

**DEROGATION LETTER  
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED  
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002**

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order issued by the Competition and Markets Authority ('CMA') on 21 December 2021.**

**Acquisition by NEC Software Solutions UK Limited of SSS Public Safety Limited and Secure Solutions USA LLC (the 'Merger')**

We refer to your email of 15 December 2022 requesting that the CMA consents to derogations to the Initial Enforcement Order of 21 December 2021 (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, NEC Corporation ('**NECJ**'), Garden Private Holdings Limited ('**GPHL**') and NEC Software Solutions UK Limited ('**NECSWS**') and its subsidiaries ('**the NEC business**') are required to hold separate the NEC business from SSS Public Safety Limited ('**SSS PSL**'), Secure Solutions USA LLC ('**SSU**') and their subsidiaries (the '**SSS business**') and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, the NEC business and the SSS business may carry out the following actions:

- **Derogation from the Initial Order**

On 1 December 2022, the CMA issued its final report in respect of the acquisition by NECSWS of SSS (the "**Final Report**"). In its Final Report, the CMA found that the Merger has resulted, or may be expected to result, in a substantial lessening of competition ("**SLC**") in the supply of ICCS to emergency services and transport customers in the UK and the supply of Duties to police forces in the UK.

The CMA decided that the following remedies are required to address the two SLCs:

- the sale of NECSWS's ICCS business, comprised of the former APD business and its CallTouch and Stream products; and

- the sale of either NECSWS's CARM business or SSS's Origin business.

(in this derogation letter all three businesses are referred to as the "**Divestment Businesses**" and each are defined by reference to the Final Report).

In line with the CMA's published guidance, the CMA considers that the Initial Order can be reduced in scope following its findings in the Final Report.

The Parties have requested that the key obligations and restrictions of the Initial Order which apply to the operation of the NEC business and SSS business (eg on key staff, organisation changes, maintaining assets) should be narrowed in scope so that they only apply to the Divestment Businesses.

The Parties have prepared a mark-up of the Initial Order setting out their derogation request which is contained in the Annex to this letter. Subject to the conditions below, the CMA hereby grants a derogation from the Initial Order with the effect that the provisions of the Initial Order are to be applied in line with the Annex.

This derogation is provided on the basis that:

- a) this derogation does not impact the viability of any of the Divestment Businesses during the term of the Initial Order;
- b) this derogation will not impact the ability of the SSS business to compete independently of the NEC business;
- c) this derogation will not result in any integration between the SSS business and the NEC business; and
- d) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Merger, in particular this derogation will not impact any of the businesses that may be divested as set out in the CMA's Final Report.

**Colin Garland**  
Director Remedies, Business and Financial Analysis

21 December 2022

## Annex

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

#### INITIAL ENFORCEMENT ORDER MADE BY THE COMPETITION AND MARKETS AUTHORITY PURSUANT TO SECTION 72(2) OF THE ENTERPRISE ACT 2002 (THE ACT)

Whereas:

- (a) On 1 December 2022, the Competition and Markets Authority (**CMA**) issued its Final Report in respect of the acquisition by NEC Software Solutions UK Limited of SSS Public Safety Limited and Secure Solutions USA LLC (the **Merger**); and
- (b) the CMA wishes to ensure that no action is taken which may give rise to pre-emptive action in accordance with section 72(2) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to NEC Corporation (**NECJ**), Garden Private Holdings Limited (**GPHL**), NEC Software Solutions UK Limited (**NECSWS**), SSS Public Safety Limited (**SSS PSL**) and Secure Solutions USA LLC (**SSU**) (the **Order**). NECJ, GPHL and NECSWS are henceforth referred to collectively as NEC. SSS PSL and SSU are henceforth referred to collectively as **SSS**.

#### **Commencement, application and scope**

1. This Order commences on the commencement date: being the date of completion of the Merger.
2. This Order applies to NECJ, GPHL, NECSWS, SSS PSL and SSU.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige NECJ,

GPHL, NECSWS, SSS PSL or SSU to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

4. This Order does not prohibit the completion of the transaction provided that NECJ, GPHL, NECSWS, SSS PSL and SSU observe the restrictions set out below.

**Management of the NEC and SSS businesses until determination of proceedings**

5. Except with the prior written consent of the CMA (which, for the avoidance of doubt, includes any derogations already granted by the CMA, which shall remain applicable during the specified period), NECJ, GPHL, NECSWS, SSS PSL and SSU shall not, during the specified period, take any action which might impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on a reference under section 22 of the Act, including any action which might:
  - (a) lead to the integration of the SSS business with the NEC business;
  - (b) transfer the ownership or control of all or any part of any Divestment Business; or
  - (c) otherwise impair the ability of any Divestment Business to compete independently in any of the markets affected by the transaction.
6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3 and 4, NECJ, GPHL, NECSWS, SSS PSL and SSU shall at all times during the specified period procure that, except with the prior written consent of the CMA (which, for the avoidance of doubt, includes any previous derogations granted by the CMA, which will remain applicable during the specified period):
  - (a) the SSS business is carried on separately from the NEC business and the SSS business's separate sales or brand identity is maintained;
  - (b) each Divestment Business is maintained as a going concern and sufficient resources are made available for the development of each

Divestment Business to enable each of them to continue to compete in any of the markets affected by the transaction;

- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, each Divestment Business;
- (d) the nature, description, range and quality of goods and/or services supplied in the UK by each Divestment Business is maintained and preserved;
- (e) except in the ordinary course of business:
  - (i) all of the assets of each Divestment Business are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of any Divestment Business are disposed of; and
  - (iii) no interest in the assets of any Divestment Business is created or disposed of;
- (f) there is no integration of the information technology of the SSS or NEC businesses, and the software and hardware platforms of the SSS business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses (ie the NEC business and the SSS business) shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the SSS business will be carried out by the SSS business alone and for the avoidance of doubt the NEC business will not negotiate on behalf of the SSS business (and vice versa) or enter into any joint agreements with the SSS business (and vice versa);
- (h) all existing contracts of the Divestment Businesses continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of any Divestment Business;

- (j) no key staff are transferred between the SSS business and the NEC business;
- (k) all reasonable steps are taken to encourage all key staff to remain with each Divestment Business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the SSS business (or any of its employees, directors, agents or affiliates) to the NEC business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction).

### **Compliance**

7. NECJ, GPLH, NECSWS, SSS PSL and SSU shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
8. NECJ, GPLH, NECSWS, SSS PSL and SSU shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by NECJ, GPLH, NECSWS, SSS PSL and SSU and their subsidiaries with this Order. In particular, on the date falling two weeks from commencement of this Order and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officers of NECJ, GPLH, NECSWS, SSS PSL and SSU or other persons of NECJ, GPLH, NECSWS, SSS PSL and SSU as agreed with the CMA shall, on behalf of each of NECJ, GPLH, NECSWS, SSS PSL and SSU, provide a statement to the CMA in the form set out in the Annexes to this Order confirming compliance with this Order.

9. At all times, NECJ, GPHL, NECSWS, SSS PSL and SSU shall each actively keep the CMA informed of any material developments relating to the Divestment Businesses, which includes but is not limited to:
  - (m) details of key staff who leave or join any of the Divestment Businesses;
  - (n) any interruption of any Divestment Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
  - (o) all substantial customer volumes won or lost or substantial changes to the customer contracts for any of the Divestment Businesses including any substantial changes in customers' demand; and
  - (p) substantial changes in any Divestment Business's contractual arrangements or relationships with key suppliers.
10. If NECJ, GPHL, NECSWS, SSS PSL or SSU has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that NECJ, GPHL, NECSWS, SSS PSL or SSU may be directed to appoint under paragraph 11.
11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
12. NECJ, GPHL, NECSWS, SSS PSL and SSU shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

## Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

14. For the purposes of this Order:

**‘the Act’** means the Enterprise Act 2002;

**‘an affiliate’** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**‘business’** has the meaning given by section 129(1) and (3) of the Act;

**‘commencement date’** means the date of completion of the Merger;

**‘control’** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**‘SSS PSL’** means SSS Public Safety Limited, a company registered at 65 Gresham Street, London, England, EC2V 7NQ, with company number 13052116;

**‘SSU’** means Secure Solutions USA LLC, a company registered at 16479 Dallas Parkway, Suite 140 Addison TX 75001 United States, with company number 5535075;

**‘the SSS business’** means the business of SSS PSL, SSU and their subsidiaries carried on as at the commencement date;

**‘the decisions’** means the decisions of the CMA on the questions which it is required to answer by virtue of sections 35 or 36 of the Act;

**‘Divestment Businesses’** means (i) the NECSWS ICCS Business, (ii) the NECSWS Duties Business, and (iii) the SSS Duties Business;



**'Final Report'** means the report entitled 'Competed acquisition by NEC Software Solutions UK Limited of SSS Public Safety Limited and Secure Solutions USA LLC – Final Report' dated 1 December 2022;

**'GPHL'** means Garden Private Holdings Limited, a company registered at 1st Floor, Imex Centre, 575-599 Maxted Road, Hemel Hempstead, Hertfordshire, United Kingdom, HP2 7DX, with company number 11126837;

**'GPHL business'** means the business of GPHL and its subsidiaries carried on as at the commencement date;

**'key staff'** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

**'NECJ'** means NEC Corporation, a company registered at 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan, with company number 7010401022916;

**'NEC business'** means the business of NECJ and its subsidiaries carried on as at the commencement date;

**'NECSWS'** means NEC Software Solutions UK Limited, a company registered at 1st Floor, Imex Centre, 575-599 Maxted Road, Hemel Hempstead, Hertfordshire, United Kingdom, HP2 7DX, with company number 00968498;

**'NECSWS business'** means the business of NECSWS and its subsidiaries carried on as at the commencement date;

**'NECSWS Duties Business'** means the NECSWS Duties business as described in paragraphs 11.178-11.181 of the Final Report;

**'NECSWS ICCS Business'** means the NECSWS ICCS business (including NECSWS' CallTouch and Stream products) as described in paragraphs 11.50-11.57 and 11.86 of the Final Report;

**'the ordinary course of business'** means matters connected to the day-to-day supply of goods and/or services by the SSS business or the NEC business and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of the SSS business and the NEC business;

**'specified period'** means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

**'SSS Duties Business'** means the SSS Duties business as described in paragraphs 11.220-11.223 of the Final Report;

**'subsidiary'**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**'the transaction'** means the transaction by which NECSWS, SSS PSL and SSU will cease to be distinct within the meaning of section 23 of the Act;

**'the two businesses'** means the NEC business and the SSS business;

unless the context requires otherwise, the singular shall include the plural and vice versa.