1.8 Any barriers to entry and expansion in the reference markets are readily and demonstrably surmountable, as evidenced by the number and variety of competing suppliers to the Parties (including many credible non-UK suppliers), on which see section 6 below; and
- 5.1.9 Emergency services customers have a high degree of control over, and choose how they wish to procure, their products and services, and exercise material buyer power. There is a strong emphasis on value for money and a drive for greater efficiency underlying public sector customers' approach to the procurement of

<sup>&</sup>lt;sup>12</sup> The same [**%**] apply in respect of the modular "PoliceWorks v1" product referred to in footnote 4 above.

<sup>13 [%]</sup> 

software, together with the importance of reliable and stable providers and solutions.

5.2 For the reasons set out in section 2 above, the Transaction will in fact enable NECSWS to compete more effectively with third party suppliers, including newer entrants which are winning contracts with their contemporary, cloud-based solutions (who are often well-resourced international suppliers – on which see further below).

## 6. NEW ENTRY

- 6.1 As the Parties explained in their Initial Submission, a key factor driving current competitive dynamics in public sector software markets is customers' movement towards digital, mobile and cloud-based solutions that allow modern and agile ways of working (mandated by UK public policy), which opens the market up to new entrants with contemporary product offerings. Many opportunities coming to market in the reference markets play to the strengths of these suppliers, which are well-funded and well-established international organisations.<sup>14</sup>
- 6.2 The trend towards adoption of cloud technology and global standards opens up the UK market to international software suppliers. As discussed with the CMA at NECSWS' site visit, such suppliers are able to implement their solutions across national markets and have in fact done so. For example:
  - 6.2.1 In ICCS, three key international suppliers (Systel, SAAB and Motorola) entered in the last decade and a fourth supplier (Frequentis) in the decade before. Since then, the worldwide ESN standard has been adopted, making it even more straightforward for any ICCS solution with LTE capability (i.e. which is ESN-compatible) to enter the UK market;
  - 6.2.2 In Duties, current or recent direct (rather than sub-contracted) supply by global ERP vendors such as SAP and Oracle has continued to impose competitive pressure on suppliers of Duties solutions; and
  - 6.2.3 In RMS, Mark43's recent entry into the UK was supported by its first customer, Cumbria Constabulary. Mark43 is a North American RMS supplier with a cloudnative RMS product and has evidently been able to adapt its solution to meet a UK police force's requirements.
- 6.3 These examples clearly illustrate a continuing trend of new entrants in the reference markets being able to win, and indeed winning, contracts from incumbent suppliers. This trend can only be expected to continue in light of customers' increasing adoption of cloud-based solutions, which facilitates remote provision, and the globalisation of relevant standards.

<sup>&</sup>lt;sup>14</sup> For example, at paragraph 5.26 of the IL Response the Parties set out examples of emergency services customers who when tendering for the provision of ICCS (amongst other services) have required that the solution offered must be cloud-based, or have chosen a solution as a result of its cloud functionality.