

**COMPLETED ACQUISITION BY NEC SOFTWARE SOLUTIONS UK LIMITED OF CAPITA (SSS)
LIMITED AND CAPITA SOFTWARE (US) LLC ME/6979/21****RESPONSE TO CMA'S REMEDIES NOTICE DATED 15 SEPTEMBER 2022****1. Introduction and summary**

- 1.1 The purpose of this paper is to respond on behalf of SSS Public Safety Limited (**SSS**) to the CMA's Notice of possible remedies dated 15 September 2022 (**Remedies Notice**).
- 1.2 The submission contains confidential information which should not be disclosed to third parties, or as between SSS and NEC Software Solutions UK Limited (**NECSWS**).
- 1.3 The paper is submitted without prejudice to SSS' strong view that the CMA's findings, as set out in the Provisional Findings dated 15 September 2022 (**Provisional Findings**), that the acquisition will give rise to a substantial lessening of competition (**SLC**) in the ICCS and Duties markets is fundamentally flawed, and is not supported by the significant amount of evidence submitted to the CMA during the CMA's investigation. SSS will be submitting a separate response to the Provisional Findings in due course.
- 1.4 In summary:
- 1.4.1 SSS believes that a full divestment of SSS is highly disproportionate compared to the limited adverse effects identified in the Provisional Findings and would be intrusive and damaging for customers;
- 1.4.2 a sale of all of SSS would not be an effective remedy. The Remedies Notice assumes – without any analysis – that a full divestment of SSS [REDACTED]. This is manifestly incorrect. [REDACTED];
- 1.4.3 SSS' view is that a partial divestment of specific products would be more attractive to purchasers who would be able to expand their existing product range by slotting in a new product [REDACTED];
- 1.4.4 The Remedies Notice fails to consider a partial divestment by NECSWS of its ICCS and Duties products. [REDACTED].

2. A full divestment of SSS is highly disproportionate and would not be an effective remedy**(a) A full divestment of SSS is entirely disproportionate given the limited adverse effects identified by the CMA**

- 2.1 The CMA's Remedies Guidance states at paragraph 3.4 that the CMA shall:

"seek remedies that are effective in addressing the SLC and its adverse effects and will then select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects".

- 2.2 As noted above, SSS fundamentally disagrees that an SLC will arise either in relation to ICCS or Duties. However, even in the event of an SLC finding, SSS respectfully submits that it is clear from the Provisional Findings that very limited adverse effects may be expected to arise from the acquisition of SSS by NECSWS (the **Transaction**):
- 2.2.1 No customer or competitor appears to have complained about the Transaction while the vast majority have raised no competition concerns. [REDACTED].
- 2.2.2 In Duties, the Transaction does not change the competitive dynamics of the market. The evidence identified in the Provisional Findings shows that the

parties [REDACTED]. The Provisional Findings also recognise that there are few instances of competition within Duties and that this is likely to continue going forward. Where new opportunities arise the Provisional Findings show that customers require cloud, and [REDACTED]. There is also no evidence in the counterfactual that either Capita Group or a perceived potential purchaser of SSS would have invested sufficiently to develop SSS' [REDACTED] offering.

2.2.3 In ICCS, the evidence identified in the Provisional Findings is that there are six competitors present, and that Frequentis, Motorola and Saab are all strong players. In a context where the Provisional Findings show that on average there are two bidders for each opportunity, it is clear that any perceived adverse effects are limited in scope in relation to ICCS. This is reinforced by the clear evidence that ICCS customers identify cloud as a key feature going forward. SSS [REDACTED], and as with Duties there is no evidence that either Capita Group or a perceived potential purchaser of SSS would have invested sufficiently to develop SSS' [REDACTED] offering. SSS understand that Frequentis, Motorola and Saab each have cloud capability, and SSS [REDACTED]. [REDACTED], even if Capita Group or a potential purchaser would have invested.

