

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

## Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups<sup>1</sup>

### Introduction

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>2</sup> and Secure Solutions USA LLC<sup>3</sup> (together **SSS**) 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. The Merger completed on 3 January 2022. The CMA imposed an Initial Enforcement Order (**IEO**) under section 72(2) of the Act on 21 December 2021 to ensure that no action is taken pending final determination of the reference which might prejudice the reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference. In accordance with the IEO, on 30 May 2022 the CMA directed NECSWS to appoint a Monitoring Trustee (**MT**). An MT was appointed on 8 June 2022. To date, a number of derogations have been made under the IEO.<sup>4</sup>
4. In its provisional findings on the reference notified to the Parties on 15 September 2022 (the **Provisional Findings**), the CMA, among other things, provisionally concluded that the Merger has resulted in the creation of a relevant merger situation, and that the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in the supply of Integrated Communication Control Systems software (**ICCS**) to emergency services agencies (police forces, fire and rescue services, and ambulance trusts) and transport customers in the UK and in the supply of Duties Management Systems software

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<sup>1</sup> CMA, [Rules of Procedure for Merger, Market and Special Reference Groups \(CMA17\)](#), 28 March 2014.

<sup>2</sup> Formerly Capita (SSS) Limited.

<sup>3</sup> Formerly Capita Software (US) LLC.

<sup>4</sup> Details of the IEO, MT mandate and derogations can be found on the [CMA case page](#).

**(Duties)** (software that enables the planning, scheduling and shift management of emergency service staff) to police customers in the UK.

5. The CMA's analysis provisionally indicates that these SLCs have resulted, or may be expected to result, in adverse effects, for example in the form of the Merged Entity removing available product lines, reducing service quality or investment, or increasing prices compared to what would otherwise have been the case absent the Merger.
6. This notice of possible remedies (**Remedies Notice**) sets out the possible actions which the CMA considers it might take for the purpose of remedying these SLCs and/or any resulting adverse effects identified in the Provisional Findings.<sup>5</sup>
7. The CMA invites comments on possible remedies by Friday 30 September 2022.<sup>6</sup>

## Criteria for remedies

8. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.<sup>7</sup>
9. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects.<sup>8</sup> The effectiveness of a remedy is assessed by reference to its: (a) impact on the SLC and its resulting adverse effects; (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration; (c) practicality, in terms of its implementation and any subsequent monitoring; and (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effects.<sup>9</sup>
10. Having identified the effective remedy options, the CMA will select the least costly and intrusive remedy that it considers to be effective.<sup>10</sup>
11. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>11</sup>

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<sup>5</sup> [NEC Software Solutions UK / Capita Secure Solutions and Services merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/merger-remedies-guidance)

<sup>6</sup> Responses to the Notice of Possible Remedies are typically requested within 14 days of publication of the Notice (and in any event, no less than seven days) so that they can be considered before response hearings ([Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), paragraph 13.1).

<sup>7</sup> [Section 35\(4\)](#) of the Act. [Merger remedies guidance \(CMA87\)](#), 13 December 2018, paragraph 3.3.

<sup>8</sup> [CMA87](#), paragraph 3.4.

<sup>9</sup> [CMA87](#), paragraph 3.5.

<sup>10</sup> [CMA87](#), paragraph 3.4.

<sup>11</sup> [CMA87](#), paragraph 3.4.

## **Possible remedies on which views are sought**

12. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC or any resulting adverse effects that have been provisionally identified.
13. As set out in published remedies guidance, the CMA prefers structural remedies, such as divestiture (if the merger is completed) or prohibition, over behavioural remedies because:
  - (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
  - (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
  - (c) structural remedies rarely require monitoring and enforcement once implemented.<sup>12</sup>
14. The CMA's current view is that a behavioural remedy is very unlikely to be an effective remedy to the provisional SLCs or any resulting adverse effects that it has provisionally identified. However, the CMA will consider any behavioural remedies put forward as part of this consultation.
15. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the provisional SLCs or any resulting adverse effects.
16. The CMA first sets out below the considerations for the design of effective divestiture remedies before setting out the possible structural remedies to address the provisional SLCs set out in the provisional findings.

### ***Considerations for the design if an effective divestiture remedy***

17. In evaluating possible divestitures as a remedy to the provisional SLCs it has found, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, per its guidance on remedies, the CMA will have regard to the following risks which can impair the effectiveness of divestiture remedies:<sup>13</sup>

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<sup>12</sup> [CMA87](#), paragraph 3.46.

