COMPLETED ACQUISITION BY NEC SOFTWARE SOLUTIONS UK LIMITED OF CAPITA (SSS) LIMITED AND CAPITA SOFTWARE (US) LLC
ME/6979/21

NECSWS COMMENTS ON NOTICE OF POSSIBLE REMEDIES

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The following comments are provided on behalf of NEC Software Solutions UK Limited ("**NECSWS**") in response to the CMA's Notice of Possible Remedies (the "**Notice**") dated 15 September 2022 (the "**Response**").

EXECUTIVE SUMMARY

- **The CMA's current view that a full divestment of SSS is the only potential effective remedy is unreasonable, and is inconsistent with the CMA's stated guidance that it will select the least costly and intrusive remedy that is effective.**
- NECSWS considers that there are no reasonable grounds for this view. A full divestment of SSS would be **wholly disproportionate, costly and intrusive** and **subject to considerable composition risks**.
- Notably, a full divestment of SSS would cause **significant cost and disruption for SSS' customers**, as it would involve a change of supplier and another period of uncertainty for customers soon after the Transaction. This would be unjustifiably costly and intrusive, particularly because the disruption would apply equally to customers whether or not they procure solutions from SSS in the markets in which the CMA has provisionally found an SLC (i.e. ICCS and Duties).
- **Targeted partial divestments**, focused on ICCS and Duties and which would be effective to address these SLCs, can readily be achieved within an acceptable timeframe and are more likely to be attractive to suitable purchasers than a full divestment of SSS.
- In each of these markets, the **divestment of NECSWS' own relevant business** would be [✂] effective, efficient and proportionate [✂] to address the SLC the CMA has found, [✂]. [✂] potential divestments from the SSS business are also described below, [✂].
- NECSWS anticipates that **the divestment businesses would attract a number of buyers** that would be interested in entering or expanding their presence in ICCS or Duties. **Purchasers of these targeted divestments are more likely to be committed to operating and investing in these businesses** (and therefore maintain a competitive constraint in these markets) **than a purchaser of the full SSS business**, which might not be focused on developing or investing in the full suite of SSS activities.
- ICCS and Duties are two separate business areas, and neither Party has any customer contracts which include both their ICCS and Duties products. If the CMA considers that remedies drawn from each of the Parties' businesses would individually be appropriate, a "mix and match" remedy therefore would not give rise to any increase in composition risk. For the same reasons, these businesses could either be sold to a single purchaser or to more than one purchaser; [✂].

1. INTRODUCTION

1.1 For the reasons that will be set out in more detail in due course in NECSWS' response to the CMA's Provisional Findings dated 15 September 2022 ("**PFs**"), NECSWS strongly disagrees with the CMA's provisional conclusion that SLCs may be expected to occur in the supply of ICCS to emergency services and transport customers in the UK and in the supply of Duties to police customers in the UK.

1.2 To the extent the CMA nonetheless concludes in its final report that the Transaction has resulted or may be expected to result in SLCs in the supply of ICCS to emergency services and transport customers in the UK and in the supply of Duties to police customers in the UK, NECSWS has provided comments below on the possible actions described by the CMA in the Notice. These comments are provided without prejudice to NECSWS' position on the substance of the PFs.

1.3 NECSWS considers that the CMA's current view that a full divestment of SSS is the only potential effective remedy is unreasonable, and is inconsistent with the CMA's stated guidance that it will select the least costly and onerous remedy that is effective. NECSWS considers that there are no reasonable grounds for this view, and that a full divestment of SSS would be wholly disproportionate. NECSWS is surprised by the CMA's view, given that it has identified competition concerns in two markets that account for only a small proportion of the total revenue of the SSS business acquired by NECSWS ([✂] out of [✂] in 2021, i.e. approximately [✂]). Such a severe remedy also appears to be particularly difficult to justify when the CMA's own investigation to date has found no evidence of a groundswell of opinion among customers against the Transaction.

1.4 For the reasons set out in greater detail below, NECSWS is of the firm view that targeted partial divestments, focused on the CMA's areas of concern, are readily achievable within a timeframe acceptable to the CMA, are more likely to be attractive to suitable purchasers than a full divestment of SSS, and are significantly more proportionate. Purchasers of partial divestments are more likely to be committed to operating and investing in the divestment businesses than a purchaser of the whole SSS business (which might not be focused on developing or investing in the full suite of SSS activities). In summary, NECSWS considers that there are no reasonable grounds to consider a full divestment of SSS as the only potential effective remedy to address the concerns provisionally identified by the CMA.

1.5 For each of the divestment proposals set out below, NECSWS anticipates that the disposal would in particular be conditional on:

1.5.1 Approval by the CMA of the proposed purchaser;

1.5.2 Approval by the Department for Business, Energy and Industrial Strategy under the National Security and Investment Act 2021 (the "**NS&I Act**"), if relevant; and

1.5.3 Relevant customer consents being obtained.

1.6 This Response is structured as follows:

1.6.1 **Section 2** explains why the CMA's approach in the Notice is flawed.

1.6.2 **Section 3** explains why full divestment of SSS is not a suitable remedy.

1.6.3 **Section 4** sets out an initial overview of partial divestiture options, which are detailed further in subsequent sections.

1.6.4 **Section 5** sets out details of a [✂] NECSWS ICCS divestment which would be suitable to remedy the SLC provisionally found in ICCS.

1.6.5 **Section 6** sets out a [✂], which is a potential divestment of SSS's ICCS business.

1.6.6 **Section 7** [✂].

1.6.7 **Section 8** sets out details of a [✂] NECSWS Duties divestment which would be suitable to remedy the SLC provisionally found in Duties.

1.6.8 **Section 9** sets out details of a proposed SSS Duties divestment which would [✂] address the SLC provisionally found in Duties [✂].

2. CMA'S APPROACH IN THE REMEDIES NOTICE IS FLAWED

2.1 The CMA's starting point set out in the Notice is that:

2.1.1 The CMA has currently identified only one potential effective structural remedy: "the full divestiture of SSS by NECSWS" (which NECSWS understands to mean a divestment of all the products and assets purchased by NECSWS from Capita and which together comprise the Transaction). The CMA recognises in the Notice that this far-reaching remedy would be akin to a complete prohibition of the Transaction[1]; and

2.1.2 The CMA has concerns that a partial divestiture of SSS' ICCS and Duties businesses may raise composition risks, in particular in light of uncertainties around access to shared services and contracts that also include other SSS products/services.

