

**ACQUISITION BY TOBII AB OF SMARTBOX ASSISTIVE
TECHNOLOGY LIMITED AND SENSORY SOFTWARE
INTERNATIONAL LIMITED**

**Interim Order made by the
Competition and Markets Authority pursuant to
section 81 of the Enterprise Act 2002**

Whereas:

- A. On 1 October 2018 Tobii AB ('Tobii') acquired Smartbox Assistive Technology Limited ('SATL') and Sensory Software International Limited ('SSIL') (together, 'Smartbox') (the 'Merger'). Tobii and Smartbox are together referred to as 'the Parties'.
- B. On 28 September 2018 the Competition and Markets Authority ('CMA') made an initial enforcement order ('IEO') in accordance with section 72 of the Enterprise Act 2002 (the 'Act') for the purpose of preventing pre-emptive action. The IEO ceases to be in force under section 72(6) of the Act when the CMA makes an interim order under section 81 of the Act.
- C. On 14 December 2018, the CMA issued written directions under paragraph 10 of the IEO that, for the purpose of securing compliance with the IEO, Tobii must appoint a monitoring trustee (the 'MT'). BDO's appointment as MT and the terms of the mandate governing the appointment were approved by the CMA on 28 December 2018.
- D. On 8 February 2019 the CMA referred the Merger for a phase 2 investigation pursuant to section 22 of the Act (the 'Reference') to determine, pursuant to section 35 of the Act:
 - a) whether a relevant merger situation has been created; and

- b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition in any market or markets in the United Kingdom ('UK') for goods or services.
- E. The CMA wishes to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the Reference.
- F. The Reference has not been finally determined in accordance with section 79 of the Act.
- G. The CMA granted derogations from the IEO. The derogations remain in force as if they were made with respect to this interim order until varied or revoked by the CMA. By this interim order, the CMA has varied the first derogation granted on 21 December 2018, which was extended by the CMA on 8 February 2019 (the original derogation is attached as Annex A, showing the variation in strike-through text).

Now for the purpose of preventing pre-emptive action in accordance with section 81 of the Act, the CMA makes the following order ('Order').

Commencement, application and scope

1. This Order commences on the commencement date.
2. This Order applies to Tobii AB, Smartbox Assistive Technology Limited and Sensory Software International Limited.
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 Tobii or Smartbox to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement of the IEO.

Management of the Tobii and Smartbox businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Tobii and Smartbox shall not, during the specified period, take any action which might prejudice a reference of the Merger under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on the Reference, including any action which might:

- (a) lead to the integration of the Tobii business with the Smartbox business or the Smartbox business with the Tobii business;
 - (b) transfer the ownership or control of the Tobii business or the Smartbox business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Tobii business or the Smartbox business to compete independently in any of the markets affected by the Merger.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, Tobii and Smartbox shall at all times during the specified period procure that, except with the prior written consent of the CMA:
- (a) the Tobii business is carried on separately from the Smartbox business and the Tobii business's separate sales or brand identity is maintained;
 - (b) the Smartbox business is carried on separately from the Tobii business and the Smartbox business's separate sales or brand identity is maintained;
 - (c) the Tobii business and the Smartbox business are maintained as going concerns and sufficient resources are made available for the development of the Tobii business and the Smartbox business, on the basis of their respective pre-Merger business plans;
 - (d) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within the Tobii business or the Smartbox business;
 - (e) the nature, description, range and quality of goods and/or services supplied in the UK by each of the Tobii business and the Smartbox business are maintained and preserved;
 - (f) except in the ordinary course of business for the separate operation of the Tobii business and the Smartbox business:
 - (i) all of the assets of the Tobii business and Smartbox business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Tobii business or the Smartbox business are disposed of; and
 - (iii) no interest in the assets of the Tobii business or the Smartbox business is created or disposed of;

- (g) there is no integration of the information technology of the Tobii business or the Smartbox business, and the software and hardware platforms of the Tobii business and the Smartbox business shall remain essentially unchanged, except for routine changes and maintenance;
- (h) the customer and supplier lists of the Tobii business and the Smartbox business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Tobii business will be carried out by the Tobii business alone and for the avoidance of doubt the Smartbox business will not negotiate on behalf of the Tobii business (and vice versa) or enter into any joint agreements with the Smartbox business (and vice versa);
- (i) all existing contracts of the Tobii business and the Smartbox business continue to be serviced by the business to which they were awarded;
- (j) no changes are made to key staff of the Tobii business or the Smartbox business;
- (k) no key staff are transferred between the Tobii business and the Smartbox business;
- (l) all reasonable steps are taken to encourage all key staff of the Tobii business and the Smartbox business to remain with their respective business; and
- (m) 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 Tobii business or the Smartbox business shall pass, directly or indirectly, from the Tobii business on the one hand (or any of its employees, directors, agents or affiliates) to the Smartbox business on the other hand (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) and on the basis that, should the Merger be prohibited or a divestiture required, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