2.3 The CMA's Remedies Guidance makes clear that it must take into account the limited negative effects expected to arise from the Transaction. In that context, SSS considers that a full divestment is disproportionate whereas a smaller, differently configured divestiture package would be more proportionate and more effective.

(b) A full divestment of SSS is harmful and intrusive for customers

2.4 The impact of an overly broad remedy is harmful to customers, both those customers which do not procure ICCS or Duties from SSS ([REDACTED]), and those which procure a range of solutions from SSS. This is unnecessarily disruptive, costly and highly intrusive to customers in a key sector of the economy, especially in relation to mission critical solutions, for which stability and continuity of service is fundamental to the provision of the services which they provide to the public.

(c) A full divestiture is disproportionate to the size of the SSS business concerned by the perceived SLCs

2.5 The CMA has found an SLC within two relatively small parts of the SSS business, which account for [REDACTED]% of SSS' total UK revenue. This means that the vast majority of the SSS business, where no issue arises, is at risk of being put through a divestment process with [REDACTED] that this entails. This includes SSS' business outside the UK.

(d) The Remedies Notice is at odds with the CMA's Remedies Guidance

2.6 The above reflects that the Remedies Notice does not correctly apply the CMA's Remedies Guidance. This is further reflected in the fact that the CMA does not consider other potential remedy options and their effectiveness, proportionality and relative costs and intrusiveness. In particular, the Remedies Notice does not consider a potential partial divestment by NECSWS of its ICCS and Duties products. As described below, to the extent that the CMA finds SLCs in relation to ICCS and Duties, [REDACTED].

(e) Significant [REDACTED] with a full divestment of SSS

2.7 The CMA has assumed without any analysis that a full divestment of the SSS business does not present [REDACTED]. This is flawed and incorrect. Any purchaser of the entire SSS business would need to be prepared to:

2.7.1 acquire a business comprising a broad range of different products and services;

2.7.2 significantly invest in SSS' products, as the Provisional Findings implicitly recognise;

2.7.3 take on a business which currently includes [REDACTED];

- 2.7.4 [REDACTED];
- 2.7.5 tackle the substantial reputational harm SSS has faced in respect of RMS (as set out in the Provisional Findings); and
- 2.7.6 accept and overcome [REDACTED].
- 2.8 The above [REDACTED] have very much been in the public domain. First, the issues with Greater Manchester Police (**GMP**) and RMS have been well publicised both by GMP itself and in the press. Second, issues such as the lack of historic investment in the SSS business and SSS' lack of cloud offering have been made public in the documents published by the CMA during this process (notwithstanding SSS' confidentiality representations to the contrary).
- 2.9 If not already known, SSS expects the above would become immediately apparent to a potential purchaser through even a perfunctory due diligence exercise. [REDACTED].
- 2.10 SSS' position has [REDACTED]. Given that there were only two bidders at that stage, it seems unlikely that there would be a significant pool of potential purchasers for the full SSS business, [REDACTED].

(f) A partial divestment will attract a broader number of potential bidders

- 2.11 By contrast, SSS considers that the sale of an ICCS and Duties business (either together or separately) is likely to attract greater purchaser interest.
- 2.12 A targeted package would allow a potential purchaser to plug a gap in their portfolio [REDACTED]. Alternatively, it would enable an adjacent player to enter the emergency services sector in a targeted manner. This more focussed approach, in SSS' view, is likely therefore to attract a purchaser with a specific strategy to enter or expand in the ICCS and/or Duties markets, leading to an effective competitor as a more likely outcome than in the case of a full divestment.

(g) SSS considers that there is a significant asset risk involved in the sale of the entire SSS business

- 2.13 As the CMA is aware, SSS has been the subject of a sales process since June 2020. Notwithstanding SSS' work to maintain its business, this has had two key impacts:
- 2.13.1 SSS' staff have already faced a long period of significant uncertainty, without any clear future direction of the ownership of the business. [REDACTED].
- 2.13.2 In the public safety sector, customers want their suppliers to be long-term, reliable partners. [REDACTED].