2.2 NECSWS strongly disagrees with this starting point. A remedy ordering full divestment would be both flawed and inconsistent with the CMA's Remedies Guidelines. The CMA's current concerns regarding shared resources and contracts do not reflect the commercial realities of the industry in which NECSWS and SSS operate. There is nothing particularly unusual about the sale of part of a business or group of businesses in the public sector software industry; this is all the more relevant in this case, as NECSWS and SSS have grown over time through the acquisition of other businesses (rather than entirely organic growth). [✂] with targeted partial divestments, as explained in detail in Section 3 below.

The CMA's approach is inconsistent with its Remedies Guidelines

2.3 The CMA position as set out in the Notice is inconsistent with its own Remedies Guidelines. Those Guidelines state[2] that the CMA will seek remedies that are:

2.3.1 Effective in addressing the SLC and adverse effects resulting from it;

2.3.2 The least costly and intrusive remedy that it considers to be effective. In particular, in cases where the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive;

2.3.3 Not disproportionate in relation to the SLC and its adverse effects; and

2.3.4 When considering the scope of any divestment package, the smallest viable, standalone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.

2.4 In that context, NECSWS considers that the following aspects of the Notice cannot be reconciled with the CMA's Remedies Guidelines and must be addressed as the CMA proceeds to consider remedies in this case. In particular:

2.4.1 No proper consideration of other effective remedies: the Notice does not consider properly or adequately whether there might be other alternative remedies that might be effective and more proportionate before concluding that the full divestment of the SSS business is the only effective remedy that it can identify at this stage. It is incumbent on the CMA as it assesses any potential remedies to consider in an even-handed way the full range of potential remedies options. For example, NECSWS notes that the Notice does not give any consideration to the possibility of divestments of NECSWS' ICCS or Duties products, or a potential "mix and match" remedy as between NECSWS and SSS products, [✂].

2.4.2 Not the smallest viable standalone business: it is also incumbent upon the CMA to consider properly whether there is any smaller viable standalone business that could be divested which might effectively address the provisionally identified SLCs. There is no indication in the Notice that the CMA has done this to date, notwithstanding that there are a number of distinct SSS products/services which

1 Remedies Notice, paragraph 23.
2 Merger Remedies Guidelines, paragraph 3.4 and 5.7.

are complementary and unrelated to the markets in which the CMA has provisionally found an SLC.

2.4.3 The remedy identified in the Notice is wholly disproportionate; the Notice gives no consideration to the proportionality, costliness or intrusiveness of the proposed remedy: the CMA's currently proposed remedy would be wholly disproportionate in relation to the scale of the two limited SLCs provisionally identified by the CMA in the PFs and would be highly intrusive, in particular in respect of those customers of SSS which have no relationship with SSS' ICCS and Duties businesses but will find their contracts disrupted by another sale of the full SSS business. When assessing suitable remedies in this case, the CMA must therefore fully analyse the practicality and feasibility of its chosen remedy.

2.5 For the reasons explained further below, NECSWS is strongly of the view that:

2.5.1 The CMA's current identified remedy is wholly disproportionate and unreasonable, and that it raises considerable composition risks which undermine its viability (see further Section 3 below).

2.5.2 There are a number of potential divestiture packages that would be equally effective and comprehensive solutions to the SLCs provisionally identified by the CMA, far more proportionate, and less costly and intrusive than a remedy that is akin to a prohibition of the whole transaction. These alternative proposals are discussed in detail in Section 4 onwards.

CMA's concerns regarding partial divestment do not reflect the realities of the public sector software industry

2.6 NECSWS disagrees with the CMA's concerns regarding the effectiveness of a partial divestiture expressed at paragraph 26 of the Notice, and considers these do not reflect the realities of disposals of parts of businesses (often known as "carve-outs") in the public sector software industry in which the Parties operate. NECSWS expands below on the basis for this disagreement, in relation to both (i) access to services (responding to paragraph 26(a) of the Notice) and (ii) contracts covering more than one solution (responding to paragraph 26(b) of the Notice).

Services

2.7 Acquisitions and disposals of parts of businesses are extremely common in the public sector software industry in which NECSWS and SSS operate. Using NECSWS alone as an example:

2.7.1 NECSWS disposed of its Social Care software business to OLM in May 2017;

2.7.2 NECSWS disposed of its PARIS payments software business to Civica in May 2018;

2.7.3 NECSWS acquired the EMIS Care (now known as NEC Care) and diabetic eye screening software business from EMIS in April 2019; and

2.7.4 NECSWS acquired the Charter Services (covert asset management software) business from Equiniti in December 2020.

2.8 The table below summarises the services which were transferred by the vendor to the acquirer in each of these cases: [✂].

2.9 In all of the above cases:

2.9.1 [✂];

2.9.2 [✂]

2.9.3 [✂].

2.10 NECSWS has significant experience of successfully acquiring and disposing parts of businesses, and believes that its previous experience is consistent with the public sector software industry more generally. Specifically, the typical approach in such acquisitions/disposals is that most operational resources needed to run the business would be included as part of the sale package, but non-operational support services (such as HR, Finance, Legal, Marketing, Security and first-line support) are not included, as these are very much viewed as "generic" services.

2.11 This reflects the fact that, in many cases, an acquirer may well already have its own existing non-operational services into which any acquisition can be integrated. In the highly unusual event that an acquirer does not have these services, there is no difficulty in acquiring them: the nature of these resources is not bespoke to the industry and can be readily procured where needed.

2.12 In either case, however, the availability of these services is not an issue or in any way problematic; this is even more so in a case such as this where the numbers of personnel providing these generic services are very limited (i.e. NECSWS believes that [✂]).