6. The derogations from the IEO that were granted on 21 December 2018 (when two derogations were granted, Derogation A and Derogation B), 28 December 2018, 14 November 2018 and 24 October 2018 as attached to this Order as Annexes A to E, respectively, shall apply as if they were made with respect to this Order and remain in force until varied or revoked by the CMA.

7. Derogation A granted on 21 December 2018 and as set out in Annex A to this Order shall be varied as follows:

- a. The following condition is removed in its entirety from that derogation: "*the temporary derogation will remain in place until 25 January 2019, subject to the CMA having the discretion to reduce or extend this period in writing*".

Compliance

8. Tobii and Smartbox shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.

9. Tobii 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 Tobii and their subsidiaries with this Order. In particular, on 4 March 2019 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Tobii, or other persons of Tobii as agreed with the CMA shall, on behalf of Tobii, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.

10. Smartbox 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 Smartbox and their subsidiaries with this Order. In particular, on 4 March 2019 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Managing Director of Smartbox, or other persons of Smartbox as agreed with the CMA shall, on behalf of Smartbox, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.

11. At all times, Tobii and Smartbox shall actively keep the CMA informed of any material developments relating to the Tobii business or the Smartbox business, which includes but is not limited to:

- (a) details of key staff who leave or join the Tobii business or the Smartbox business;
- (b) any interruption of the Tobii business or Smartbox 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;
- (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Tobii business or Smartbox business including any substantial changes in customers' demand; and

(d) substantial changes in the Tobii business's or Smartbox business's contractual arrangements or relationships with key suppliers.

12. If Tobii or Smartbox has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Tobii and/or Smartbox may be directed to appoint under paragraph 13.

13. 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.

14. Tobii and Smartbox 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

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

16. 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 this Order is issued;

'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;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

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

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

'SATL' means Smartbox Assistive Technology Limited, company number 05541084;

'SSIL' means Sensory Software International Ltd, company number 03662043;

'Smartbox' means SATL and SSIL;

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

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

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

'Tobii' means Tobii AB, listed on Nasdaq Stockholm, corporate identity number 556613-9654;

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

'the two businesses' means each of the Tobii business and the Smartbox business;

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

Kip Meek
Inquiry Chair
18 February 2019

Derogation A originally granted under IEO 21 December 2018

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

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 28 September 2018

Completed acquisition by Tobii AB of Smartbox Assistive Technology Limited and Sensory Software International Ltd

We refer to your email of 7 December 2018 requesting that the CMA consents to derogations to the Initial Enforcement Order of 28 September 2018 (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, Tobii is required to hold separate the Tobii business from the Smartbox and Sensory Software businesses 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, Tobii and Smartbox and Sensory Software may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 4(a), 4(c), 5(a) and 5(g) of the Initial Order

The CMA understands that Tobii and Smartbox entered into the following reseller/distribution arrangements ('**Reseller Agreements**') in August 2018:

- Distributor Agreement dated 29 August 2018 whereby Tobii acts as a distributor for Smartbox; and
- Reseller Agreement dated 15 August 2018 whereby Smartbox acts as a reseller for Tobii.

Tobii and Smartbox wish to continue operating under the Reseller Agreements and to implement various actions directly related to the Reseller Agreements. Tobii is therefore requesting a derogation from the Initial Order to continue to operate the Reseller Agreements.

The CMA consents to a temporary derogation from the Initial Order, subject to the following conditions:

- i. ~~the temporary derogation will remain in place until 25 January 2019, subject to the CMA having the discretion to reduce or extend this period in writing;~~
- ii. the temporary derogation is strictly limited to necessary actions arising solely in relation to and directly resulting from the need for Tobii and Smartbox to fulfil their obligations and exercise their rights under the Reseller Agreements for the duration of the derogation. Tobii and Smartbox therefore acknowledge that the temporary derogation does not permit any wider integration which is unrelated to the Reseller Agreements; and
- iii. the Parties shall seek the CMA's consent before taking any action under the Reseller Agreements that would have the effect of requiring the continued operation of the Reseller Agreements beyond the period of the temporary derogation (as may be amended under (i) above), including building up future stock and inventory of the products covered under the Reseller Agreements.