<sup>13</sup> [CMA87](#), paragraph 5.3.

- (a) composition risk arises if the scope of the divestiture business is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
  - (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser or if a suitable purchaser is not available; and
  - (c) asset risk arises if the competitive capability of the divestiture business deteriorates before completion of the divestiture.
18. In defining the scope of a divestiture package that will address any SLCs, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.<sup>14</sup> This may comprise a subsidiary or a division or the whole of the business acquired.<sup>15</sup>
19. The CMA will generally prefer the divestiture of an existing business, which can compete effectively on a stand-alone basis, to the divestiture of part of a business or a collection of assets.<sup>16</sup> This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.<sup>17</sup>
20. When considering purchaser risk, the CMA will normally wish to be satisfied that a prospective purchaser:
- (a) is independent of the merger parties;
  - (b) has the necessary capability to compete;
  - (c) is committed to competing in the relevant markets; and
  - (d) will not create further competition concerns.<sup>18</sup>
21. When considering asset risk, the CMA will seek to ensure an effective divestiture process that will protect the competitive potential of any divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale.<sup>19</sup> The process should also allow prospective purchasers to make an appropriately informed acquisition decision.<sup>20</sup> As such, the CMA will consider

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<sup>14</sup> [CMA87](#), paragraph 5.7.

<sup>15</sup> [CMA87](#), paragraph 5.7.

<sup>16</sup> [CMA87](#), paragraph 5.12.

<sup>17</sup> [CMA87](#), paragraph 5.12.

<sup>18</sup> [CMA87](#), paragraphs 5.20 and 5.21.

<sup>19</sup> [CMA87](#), paragraph 5.33.

<sup>20</sup> [CMA87](#), paragraph 5.33.

what, if any, procedural safeguards may be required to minimise the asset risk associated with divestiture.

### ***Possible divestiture remedy options***

22. At this stage, the CMA has identified only one potential effective structural remedy: the divestiture of SSS by NECSWS (full divestiture).
23. The CMA considers that a full divestiture would be similar to a prohibition of the Merger as it would restore the independent ownership of SSS and NECSWS and the resulting market structure to that which existed at the time of the Merger. It would thereby restore fully the loss in the competitive constraint arising from the Merger. The CMA therefore takes the initial view that, subject to implementation considerations, a full divestiture of SSS would represent a comprehensive and effective remedy to all aspects of the SLCs it has provisionally found, and consequently any resulting adverse effects.
24. The CMA has not identified any other divestiture package that, at this stage, it considers would be effective.
25. Specifically, at this stage, the CMA has not been able to identify another smaller or differently configured divestiture package (eg the sale of only the ICCS and the Duties operations of SSS, either on a combined or separate basis) that could form the basis of an effective remedy to address comprehensively the provisional SLC identified in the provisional findings. As noted at paragraphs 18 and 19 above, to identify a smaller or differently comprised divestiture package as effective, the CMA would require, in particular, evidence that the smaller or differently configured divestiture package would be attractive to potential buyers and compete effectively on a stand-alone basis or as part of another company such that it included all the relevant operations pertinent to the area of competitive overlap.
26. The CMA recognises the possibility that divestiture only of SSS's ICCS operations and Duties operations, either on a combined or separate basis, might, in principle, be able to remedy the provisional SLC. However, the CMA has concerns as to the potential effectiveness of such a partial divestiture, relating to composition risk and the practical implementation of such a divestiture. In particular:
  - (a) We understand the ICCS operations and the Duties operations of SSS rely on the support of other parts of SSS. This includes product development and support, as well as support functions such as HR and finance. Such services would have to be provided by a purchaser, either by integrating into existing structures or by establishing these from new. The loss of these existing connections within SSS could weaken the divested business relative to SSS's ICCS operations and Duties operations today and/or unnecessarily

limit the number of potential purchasers to whom the divestiture package would be attractive.

- (b) We understand that many of the ICCS and Duties contracts serviced by SSS are part of broader contracts with customers that procure services from SSS. For such customers, an ICCS and Duties-only divestiture would require such contracts to be split. This could weaken the competitive position of the divested business and/or its attractiveness to potential customers.

27. The CMA will consider full divestiture and any other practicable remedies that the Parties, or any interested third parties, may propose that could be effective in addressing the SLCs and/or any resulting adverse effects.