2.13 NECSWS also notes that its experience includes transactions with third parties who are serial acquirers or disposers in the industry (such as Capita or Civica). Numerous business carve-outs have been carried out by such parties: a few recent examples include SCC's acquisition of Civica's Licensing and Cloud Software Lifecycle (LCSL) business in 2022; Infor's sale of its enterprise asset management software business to Hexagon in 2021; Idox's sale of its Compliance Operations business Sponge Group in 2021; Visma's sale of two of its product areas within procurement software to Mercell in 2020; and IBM's sale of its collaboration and on-premise marketing and commerce software products to HCL in 2019. These illustrate that such carve-outs are a common feature of the industry.

2.14 [✂]:

2.14.1 [✂].

2.14.2 [✂].

2.15 [✂].

Contracts

2.16 Similarly, the CMA's concerns regarding contracts that cover more than one solution are not well-founded. NECSWS considers that contracts that span different products are a typical aspect of the industry, and can be separated out if required (as explained further below in this Response). Separation of such contracts is simply one aspect to be addressed as part of any transaction or indeed a divestment process – this is not an impediment to effective implementation and can realistically be achieved. By way of example, when NECSWS sold its PARIS payments software business to Civica in May 2018, [✂].

2.17 The most likely way to ensure continuity of supply to customers once a contract for more than one product has been separated out is that one supplier remains as the "prime" supplier and the other becomes a sub-contractor for the remaining services under the contract. Subcontracting of services is common in the industry; for example, in some instances [✂]. Customers are therefore familiar with such sub-contracting arrangements.

Summary

2.18 In light of the above, access to services and separating contracts that cover more than one solution have not, in NECSWS' experience, been problematic challenges to other carve-out acquisitions or disposals in the industry in which NECSWS and SSS operate, and cannot properly be viewed by the CMA as entailing composition or implementation risks relating to a partial divestment in ICCS or Duties (as explained further with reference to each of the proposals for partial divestments set out below). NECSWS does not consider that potential purchasers would be deterred from a partial divestment of ICCS or Duties or would experience any competitive disadvantage as a result of these matters. It follows that the CMA should not dismiss a more targeted partial divestiture option on the basis of these unfounded concerns, in particular where this would lead to a more proportionate and achievable outcome.

3. FULL DIVESTMENT OF SSS IS NOT A SUITABLE REMEDY

3.1 NECSWS' view is that a full divestment of the SSS business would be: (i) wholly disproportionate; (ii) highly costly and intrusive for each of NECSWS, SSS and their customer bases; and (iii) subject to considerable composition risks.

A full divestment of SSS is wholly disproportionate in relation to the SLCs provisionally identified

3.2 The CMA recognises that a divestment of the SSS business would be akin to a prohibition of the Transaction. It would be manifestly disproportionate and unreasonable to impose a remedy equivalent to blocking the entirety of the Transaction in circumstances where the CMA has identified competition concerns in only two markets, which comprise (as also explained above) a limited part of the overall SSS business:

3.2.1 <u>The SSS business is considerably wider than the two markets in which an SLC has been provisionally found:</u> the SSS business includes various pillars/products in addition to the SSS ICCS and Duties products in respect of which the CMA has provisionally identified an SLC. SSS also has significant international operations beyond its operations in the UK, with customers in 15 countries across 5 continents.

The table below highlights a range of products that are part of the SSS business in the UK, in respect of most of which the CMA has not provisionally found an SLC.

Table 2: SSS products in which SLCs have / have not been found by the CMA in the PFs

Product	Provisional SLC identified by CMA?
Radio Managed Services	No
ControlWorks	No
Vision	No
Response Eye	No
EvidenceWorks	No
UNIFI	No
PoliceWorks	No
Origin - Duties	Yes
DSx - ICCS	Yes

3.2.2 <u>ICCS and Duties account for only a limited proportion of the SSS business by revenue:</u> The table below sets out the UK revenue generated by the whole of the SSS business and by SSS' activities across ICCS, CAD, RMS, Duties and any other revenues in the UK for the last four financial years. The revenue attributable to SSS' supply of ICCS and Duties is [✂], as compared to revenue of [✂] for the SSS business; this equates to only c. [✂]% of the FY2021 UK revenue for the full SSS business.

Table 3: Breakdown of SSS UK revenues

[✂]

A full divestment of SSS would be highly costly and intrusive

3.3 A full divestment of SSS would also be highly costly, lengthy and intrusive:

3.3.1 NECSWS considers that the SSS products in a number of the non-SLC markets are complementary and additive to NECSWS' existing capabilities and will benefit UK customers. It would not be reasonable to deny customers or NECSWS such benefits in product areas in which there is no overlap between the Parties.

3.3.2 [✂]:

(A) [✂]

(B) [✂]

(C) [✂]

3.4 There are a number of alternative divestiture options that would (i) be equally effective in remedying the SLCs provisionally identified by the CMA, (ii) be far less costly and intrusive than a full divestment, and (iii) be more tailored and proportionate in scope (see Section 4 below). In accordance with the CMA's Mergers Remedies Guidelines, in cases where there is more than one potential remedy which is effective, the CMA should choose the remedy which is the least costly and intrusive.

3.5 NECSWS therefore believes that a full divestment of SSS would be inconsistent with the CMA's guidance which indicates that the CMA "*will seek to select remedies that will effectively address the SLC and its resulting adverse effects in the least costly way*"[3] and that in selecting divestiture remedies, the CMA "*will normally seek to identify the smallest viable, standalone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap*"[4].

A full divestment of SSS carries considerable composition risks

3.6 There are considerable composition and purchaser risks associated with the full divestiture of SSS that would affect the viability and timeliness of any such remedy:

3.6.1 In NECSWS' view, the pool of purchasers – particularly trade buyers - for the full divestment of SSS would be very limited since there are [✂]. NECSWS believes that [✂], but the CMA has itself recognised in the PFs that, at the time that Capita was seeking to dispose of SSS, "*many potential buyers were not interested in purchasing SSS*".[5]

3.6.2 Further, given the range of SSS' activities:

(A) Potential buyers are more likely to encounter issues in due diligence in respect of the whole SSS business than they are in respect of a partial divestment, as there are more areas in which issues could arise (for example relating to the SSS RMS business' reputational issues in connection with Greater Manchester Police);

(B) Potential buyers will also need to consider investing across a wide range of products to improve, update and maintain SSS' offering (as opposed to a narrower, more clearly defined target for investment);

(C) Trade buyers that might prima facie be interested in acquiring the full SSS business may be more likely to raise competition concerns, which could diminish their interest in pursuing any such acquisition and lead to increased purchaser risks.