Derogation B originally granted under IEO 21 December 2018

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

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 28 September 2018

Completed acquisition by Tobii AB of Smartbox Assistive Technology Limited and Sensory Software International Ltd

We refer to your emails of 13 and 17 December 2018 requesting that the CMA consents to derogations to the Initial Enforcement Order of 28 September 2018 (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, Tobii is required to hold separate the Tobii business from the Smartbox and Sensory Software businesses 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, Tobii and Smartbox and Sensory Software may carry out the following actions, in respect of the specific paragraphs:

1. Paragraph 5(l) of the Initial Order

On 14 November 2018, the CMA granted Tobii a derogation from paragraph 5(l) of the Initial Order for certain Smartbox financial information to be shared with Tobii in order for Tobii to comply with its regulatory reporting requirements imposed by the Nasdaq Stockholm stock exchange where Tobii is listed.

The CMA understands that identified individuals within Tobii's finance team (Anna Wirén, Interim Group Financial Controller; Peter Hedin, Finance Manager; and Peter Runebjork, Tobii Dynavox Business Controller) ('**Authorised Individuals**') require further information from Smartbox (ie explanations of material variances or trends) relating to Smartbox financial information provided to Tobii in order to allow for the preparation of Tobii's consolidated financial reports.

The CMA consents to a derogation from the Initial Order, subject to the following conditions:

- i. the financial information shared with Tobii for these purposes will only be made available to the Authorised Individuals and will be strictly limited to the minimum that is necessary for Tobii to prepare consolidated financial reports;
- ii. the Authorised Individuals continue to be bound by an NDA, the form of which has been agreed with the CMA;
- iii. the Authorised Individuals are not responsible for commercial decision-making at Tobii and are not, and will not in future, be engaged in preparing any data or material used for commercial decision-making at Tobii;
- iv. the sharing of any information subject to this derogation with the Authorised Individuals is subject to strict oversight by the Monitoring Trustee appointed by Tobii such that all exchanges (electronically, verbally or otherwise) between Tobii and Smartbox will not take place without the Monitoring Trustee's knowledge, specifically:
 - a. the Monitoring Trustee will at all times be copied in on any communications between Tobii and Smartbox relevant to this derogation; and
 - b. the Monitoring Trustee will attend any calls or meetings which are arranged between Tobii and Smartbox relevant to this derogation;
- v. the Monitoring Trustee maintains the authority to intervene and prevent the sharing of information in the event that any proposed information sharing between Tobii and Smartbox exceeds the limits provided for in this derogation, and the Monitoring Trustee will promptly notify the CMA whenever such interventions are made; and
- vi. the Monitoring Trustee shall maintain a record of all information exchanged between the Parties under this derogation and shall make such information available to the CMA upon the CMA requesting such information.

Derogation originally granted under IEO 28 December 2018**DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDER ISSUED
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002
COMPLETED ACQUISITION**

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 28 September 2018

Completed acquisition by Tobii AB of Smartbox Assistive Technology and Sensory Software International Limited

We refer to your email dated 27 December 2018 requesting that the CMA consents to a derogation to the Initial Enforcement Order (the '**Initial Order**') of 28 September 2018. 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, Tobii is required to hold separate the Tobii business from the Smartbox and Sensory Software businesses 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 a derogation from the Initial Order, based on the information received from you and in the particular circumstances of this case, Tobii may carry out the following actions, in respect of the specific paragraph:

1.Paragraph 5(c) of the Initial Order

The CMA understands that Tobii is proposing to undertake a corporate restructuring, which is scheduled to take effect for the Tobii group of companies on 1 January 2019 (the '**Tobii restructuring**'). In an email to the CMA dated 11 December 2018, Tobii provided information to the CMA about the proposed Tobii restructuring, and explained that the Tobii restructuring will take place at Tobii group level and will apply to all three Tobii business units, including Tobii Dynavox. Tobii also explained that that the Tobii restructuring will be completely unrelated to the Smartbox and the Sensory Software businesses and will neither alter nor have any effect on the Smartbox and the Sensory Software business, including their operations.

