

NEC Software Solutions UK / Capita Secure Solutions and Services Merger Inquiry

Kent Police and Essex Police Submission on Behalf of the Athena Consortium

Introduction

1. The Athena Consortium of Police Services (the **Consortium**) are grateful to the CMA Group for their kind extension of time to make submissions in respect of the Record Management Systems software (RMS) aspects of NEC Software Solutions UK Limited (**NEC-UK**)'s completed acquisition of SSS Public Safety Limited and Secure Solutions LLC (together **SSS**) from Capita plc (the **RMS Concentration**).
2. The Athena Consortium is a consortium of 9 Police Services who use a common version or 'instance' of the NEC-UK RMS. These Police Services are Kent, Essex, Bedfordshire, Cambridgeshire, Hertfordshire, Norfolk, Suffolk, Warwickshire and West Mercia Police. The formation of the Consortium was driven by the need to share information between forces as a result of the tragic murders leading to the Bichard Inquiry (see paragraph 6 below).
3. This submission is limited to the Consortium's concerns that the RMS Concentration will lead to a substantial lessening of competition for RMS that will further erode value for money and prevent the required innovation allowing for the free flow of information between Police Services in the UK, which is essential for public safety.
4. Additionally, the Consortium is concerned that the market for RMS is not working well for Police Services and that there are features of the market that already give rise to significant adverse effects on competition, that harm Police Services and, in turn, harm UK citizens and others relying on the UK's Police Services. The RMS Concentration, if allowed to proceed, will exacerbate these adverse effects. Separate to the CMA's review of the RMS Concentration, the Consortium, therefore, additionally urges the CMA to more generally consider whether there are issues with RMS that would warrant separate closer inspection outside the confines of the Merger Inquiry.

Background

5. Although the CMA has set out within its Provisional findings report, notified on 15 September 2022 (the **Provisional Report**), its view of the relevant background facts relating to RMS, the Consortium considers it may be helpful for the Consortium to set out its own view.
6. RMS is an essential component of modern policing. RMS services, when they work well, enable Police Services to collect, collate, interrogate and share intelligence and other information between Police Officers and Police Services, contributing to the prevention of crime and public safety. Indeed, the vital importance of RMS was highlighted in the Bichard Inquiry Report¹ into the tragic murders of Jessica Chapman and Holly Wells by Ian Huntley and which Public Inquiry focused on, amongst other things, record keeping and information sharing in Humberside Police and

¹ <https://dera.ioe.ac.uk/6394/1/report.pdf>

Cambridgeshire Constabulary. The Public Inquiry indicated that better data gathering and sharing practices could have helped prevent the crimes.

7. As the CMA observes, there are two large providers of RMS in the UK, they are the NEC Corporation (NEC) and Niche Technology Inc. (Niche).
8. NEC Corporation entered the UK RMS market primarily through its acquisition of the then UK-based IT services company Northgate Public Services Limited. NEC acquired NPS from Cinven, a private equity firm, for GBP 475 million; the acquisition completed in January 2018.² NEC-UK provides RMS to the Consortium. NEC-UK's RMS product has no API (or equivalent) functionality to enable interfaces to other Police Force RMS instances and only limited private cloud type functionality.³
9. Niche is a Canadian company providing RMS as a COTS⁴ product to police forces internationally. In the UK, Niche provides RMS to 27 Police Services.⁵ The users of the Niche RMS are required to join a user group called Minerva, and through this user group may seek to prioritise and agree RMS development requests for Niche, which Niche may then accept and develop into its RMS. The Niche product is relatively inflexible and has no current API to enable interfaces to other Police Force RMS instances or real cloud functionality.
10. SSS currently provide RMS to, the Consortium understands, two Police Services, including Greater Manchester Police (**GMP**). The SSS RMS has suffered from a lack of development and does not have an API to enable interfaces to other Police Force RMS instances or cloud functionality.
11. There are a few smaller RMS providers, including Mark 43, who the Consortium understands have recently agreed to provide RMS to Cumbria Police in place of the incumbent. Mark 43 are based in the USA and importantly, are a new entrant to the UK RMS market and a truly native cloud-based RMS provider with potential API functionality to enable interfaces to other Police Force RMS instances.

Limitations of RMS in the UK

12. For RMS to be fully effective it is necessary that the RMS enables the information that they contain to be shared, not just between Police Officers within a Police Service, but also between different Police Services. For example, if Police Services were able to access each other's RMS, a Police Officer in one Police Service could access other Police Service's RMS to check whether a person in custody is wanted for questioning in respect of a crime in another Police Service's area and notify that other Police Service.

² https://www.nec.com/en/press/201801/global_20180109_01.html

³ The Consortium notes that Niche and NEC-UK RMS interface with certain other police system, such as the Police National Computer system, but not other RMS.