3.6.3 NECSWS anticipates that there would be greater purchaser interest, in particular from trade buyers active in only certain or specialised segments of the industry, for more targeted disposals (e.g. of ICCS and Duties businesses), for example where the product being divested will "plug a gap" in an existing portfolio to enable

3 Paragraph 3.45, Merger Remedies Guidelines
4 Paragraph 5.7, Merger Remedies Guidelines
5 Paragraph 6.169, PFs

expansion into new or complementary markets (this is an acquisition strategy that NECSWS itself has employed in recent years). **Importantly, purchasers of a more targeted divestment will likely be more committed to investing sufficiently in the target business (and therefore more likely to maintain the competitive constraint associated with a divestment) than a purchaser of the full SSS business, which might not be focused on developing or investing in the full suite of SSS activities. It is therefore more likely that targeted divestments would restore and maintain pre-Transaction levels of competition in each of ICCS and Duties than would a full divestment of SSS.** Customers may also be more likely to consent to a partial divestment where the commitment of the purchaser to the specific divestment business is clear.

3.6.4 It is more likely that a purchaser would require external debt for the purchase of the whole SSS business than it would for an acquisition of a targeted divestment. The CMA's own guidance notes that a highly-leveraged acquisition of a divestiture package which leaves no scope for competitive levels of capital expenditure or product development is unlikely to satisfy suitability criteria.[6]

3.6.5 Given the above and in light of the limited interest in SSS during the previous sale process, it is apparent that a sale of the full SSS business as a remedy package would be less attractive, less feasible and require more time than a partial divestment remedy option, and would carry greater composition risk.

4. PARTIAL DIVESTITURE REMEDIES

4.1 The following sections of this Response set out alternative, more targeted remedy proposals which would address the SLCs found by the CMA in the PFs in an effective and proportionate way without raising the composition and purchaser risks outlined in Section 3 above.

4.2 In overview (and without prejudice to NECSWS' disagreement with the CMA's provisional conclusion that SLCs may be expected to occur in the ICCS and Duties markets identified in the PFs):

4.2.1 In respect of ICCS:

(A) NECSWS [✂] considers that the divestment of NECSWS' own ICCS business would be [✂] effective and proportionate [✂] to address the SLC the CMA has found in ICCS.

(B) A potential [✂] way to address the SLC would be the divestment of the SSS ICCS business, [✂], [✂].

4.2.2 In respect of Duties:

(A) NECSWS considers that the divestment of its own Duties business would be [✂] effective and proportionate [✂] to comprehensively address the SLC the CMA has found in Duties.

(B) [✂] way to address this SLC would be the divestment of the SSS Duties business, [✂].

4.3 As explained above, NECSWS has significant experience of successfully acquiring and disposing parts of businesses. [✂].

4.4 Without prejudice to the points made in Section 2, and although separation of contracts and access to support services can be, and often are, addressed as part of transactions, an [✂].

4.5 NECSWS has already had some initial discussions with a small number of potential divestment purchasers:

[6] Paragraph 5.21(c), Merger Remedies Guidelines

4.5.1 One party indicated an interest in an [✂] ICCS disposal and potentially also a Duties disposal; and

4.5.2 One party indicated an interest in a Duties disposal.

No increase in divestiture risk from "mix and match" remedy or sale to more than one purchaser

4.6 To the extent the CMA considers that remedies drawn from each of the Parties' businesses would individually be most effective [✂] NECSWS also considers that a "mix and match" remedy would not give rise to any significant increase in composition risk. ICCS and Duties are two separate business areas, being entirely separate products with very different functions: ICCS relating to call handling, and Duties to planning, scheduling and shift management (i.e. back-office functions). [✂]. There is therefore no reason in principle why these two divestments need to come from the same Party.

4.7 Similarly, NECSWS believes that the ICCS and Duties divestments (whether drawn from NECSWS' business, SSS' business, or both) could either be sold to a single purchaser or to more than one purchaser. Indeed, [✂]. As the CMA will note from the lists of potential purchasers below, the third parties likely to be interested in an ICCS divestment largely differ from those likely to be interested in a Duties divestment. As such, the divestments may be more attractive to potential purchasers if offered separately, and NECSWS considers that the purchaser risk would be no greater in such circumstances.

5. DIVESTMENT OF NECSWS' ICCS BUSINESS IS A SUITABLE REMEDY TO ADDRESS AN SLC IN ICCS

Overview

5.1 NECSWS proposes that the following divestment would be [✂] suitable [✂] to address the CMA's concerns in ICCS: the divestment of the products and relevant customer contracts and resources formerly associated with its APD subsidiary (including its ICCS Cortex product, Aspire CRM product[7],and Artemis telematic and fleet management system)[8] (the "**APD Business**"). This divestment would also include the resources and contracts associated with NECSWS' CallTouch product if the CMA considers it necessary for CallTouch to be divested in order to remedy an SLC in ICCS (together, the "**NECSWS ICCS Divestment**") – although, as explained below, NECSWS is of the firm view that a divestment of CallTouch is not necessary.

5.2 NECSWS considers that the NECSWS ICCS Divestment would be:

5.2.1 *Effective* by reference to the criteria set out by the CMA at paragraph 8 of the Notice, namely: (a) impact on the SLC and its resulting adverse effects; (b) duration and timing; (c) practicality; and (d) risk profile (composition risk, purchaser risk and asset risk).

5.2.2 [✂] *effective* to address the CMA's concerns in ICCS.

5.2.3 *Proportionate* in relation to an SLC in ICCS and its adverse effects.

Remedy scope and implementation

5.3 Please see Table 4 below for further detail on NECSWS' envisaged nature and composition of the NECSWS ICCS Divestment, together with information on suitable purchasers. As explained further below, the NECSWS ICCS Divestment would be straightforward to separate from the rest of the NECSWS business:

5.3.1 Products and assets associated with the APD Business are a relatively new addition to NECSWS' business (having been acquired as part of the APD

[7] Described at section 4 of the FMN.