The CMA consents to a derogation from the Initial Order permitting the Tobii restructuring to take place, subject to the following conditions:

- i. that Smartbox and its subsidiaries and their respective businesses will be completely untouched and unaffected by the Tobii restructuring, including for the avoidance of doubt, that no shares or assets of Smartbox and Sensory Software will be transferred from Tobii AB to Tobii Dynavox or to any other legal entity or person;
- ii. that the CMA reserves the right to request the Monitoring Trustee appointed in accordance with the directions issued by the CMA on 14 December 2018, to

audit the Tobii restructuring to confirm that Tobii has fully complied with the conditions attached to this derogation; and

- iii. that, without prejudice to the outcome of the CMA's merger enquiry, Tobii confirms to the CMA in advance of undertaking the Tobii restructuring that the Tobii restructuring would not impede or otherwise hinder the taking of remedial action by the CMA if it is determined that such action is required. As remedial action could potentially include a divestment of the overlapping Tobii business, the Tobii restructuring should not:
 - a. prevent the overlapping Tobii business or Smartbox and Sensory Software businesses (or parts thereof) from forming a potential divestment package if this was found to be necessary; and/or
 - b. make a potential divestment of the overlapping Tobii business or Smartbox and Sensory Software businesses (or parts thereof) any more onerous/difficult than would have been the case in the absence of the Tobii restructuring.

Derogation originally granted under IEO 14 November 2018

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 28 September 2018

Completed acquisition by Tobii AB of Smartbox Assistive Technology Limited and Sensory Software International Ltd

We refer to your emails of 1 November 2018, 7 November 2018 and 13 November 2018 requesting that the CMA consents to derogations to the Initial Enforcement Order of 28 September 2018 (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, Tobii is required to hold separate the Tobii business from the Smartbox and Sensory Software businesses 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, Tobii and Smartbox and Sensory Software may carry out the following actions, in respect of the specific paragraphs:

1. Paragraph 5(I) of the Initial Order

The CMA understands that Tobii and Smartbox exchange technical information for the purpose of enabling Smartbox products to work and interact with Tobii products. As this is a market where solutions are not particularly standardised, and the needs of end users vary, Tobii and Smartbox submitted that providers often need to collaborate to make solutions work for end users where the individual components are manufactured by different suppliers. Tobii is therefore requesting a derogation from the Initial Order to continue to exchange the necessary technical information in order to ensure interoperability between the hardware and software components of Tobii and Smartbox for the benefit of end users.

The CMA consents to this derogation, subject to the following conditions:

- i. the information exchanged must be technical in nature only, as described in Tobii's submission dated 9 October 2018;
- ii. the technical information exchanged between Tobii and Smartbox is solely for the purposes of enabling Smartbox products to work and interact with Tobii products;
- iii. the technical information is shared only to allow the interaction of the Smartbox products that were interacting with the Tobii products prior to the Transaction; and

- iv. only those individuals at Tobii and Smartbox who have been approved by the CMA (as listed in Tobii's submission dated 1 November 2018) and have signed a non-disclosure agreement (NDA) (the form of which has been agreed with the CMA) will be authorised to receive the technical information exchanged between Tobii and Smartbox.

2. Paragraph 5(l) of the Initial Order

The CMA understands that Tobii requires certain financial information from Smartbox in order to comply with its regulatory reporting requirements imposed by the Nasdaq Stockholm stock exchange (the "Exchange") where Tobii is listed. Tobii, as an issuer listed on the Exchange, must establish and maintain adequate procedures, controls and systems, including systems and procedures for financial reporting, to enable compliance with its obligations to provide the market with timely, reliable, accurate and up-to-date information as required by the Exchange. This obligation extends to Smartbox as a subsidiary of Tobii. The raw data received from Smartbox for the purposes of this financial reporting to the Exchange will be held in a Tobii finance database which is not capable of being ring-fenced, although access is limited to Tobii's finance team. Tobii is requesting a derogation from the Initial Order in order to receive certain commercially-sensitive financial information from Smartbox in order to comply with its regulatory requirements.

The CMA consents to this derogation, subject to the following conditions:

- i. the Smartbox financial information shared with Tobii will be in a format agreed with the CMA and will be limited to that which is strictly necessary for the purposes of consolidating Tobii and Smartbox accounts to comply with reporting requirements imposed by the Exchange;
- ii. The financial information required from Smartbox for these purposes will be made available to the following individuals: [X] (Interim Group Financial Controller), [X] (Finance Manager) and [X] (Business Controller), on the basis and only to the extent that Smartbox employees are unable to consolidate the financial information required by Tobii themselves;
- iii. [X], [X] and [X] will enter into an NDA, the form of which has been agreed with the CMA;
- iv. Tobii will put in place a written policy informing Tobii's finance team that only [X], [X] and [X] are authorised to access the Smartbox raw financial information stored in the Tobii finance database for the purposes of consolidating the Smartbox financial information;
- v. Smartbox financial information will only be shared with [X] (the CFO of Tobii) where specifically necessary in order to answer a query by the three approved Tobii finance individuals relating to consolidation of the Smartbox information which is necessary to comply with the reporting requirements imposed by the Exchange;