3. A partial divestment is an effective, proportionate and less intrusive remedy

(a) [REDACTED] the sale of NECSWS' ICCS and Duties products

- 3.1 [REDACTED], a divestment of NECSWS' ICCS and Duties products would constitute an effective and proportionate remedy. At a high level:
- 3.1.1 a divestment of NECSWS' ICCS and Duties products would completely address the SLCs identified in the Provisional Findings;
- 3.1.2 SSS understands that it has a broader, more integrated product range than NECSWS and that, as such, it is likely to be far simpler to divest NECSWS' products [REDACTED];
- 3.1.3 [REDACTED].
- 3.2 SSS refers the CMA to NECSWS for further information on NECSWS' products.

(b) The CMA's concerns regarding shared generic support functions are unfounded

3.3 The Remedies Notice stated:

"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."

3.4 SSS' view is that some of the support functions which the CMA refers to, in particular HR functions and Finance functions, but also IT support, facilities, sales and marketing etc are very often run as part of a central function, as is the case in SSS.

3.5 Any new purchaser is highly likely to have these types of generic, non-technical support functions already in place, and as such SSS does not see the existence of these types of shared support functions as a barrier to an effective partial divestment.

3.6 The extent to which these support functions can be easily put in place can be seen in [REDACTED].

(c) SSS' Duties product, Origin, [REDACTED]

3.7 Without prejudice to the fact that SSS believes that the sale of NECSWS' ICCS and Duties business is a proportionate and effective remedy, SSS would also like to take the opportunity to correct some misconceptions stated in the Remedies Notice regarding the operation of SSS' business, particularly as regards SSS' Duties business, Origin.

3.8 When the Origin business (Cedar HR) was originally acquired by Capita Group it was part of a separate division within Capita Group (namely, Capita Justice & Secure Services), and then sat within Capita Group's software division under Integrated Business Solutions (a finance software business) for a number of years before being transferred to the SSS business in 2018. As is evident from this varied history, Origin can sit within various types of software business.

3.9 [REDACTED]. This is reflected in the following:

3.9.1 *Development & Testing* – [REDACTED].

3.9.2 *Engineering & Implementation* – [REDACTED].

3.9.3 *Sales & Account Management* – [REDACTED].

3.9.4 *Service* – [REDACTED].

3.9.5 *Product/Project Management* – [REDACTED].

(d) Origin contracts are [REDACTED]

3.10 The Remedies Notice also stated:

"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".

3.11 SSS currently has [REDACTED] Origin customers. Each of the contracts [REDACTED].

3.12 [REDACTED].

(e) [REDACTED]

3.13 There are elements of cross-over between SSS' [REDACTED] and its other products and services. However, in a number of areas there are [REDACTED].

3.14 The position is as follows:

3.14.1 *Development & testing* – [REDACTED].

3.14.2 *Product Management* – [REDACTED].

3.14.3 *System/Implementation Engineering* – [REDACTED].

3.14.4 *Sales & Account Management* – [REDACTED].

3.14.5 *Service* - [REDACTED].

3.15 In addition, SSS' ICCS business [REDACTED]. Separation of the ICCS business would require procuring and establishing [REDACTED] in order to host build and support of the SSS ICCS solutions. [REDACTED].

(f) Some SSS customers choose to procure across multiple SSS portfolio products and contract on this basis

3.16 Unlike SSS' Origin product, SSS has a significant number of contracts [REDACTED].

3.17 SSS believes that it would, in principle, be possible to [REDACTED].

3.18 [REDACTED].

4. Conclusion

4.1 SSS views a remedy comprising the divestment of the entirety of SSS' business as entirely disproportionate to the narrow SLC finding, given the limited effects flowing from the Transaction, and the possibility for significant disruption to customers. Further, SSS has serious doubts as to the effectiveness of a remedy which requires the full divestment of the SSS business.

4.2 [REDACTED].