[8] See section 4.5 of the FMN.

Communications Limited acquisition in December 2018) and in practical terms would be straightforward to separate and divest.

5.3.2 [✂].

5.3.3 Appropriate operational resources and support for the divested business are readily identifiable and easily separable, [✂].

5.4 For the purposes of this Response, NECSWS has included CallTouch as part of the NECSWS ICCS Divestment in case the CMA considers it necessary for CallTouch to be divested in order to remedy an SLC in ICCS. However, NECSWS is firmly of the view that a divestment of CallTouch should not be necessary to address the CMA's concerns in ICCS:

5.4.1 NECSWS notes that Cortex is NECSWS' [✂] ICCS product for emergency services customers, [✂]. A divestment of the APD Business to a third party would almost entirely remove the overlap between SSS and NECSWS in the supply of ICCS to emergency services customers. The remaining limited overlap is attributable to NECSWS' CallTouch product: [✂][9].

5.4.2 NECSWS notes that the PFs do not appear to contain any substantive analysis of the effect of the Transaction on transport customers. The divestment of the APD Business to a third-party purchaser would result in the presence of a new provider or the expansion of an existing ICCS supplier who would be able to supply transport customers [✂]. Given that divestment of the APD Business alone would maintain the competitive constraint posed by NECSWS pre-Transaction (taking into account [✂]), NECSWS considers that the divestment of the APD Business would be a proportionate and effective means of addressing the SLC in ICCS.

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9 [✂]

Table 4: Further detail on NECSWS ICCS Divestment

<table>
<tr><td colspan="2">
<u>Scope of proposed remedy</u>:

Divestment of all the products and relevant customer contracts and resources formerly associated with NECSWS' APD subsidiary (including its ICCS Cortex product and its Aspire CRM product),[10] and (if required to address the SLC) the resources and contracts associated with NECSWS' CallTouch product. A list of relevant customer contracts is provided at Annex 1.
[✂], and NECSWS therefore believes its inclusion in the divestment would be welcomed by potential purchasers.
The divestment package would also include the following assets and resources. As a general point, NECSWS notes that the primary value of a business in the public sector software industry lies in its IP and customer contracts, rather than staff resource specifically.

IP: All relevant IP associated with the Cortex, Aspire, Artemis and (if required by the CMA) CallTouch products. [✂].
Appropriate staffing resource:
[✂]

NECSWS considers that the appropriate operational resources and support for the divested business could readily be identified, and that the NECSWS ICCS Divestment would not give rise to material separation challenges. [✂]:

Sites: An assignment of [✂].

</td></tr>
<tr><td>Form of disposal</td><td>All relevant assets to be transferred to newco, an entity that will be established under the laws of England and Wales. It is envisaged that newco would be acquired by the divestment purchaser by way of share purchase.</td></tr>
<tr><td>Revenue (FY22)</td><td>[✂]</td></tr>
<tr><td>Market share</td><td>Based on the PFs, NECSWS' market share in ICCS (comprising the APD Business and CallTouch) is [20-30%] by revenue, [✂]% by volume of calls and [10-20]% by number of customers[11].</td></tr>
<tr><td>Separation of contracts</td><td>NECSWS believes that the NECSWS ICCS Divestment would not give rise to any material contract separation issues.
[✂]
NECSWS notes the following:

[✂]. NECSWS does not consider that customer consent issues would be likely as long as assurances around the future of the product and support were given (which it expects a suitable purchaser would be able to provide).
[✂]
</td></tr>
</table>

10 APD Communications Limited was initially acquired by NECSWS (at the time Northgate Public Services (UK) Limited) on 28 December 2018, [✂], and re-branded as NEC Software Solutions, along with Northgate Public Services (UK) Limited, on 1 July 2021.

11 Provisional Findings, Table 6-2

	• NECSWS' CallTouch product also would not give rise to any material contract separation issues. [✂].[12]
Shared services/resources	As explained above, the typical approach to carve-out acquisitions/disposals in the public sector software industry is that non-operational support services (such as HR, Finance, Legal, Marketing and IT) are not included in a disposal, as these are very much viewed as "generic" services. NECSWS considers that these non-operational services are generic capabilities that could readily be integrated from a purchaser's existing operations. Indeed, it is likely that a potential purchaser would want to make use of its own services in many or all of these areas to address requirements of the divestment business. NECSWS would therefore not propose to make transfers of resources in non-operational areas under a divestment. However, [✂].
Potential purchasers	NECSWS strongly believes that there is a viable pool of suitable, independent, well-funded potential purchasers that would be interested in the NECSWS ICCS Divestment, would not give rise to substantive competition law or NS&I Act concerns, and to whom the NECSWS ICCS Divestment could be made within the requisite timeframe: [✂]
Timeline to disposal	[✂]

The NECSWS ICCS Divestment would be effective in remedying any SLC ultimately identified in ICCS

5.5 The NECSWS ICCS Divestment would be [✂] effective in remedying an SLC in ICCS as it would entirely remove the overlap between SSS and NECSWS in the supply of ICCS to emergency services and transport customers. The NECSWS ICCS Divestment would lead to a structural change in the market addressing an SLC in ICCS. NECSWS believes there are therefore no grounds for considering that the NECSWS ICCS Divestment would not address the SLC effectively and comprehensively.

The NECSWS ICCS Divestment will not give rise to composition or implementation risks

5.6 The NECSWS ICCS Divestment will not give rise to material composition or implementation risks.

5.7 NECSWS considers that the NECSWS ICCS Divestment would constitute an attractive set of assets that would be viable and profitable and would enable a potential purchaser to be a strong competitor in ICCS, with revenues of £[✂] in FY22 and a market share based on the PFs of [20-30%] by revenue, [✂]% by volume of calls and [10-20]% by number of customers[13]. NECSWS does not foresee any reason that this would change prior to sale to a divestment purchaser.