### ***Consultation on possible remedies***

28. The CMA invites views on:

#### *The package of assets to be divested*

- (a) whether a smaller or differently configured divestiture package (for example the sale together of only the ICCS operations and Duties operations of SSS in a single divestiture package, or the sale of the ICCS operations and Duties operations of SSS separately, to different purchasers) could form the basis of an effective remedy to address comprehensively the provisional SLCs;
- (b) whether the Parties can divest a mixture of assets from both Parties (sometimes referred to as a 'mix and match' approach) eg divest ICCS operations from one Party and Duties operations from the other and whether such an approach would result in additional risks to the remedy;<sup>21</sup>
- (c) whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market; and
- (d) any other elements that may be required.

#### *Identification of a suitable purchaser*

- (a) whether there are risks that a suitable purchaser is not available, including the risk that a purchaser would not sufficiently invest in ICCS and Duties operations;

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<sup>21</sup> The CMA has a preference for avoiding 'mix-and-match' remedies as this may create additional composition risk such that the divestiture package will not function effectively; [CMA87](#), paragraph 5.16.

- (b) whether there is a risk that the merger parties will divest to a weak or otherwise inappropriate purchaser;
- (c) whether requirements for customers to consent to the novation of contracts to a purchaser affects the availability of a suitable purchaser; and
- (d) whether there are any specific factors to which the CMA should pay particular regard in assessing purchaser suitability.

### *Effective divestiture process*

29. The CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture. The CMA invites views on:
- (a) the appropriate timescale for achieving a divestiture; and
  - (b) whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture.
30. As noted at paragraph 3 above, an MT is already in place, and the CMA currently expects this to continue throughout any divestiture process. The CMA invites views on whether any additional risks, such as the loss of key staff and reduced customer confidence in SSS, may arise during the divestiture period and whether the functions of the MT should be amended to oversee the divestiture.
31. The CMA will have the power to mandate an independent divestiture trustee to dispose of any divestiture package if:
- (a) NECSWS fails to procure divestiture to a suitable purchaser within the initial divestiture period; or
  - (b) the CMA has reason to expect that NECSWS will not procure divestiture to a suitable purchaser within the initial divestiture period.
32. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. The CMA invites views on whether the circumstances of this Merger necessitate such an approach.

### **Consultation on the cost of remedies and proportionality**

33. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLCs and their adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction. In relation

to completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy.<sup>22</sup>

34. When considering relevant costs, the CMA's considerations may include (but are not limited to):
- (a) distortions in market outcomes;
  - (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
  - (c) the loss of any relevant customer benefits (**RCBs**) that may arise from the Merger which are foregone as a result of the remedy (see paragraphs 36 to 39 below).<sup>23</sup>
35. The CMA invites views on what costs are likely to arise in implementing each remedy option.

### ***Relevant customer benefits***

36. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any RCBs in relation to the creation of the relevant merger situation.<sup>24</sup>
- (a) RCBs are limited by the Act to benefits to customers in the form of:
  - (b) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or
  - (c) greater innovation in relation to such goods or services.'<sup>25</sup>
37. The Act provides that a benefit is only an RCB if:
- (a) it accrues or may be expected to accrue to relevant customers within the UK within a reasonable period as a result of the creation of that situation; and
  - (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.<sup>26</sup>
38. The CMA welcomes views on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options we are considering.

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<sup>22</sup> [CMA87](#), paragraphs 3.8 and 3.9.

<sup>23</sup> [CMA87](#), 3.10.

<sup>24</sup> [Section 35\(5\)](#) of the Act, see also [CMA87](#), paragraphs 3.15 and 3.16.

<sup>25</sup> [Section 30\(1\)\(a\)](#) of the Act, see also [CMA87](#), paragraph 3.17.

<sup>26</sup> [Section 30\(3\)](#) of the Act, see also [CMA87](#), paragraph 3.19.



## Next steps

39. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, Friday 30 September 2022 (see Note).
40. A copy of this Remedies Notice will be posted on the [CMA case page](#).<sup>27</sup>

Kip Meek  
Chair of the Inquiry Group  
15 September 2022

## Note

This notice of possible actions to remedy, mitigate or prevent the provisional SLC or any resulting adverse effects is made having regard to the Provisional Findings announced on 15 September 2022. Interested parties have until 7 October 2022 to respond to the Provisional Findings. The CMA's findings may alter in response to comments it receives on its Provisional Findings, in which case the CMA may consider other possible remedies, if appropriate.

Comments should be made by email to: [NEC.Capita@cma.gov.uk](mailto:NEC.Capita@cma.gov.uk).

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<sup>27</sup> A copy of this Remedies Notice and the Provisional Findings can be found on the [CMA case page](#).