⁴ Commercial Off The Shelf (COTS)

⁵ (1) Avon and Somerset Constabulary (2014); (2) British Transport Police (2016); (3) Cheshire Constabulary (2004); (4) City of London Police (2016); (5) Cleveland Police (2013); (6) Derbyshire Constabulary (2016); (7) Devon and Cornwall Police (2019); (8) Dorset Police (2011); (9) Dyfed-Powys Police (part of the West Coast Collaboration) (2020); (10) Gwent Police (part of the South East Wales Niche collaboration (SEWNic) (2011); (11) Hampshire Constabulary (2003); (12) Humberside Police (2021); (13) Leicestershire Constabulary (part of the East Midlands Special Operations Unit (EMSOU) Consortium); (14) Lincolnshire Police (part of the EMSOU Consortium) (2008); (15) Merseyside Police (part of the West Coast Collaboration) (2004); (16) North Wales Police (part of the West Coast Collaboration) (2002); (17) North Yorkshire Police (2004); (18) Northamptonshire Police (part of the EMSOU Consortium) (2015); (19) Nottinghamshire Police (part of the EMSOU Consortium) (2015); (20) Police Service of Northern Ireland (2004); (21) South Wales Police (part of the SEWNic); (22) Staffordshire Police (2018); (23) Surrey Police (part of the South East Collaboration) (2013); (24) Sussex Police (part of the South East Collaboration) (2012); (25) Thames Valley Police (2011); (26) West Yorkshire Police (2005); and (27) Wiltshire Police (2014). Additionally, Niche provides RMS to Guernsey Police (2014)⁵, which while outside the UK, has a clear policing link with the UK Police Services. The dates shown in brackets are the dates when Niche was selected as each Police Services RMS provider, source: <https://nichirms.com/who-we-serve/>

13. NEC-UK, Niche and Capita's RMS are designed in such a way that each instance of their RMS is not able to be accessed by, or information shared, by other instances of that RMS or indeed by other RMS. To get round this problem, at least to a limited extent, some Police Services group together to use the same instance of an RMS, to enable the sharing of information and intelligence across those Police Services, but not further.
14. The Athena Consortium is an example of this practice. However, clearly the benefits are limited to just those Police Services who are members of that specific consortium and served by that specific RMS instance and, clearly, does not allow sharing of information between RMS (or instances of RMS) not used by the consortium, including by neighbouring Police Services who are not members of the consortium.⁶
15. This consortium effect has led to areas of the country being served exclusively or to a significant extent, by one or other of either Niche or NEC-UK. For example, the East Midlands is served exclusively by Niche, likewise all of Wales.
16. In an ideal world each RMS (or instance of an RMS) would allow, through an API or other interface or form of interworking, information to flow between Police Services. The Consortium understands that neither NEC-UK or Niche have API (or equivalent) capability of this nature, or full cloud-functionality (noting NEC operate a private cloud service and have cloud migration on their development roadmap⁷), and the Consortium believes that neither Niche nor NEC-UK see the development of full-cloud functionality and APIs (or equivalent) as being in their commercial interest. Smaller, progressive, flexible and innovative providers, including Mark 43, allow such APIs and are fully cloud based. In other words, the widespread lack of interoperability between different instances of the same RMS and between different RMS not only creates public safety issues, it also makes switching between providers difficult for users and reinforces the incumbency advantage of the relevant provider.

RMS Competition

17. The Consortium is concerned that the consortium effect (see paragraphs 13 to 15) and or the structure of tenders may lead to new entrants or providers who do not have a live service with another Police Service being excluded and that other requirements, for example, a requirement for cloud functionality, may result in one or other of Niche or NEC-UK not bidding, where they are not the incumbent.

Substantial Lessening of Competition

18. The Consortium is concerned to ensure as much competition as possible for RMS is preserved and encouraged.
19. By way of example, the Consortium understands that [xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
xxxx] are currently preparing for or are re-tendering their RMS requirements.

⁶ The Consortium notes that: (a) the Police National Database (PND) is intended to enable sharing of information across Police Service boundaries on a national basis; however, this does not remove the need for and benefit of sharing RMS access regionally, and (b) that NEC-UK provides an interface than enables third-party third party application providers, in order to allow an individual to access and create information within the Athena instance of the NEC-UK RMS through a smartphone or Personal Computer (PC) application.

⁷ Although the Consortium have not seen any written document confirming NEC-UK's development plans.

Potential Effect of the Concentration

26. In the Consortium's view, the value for money provided, the quality of service, and the innovation provided by NEC-UK, Niche and SSS is poor. The way that the existing RMS providers operate, the commercial drivers forcing the maintenance of consortiums by the providers not offering workable APIs (or equivalent), and other features of the market, do not incentivise the providers to innovate in a way that would release the full benefit of Police Services having interconnected RMS throughout the UK through true cloud-provision and APIs.
27. The Concentration will frustrate the potential for new-entrants (such as Mark 43) or existing smaller providers to compete (leading to exit), such that there will be limited competition that encourages either NEC-UK or Niche to improve their services and the value that they offer. This in turn will create, and further entrench, an uncompetitive duopoly of NEC-UK and Niche.

Conclusion and Remedies

28. For the reasons set out in this Submission the Consortium urges the CMA to rethink its position on whether the RMS Concentration gives rise to an SLC and to more fully investigate the likely effect of the concentration on RMS competition.
29. Should the CMA consider that there is in fact a SLC for RMS, the Consortium would urge the CMA to continue to require NEC to divest itself of SSS, including RMS, or if RMS is not to be divested, at the very least, to require NEC to develop its RMS to provide API functionality to enable interfaces to other Police Force RMS instances.

7 November 2022