5.8 As regards the separation of the APD Business and CallTouch from the remainder of NECSWS' business:

5.8.1 The products and assets associated with the APD Business are a relatively new addition to NECSWS' business (having been acquired as part of the APD

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12 [✂]

13 Provisional Findings, Table 6-2

Communications Limited acquisition in December 2018). In practical terms, the APD Business would be straightforward to separate and divest. [✂].

5.8.2 NECSWS does not foresee any material separation issues with its CallTouch product (as described in more detail in Table 4 above).

5.9 [✂], NECSWS anticipates that there will be a pool of independent, well-funded potential purchasers which are likely to be interested in acquiring these assets and would not give rise to substantive competition or NS&I Act concerns (see Table 4 above for further details). NECSWS therefore believes that it would be able to find a suitable purchaser within the requisite timeframe.

5.10 As the NECSWS ICCS Divestment would not give rise to composition risk or purchaser risk for the reasons explained above, NECSWS does not consider that an upfront buyer should be required.

The NECSWS ICCS Divestment can [✂] be implemented on a reasonable timeline

5.11 NECSWS believes that the NECSWS ICCS Divestment would be [✂] capable of timely implementation. As set out in Table 4 above, NECSWS envisages a timeline to disposal of [✂]. NECSWS is not aware of any obstacles that would prevent a suitable potential purchaser from completing an acquisition of the APD Business and CallTouch within the requisite timeframe.

The NECSWS ICCS Divestment is [✂] effective

5.12 The NECSWS ICCS Divestment would be [✂] effective to address the CMA's concerns in ICCS:

5.12.1 As stated above in Section 3, a full divestment of SSS would be unreasonably costly and intrusive, given that it would create a burden for a large number of customers who do not procure ICCS or Duties solutions from SSS (and who would need to change supplier again soon after NECSWS' acquisition of SSS).

5.12.2 [✂].

5.12.3 [✂], the NECSWS ICCS Divestment would be targeted at the area of concern identified by the CMA (ICCS). The APD Business and CallTouch product could be [✂] separated out for sale within a timeframe acceptable to the CMA, would be an effective and viable remedy to address an SLC in ICCS, [✂].

The NECSWS ICCS Divestment is proportionate in relation to the SLC provisionally identified in ICCS and its adverse effects

5.13 Given that it would be targeted at and focus on the area of concern identified by the CMA (ICCS), NECSWS considers that the NECSWS ICCS Divestment would be proportionate. [✂][14].

6. [✂]: DIVESTMENT OF SSS'S ICCS BUSINESS

6.1 [✂].

6.2 NECSWS believes that a potential divestment of the products and relevant customer contracts and resources associated with the SSS ICCS business (comprising SSS' DSx communication platform) (the "**DSx Business**" / "**DSx Divestment**") would also address an SLC in ICCS. As set out more fully below, [✂] [✂].

6.3 The DSx Divestment would in principle address an SLC in ICCS as it would lead to a structural change in the market, and would entirely remove the overlap between SSS and NECSWS in the supply of ICCS to emergency services and transport customers.

6.4 As noted, NECSWS understands that aspects of the SSS ICCS business are integrated with the rest of the SSS business to a material degree. NECSWS understands from SSS that the following steps in particular would need to be addressed in relation to the DSx Divestment:

[14] Paragraph 5.7, Merger Remedies Guidelines

Shared services

6.4.1 [✂]:

(A) [✂]

(B) [✂]

6.4.2 [✂].

6.4.3 [✂].

6.4.4 [✂]. These resources would need to be separated out, acquired and/or provided by the divestment purchaser.

Contract separation

6.4.5 SSS's ICCS solution is typically supplied to customers [✂]. According to input from SSS, the following SSS contracts for the supply of ICCS also involve the supply of other SSS products:

(A) [✂]

(B) [✂]

(C) [✂]

6.4.6 [✂] shared contracts would need to be separated out. One way of achieving this may be by one of the parties (i.e. SSS or the purchaser) remaining the prime supplier for such contracts and sub-contracting the provision of the other solution to the other party (i.e. the one which owns that solution). NECSWS understands that practical steps would need to be taken to implement this separation, which could give rise to challenges, and considers that [✂].

Customer consents

6.4.7 NECSWS understands that relevant customer consents may need to be obtained for the assignment or novation of relevant contracts to the divestment purchaser.

7. [✂]

[✂].

8. DIVESTMENT OF NECSWS' DUTIES BUSINESS IS A SUITABLE REMEDY TO ADDRESS AN SLC IN DUTIES

Overview

8.1 NECSWS proposes the following divestment as an effective remedy to the SLC provisionally found by the CMA in Duties: the divestment of the product and relevant customer contracts and resources associated with CARM (the "**CARM Divestment**"). This would entirely remove the overlap between SSS and NECSWS in the supply of Duties to police customers, and separation of the CARM product could [✂] be achieved within an appropriate timeframe.

8.2 NECSWS considers that the CARM Divestment would be:

8.2.1 *Effective* by reference to the criteria set out by the CMA at paragraph 8 of the Notice, namely: (a) impact on the SLC and its resulting adverse effects; (b) duration and timing; (c) practicality; and (d) risk profile (composition risk, purchaser risk and asset risk).

8.2.2 [✂] *effective* to address the CMA's concerns in Duties.

8.2.3 *Proportionate* in relation to an SLC in Duties and its adverse effects.

Remedy scope and implementation

8.3 Please see Table 5 below for further detail on NECSWS' envisaged nature and composition of the CARM Divestment, together with information on suitable purchasers.

Table 5: Further detail on CARM Divestment

<table>
<tr><td colspan="2"><u>Scope of proposed remedy</u>:
• Divestment of the product, relevant customer contracts and resources associated with NECSWS' CARM product. Relevant customer contracts are listed at Annex 1.
• The divestment package would also include:
o IP: All relevant IP associated with the CARM product. [✂].
o Appropriate staffing resource:
[✂]</td></tr>
<tr><td>Form of disposal</td><td>[✂] either:
a) All relevant assets to be transferred to newco, an entity that will be established under the laws of England and Wales, then newco would be acquired by the divestment purchaser by way of share purchase; or
b) All relevant assets to be transferred to divestment purchaser by way of asset purchase.
[✂].</td></tr>
<tr><td>Revenue (FY22)</td><td>£[✂]</td></tr>
<tr><td>Market share</td><td>Based on the PFs, NECSWS' share of supply in Duties (comprising its CARM product) is [10-20]% (based on revenue), [✂]% (based on number of police officers) and [10-20]% (based on number of police forces)[15]. The CARM Divestment would result in NECSWS having no presence in Duties and therefore remove any overlap between the Parties.</td></tr>
<tr><td>Separation of contracts</td><td>NECSWS believes that the CARM Divestment would not give rise to any material contract separation issues. [✂].[16]</td></tr>
<tr><td>Shared services/resources</td><td>As explained above, the typical approach in carve-out acquisitions/disposals in the public sector software industry is that non-operational support services (such as HR, Finance, Legal, Marketing and IT) are not included in a disposal, as these are very much viewed as "generic" services. [✂].
Further, it is likely that a potential purchaser would want to make use of its own services in many of these areas to address requirements of the divestment business.</td></tr>
<tr><td>Potential purchasers</td><td>NECSWS strongly believes that there is a viable pool of suitable, independent, well-funded potential purchasers which would be interested in the CARM Divestment, would not give rise to substantive competition law or NS&I Act concerns, and to whom the CARM Divestment could be made within the requisite timeframe:
[✂][17]</td></tr>
<tr><td>Timeline to disposal</td><td>[✂]</td></tr>
</table>

15 Table 7-2, PFs
16 [✂]
17 [✂]

The CARM Divestment would be effective in remedying any SLC ultimately identified in Duties

8.4 The CARM Divestment would be [✂] effective in remedying an SLC in Duties as it would entirely remove the overlap between SSS and NECSWS in the supply of Duties to police customers. The CARM Divestment would lead to a structural change in the market addressing an SLC in Duties. NECSWS believes there are therefore no grounds for considering that the CARM Divestment would not address the SLC effectively and comprehensively.

The CARM Divestment would not be subject to significant risks

8.5 The CARM Divestment would be effective for the following reasons:

8.5.1 [✂],[18] NECSWS [✂] considers that the current CARM product would constitute a viable and attractive set of assets for a purchaser looking to enter or expand in Duties. [✂].[19]

8.5.2 [✂], and therefore is likely to be attractive to potential purchasers. Given that the core technology underlying CARM is [✂].

8.5.3 CARM, as a [✂] Duties planning solution, has [✂] (which would make it attractive to a range of potential purchasers/customers).

8.5.4 The CARM product, and associated customer contracts and resources, could be readily separated out from the remainder of NECSWS' business for the purposes of a divestment, within a time period acceptable to the CMA. [✂]. It is also unlikely that there would be any material challenges in separating out the CARM customer contracts within the relevant timeframe, [✂]. All of the above would facilitate efficient due diligence, commercial and financial handover processes. As such, CARM can readily be acquired by a third-party purchaser without implementation risk or cost for existing customers.

8.5.5 [✂].

The CARM Divestment can be [✂] implemented on a reasonable timeframe

8.6 NECSWS believes that the CARM Divestment would be [✂] capable of timely implementation. As set out in Table 5 above, NECSWS envisages a timeline to disposal of [✂]. NECSWS is not aware of any obstacles that would prevent a suitable potential purchaser from completing an acquisition of CARM within the requisite timeframe.

The CARM Divestment will not give rise to composition or implementation risks

8.7 NECSWS does not have reason to consider that the CARM Divestment would give rise to composition or implementation risks.

8.8 [✂], NECSWS [✂] considers that the current CARM product would constitute a viable and attractive set of assets for a purchaser looking to enter or expand in Duties, [✂].

8.9 NECSWS anticipates that there will be a pool of independent, well-funded potential purchasers which are likely to be interested in acquiring these assets and would not give rise to substantive competition or NS&I Act concerns, to the extent relevant (see Table 5 above for further details). NECSWS therefore [✂] believes that it would be able to find a suitable purchaser within the requisite timeframe.

8.10 As the CARM Divestment would not give rise to composition risk or purchaser risk for the reasons explained above, NECSWS does not consider that an upfront buyer should be required.

The CARM Divestment is [✂] effective

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18 [✂].

19 Provisional Findings, para 7.139.

8.11 The CARM Divestment would be [✂] effective to address the CMA's concerns in Duties:

8.11.1 A full divestment of SSS would be unreasonably costly and intrusive, given that it would create a burden for customers who do not procure ICCS or Duties solutions from SSS (and who would need to change supplier soon after NECSWS' acquisition of SSS).

8.11.2 [✂]. Further, as a [✂] Duties product [✂], NECSWS considers that a CARM divestment would be [✂] straightforward to implement.

8.11.3 The CARM Divestment would be targeted at the area of concern specifically identified by the CMA (Duties). The relevant contracts and resources associated with CARM could be readily separated out for sale within a timeframe acceptable to the CMA, would be an effective and viable remedy to address an SLC in Duties, [✂].

The CARM Divestment is proportionate in relation to the SLC provisionally identified in Duties and its adverse effects

8.12 Given that it would be targeted at and focus on the area of concern identified by the CMA (Duties) and would entirely remove the overlap between the Parties, NECSWS considers that the CARM Divestment would be a proportionate remedy and that it would [✂] address the CMA's concerns in this area. [✂][20].

9. DIVESTMENT OF SSS' DUTIES BUSINESS IS A SUITABLE REMEDY TO ADDRESS AN SLC IN DUTIES

Overview

9.1 [✂], this SLC could also be addressed by the divestment of the products and relevant customer contracts and resources associated with the SSS Origin product (the "**Origin Divestment**"). This would entirely remove the overlap between SSS and NECSWS in the supply of Duties to police customers, and separation of the Origin product could straightforwardly be achieved within an appropriate timeframe.

9.2 NECSWS believes that the Origin Divestment:

9.2.1 Would be *effective* by reference to the criteria set out by the CMA at paragraph 8 of the Notice, namely: (a) impact on the SLC and its resulting adverse effects; (b) duration and timing; (c) practicality; and (d) risk profile (composition risk, purchaser risk and asset risk).

9.2.2 Would address the CMA's concerns in Duties.

9.2.3 Would be *proportionate* in relation to an SLC in Duties and its adverse effects.

Remedy scope and implementation

9.3 Please see Table 6 below for further detail on NECSWS' envisaged nature and composition of the Origin Divestment (taking into account information from SSS), together with information on suitable purchasers.

Table 6: Further detail on Origin Divestment

<u>Scope of proposed remedy</u>: • Divestment of all the products and relevant customer contracts and resources associated with the SSS Origin product. Relevant customer contracts are listed at Annex 2. • The divestment package would also include: o *IP*: All relevant IP associated with the Origin products. The IP for Origin is distinct and is not used in other areas of the SSS business.[21]

20 Paragraph 5.7, Merger Remedies Guidelines

21 [✂].

<table>
<tr><td colspan="2">Appropriate staffing resource: the following staff are standalone and not integrated with the rest of the SSS business, meaning they could readily be separated and transferred to the divested entity: [✂]. As described below, [✂] could be separated out, acquired or provided by the purchaser itself (but it is understood from SSS that separation would be straightforward and readily achievable, as explained further below).
Sites: [✂].</td></tr>
<tr><td>Form of disposal</td><td>[✂]</td></tr>
<tr><td>Revenue (FY21)</td><td>£[✂]</td></tr>
<tr><td>Market share</td><td>Based on the PFs, the share of supply of the SSS Duties business (comprising the Origin product) is [50-60]% (based on revenue), [20-30]% (based on number of police officers) and [30-40]% (based on number of police forces)[22]. The sale of Origin would entirely remove the overlap between the Parties in Duties.</td></tr>
<tr><td>Separation of contracts</td><td>There would not be material challenges in separating out the SSS' business Origin customer contracts within the relevant timeframe, as [✂]. In one case, [✂].</td></tr>
<tr><td>Shared services/resources</td><td>NECSWS understands that [✂]. Such resources could be separated out, acquired or provided by the purchaser as part of the Origin Divestment.
NECSWS considers it likely that a purchaser would predominantly wish to make use of its own services in many of these areas. [✂].</td></tr>
<tr><td>Potential purchasers</td><td>NECSWS believes that there would be suitable, independent, well-funded potential purchasers that would be interested in the Origin Divestment, would not give rise to substantive competition law or NS&I Act concerns, and to whom the Origin Divestment could be made within the requisite timeframe:
[✂][23]</td></tr>
<tr><td>Timeline to disposal</td><td>NECSWS believes that the Origin Divestment could be achieved within a period of c. six months.</td></tr>
</table>

The Origin Divestment would be effective in remedying any SLC ultimately identified in Duties

9.4 The Origin Divestment would be effective in remedying an SLC in Duties as it would entirely remove the overlap between SSS and NECSWS in the supply of Duties to police customers. The Origin Divestment would lead to a structural change in the market addressing an SLC in Duties, i.e. restoring the pre-Merger position. NECSWS believes there are therefore no grounds for considering that the Origin Divestment would not address the SLC effectively.

9.5 NECSWS believes that the SSS Origin product, together with associated customer contracts and resources, could be separated out from the remainder of the SSS business for the purposes of a divestment within a time period acceptable to the CMA:

[22] Table 7-2, PFs

[23] [✂]

9.5.1 [✂]. NECSWS believes that this would make separating and divesting Origin relatively straightforward [✂].

9.5.2 [✂] would need to be separated out and/or acquired or provided by a purchaser for the Origin Divestment, these steps should be achievable in a time period acceptable to the CMA, and are standard for corporate transactions in the industry in which NECSWS and SSS operate. Further, it is likely that a purchaser would wish to make use of its own services in many of these areas (while NECSWS is [✂].

9.5.3 There are unlikely to be material challenges in separating out the SSS' business Origin customer contracts within the relevant timeframe: [✂].

9.6 NECSWS believes that the Origin product would constitute a viable and attractive set of assets for a purchaser looking to enter or expand in Duties. [✂]. The CMA in the PFs refers to SSS as one of the two most successful suppliers in the market and considers that Origin will remain a strong competitive constraint in the market in future.[24]

9.7 NECSWS understands from SSS that there would not be material obstacles to obtaining relevant customer consents for the Origin Divestment [✂], noting that Origin is not a mission-critical solution.

The Origin Divestment can be readily implemented on a reasonable timeframe

9.8 NECSWS believes that the Origin Divestment could be achieved within a period of c. six months.

The Origin Divestment will not give rise to composition or implementation risks

9.9 NECSWS does not have reason to believe that the Origin Divestment would give rise to composition or implementation risks.

9.10 NECSWS considers that the Origin product would constitute a viable and attractive set of assets for a purchaser looking to enter or expand in Duties, as explained above. NECSWS anticipates that there would be independent, well-funded potential purchasers that would likely be interested in acquiring these assets and would not give rise to substantive competition or NS&I Act concerns (see Table 6 above for further details), NECSWS therefore believes that it would be able to find a suitable purchaser within the requisite timeframe.

9.11 As the Origin Divestment would not give rise to composition risk or purchaser risk for the reasons explained above, NECSWS does not consider that an upfront buyer should be required.

The Origin Divestment would not be costly or intrusive

9.12 The Origin Divestment would not be costly or intrusive. As set out above, the SSS Origin product, together with associated customer contracts and resources, could be separated out from the remainder of the SSS business within a time period acceptable to the CMA, and would be an effective and viable remedy to address an SLC in Duties.

9.13 [✂].

The Origin Divestment is proportionate in relation to the SLC provisionally identified in Duties and its adverse effects

9.14 Given that it would be targeted at and focus on the area of concern identified by the CMA (Duties), NECSWS considers that the Origin Divestment would be proportionate. This would be consistent with the CMA's approach, as set out in its Remedies Guidelines, to identify the smallest viable, standalone business that can compete successfully on an ongoing basis, and that includes all the relevant operations pertinent to the area of competitive overlap[25].

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24 Provisional Findings, paragraphs 7.80 and 7.142.

25 Paragraph 5.7, Merger Remedies Guidelines