- vi. The CFO will enter into an NDA (in a form approved by the CMA) stating that he will not disclose any of Smartbox's financial information to any other individuals at Tobii or use it in any commercial decision-making process;
- vii. Other than the CFO of Tobii, no other person at Tobii who is (i) engaged in preparing any data or material used for commercial decision-making at Tobii or (ii) is responsible for commercial decision-making at Tobii maintains access/will gain access to the finance database where the raw data of Smartbox is stored; and
- viii. Where information which contains Smartbox financial information is provided to the Executive Management Team and/or the Tobii Board, the Smartbox information will be consolidated so that it is not visible to Tobii.

3. Paragraph 5(l) of the Initial Order

The CMA understands that Tobii is required to comply with so-called "market abuse" requirements as a business listed on the Exchange. Tobii, as an issuer listed on the Exchange, must disclose inside information in accordance with applicable Swedish Market Abuse Regulations and is required to ensure that all market participants have simultaneous access to any inside information about Tobii and its subsidiaries. Tobii is requesting a derogation from the Initial Order to permit Smartbox to provide Tobii with information (some of which may be commercially sensitive) about certain types of events which must be reported in order for Tobii to fulfil its regulatory requirements to the Exchange.

The CMA consents to this derogation, subject to the following conditions:

- i. The information shared by Smartbox with Tobii will be limited to that which is strictly necessary to enable Tobii to meet its regulatory disclosure requirements to the Exchange;
- ii. Where Smartbox proposes to share commercially sensitive information with Tobii for these purposes, the information reported by Smartbox to Tobii must be provided to the CMA in parallel; and
- iii. Smartbox information will only be provided to [X] (President of Tobii Dynavox) and [X] (CFO of Tobii), each of whom will (a) sign an NDA in a format agreed with the CMA and (b) agree to use the Smartbox information which is reported purely for the "market abuse" compliance purposes only.

4. Paragraphs 5(a) and 5(l) of the Initial Order

While [X] (Managing Director of Smartbox) remains responsible for the day-to-day management of the Smartbox business, Tobii has submitted that in order to maintain the ongoing viability of Smartbox, to ensure sufficient funds are made available to Smartbox and to ensure that sufficient control mechanisms are in place at Smartbox in order to prevent fraud, it may be necessary from time to time for a named individual within Tobii to review and approve or veto certain expenditure of the Smartbox business which exceed £50,000.

The CMA consent to this derogation, subject to the following conditions:

- i. Smartbox has confirmed that payments exceeding £50,000 are not made by Smartbox in the ordinary course of business;
- ii. where the £50,000 threshold is exceeded and Smartbox is required to seek Tobii's approval for such expenditure, information will be shared only with [X] (Finance Manager) and will be kept to the minimum strictly necessary (ie only the identity of the payee and the amount of the payment) in order to allow Mr Hedin to take a decision on the proposed expenditure;
- iii. [X] will sign an NDA, the form of which has been approved by the CMA;
- iv. [X] will not be involved in commercial decision-making at Tobii in respect of any activities in markets where Tobii and Smartbox overlap or attend meetings where such commercial decisions are to be made, whilst the Initial Order is in place; and
- v. approval of payments by Tobii must not be unreasonably withheld and the CMA will be provided with prior notification from Tobii of the exercise of its right to veto expenditure proposed by Smartbox which exceeds the levels of delegated authority described above and will be provided with the reasons for any proposed veto by Tobii.

If Tobii wishes to vary any of the individuals which have been approved by the CMA for the purposes of these derogations, it will seek the prior approval of the CMA. Where approval is granted by the CMA, the conditions set out above shall apply to each individual.

Derogation originally granted under IEO 24 October 2018

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 28 September 2018 Completed acquisition by Tobii AB of Smartbox Assistive Technology Limited and Sensory Software International Ltd

We refer to your email dated 23 October 2018 requesting that the CMA consents to derogations to the Initial Enforcement Order of 28 September 2018 (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, Tobii AB ("Tobii") is required to hold separate the Tobii business from the Smartbox and Sensory Software businesses ('**Smartbox**') 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, Tobii, Smartbox and Sensory Software may carry out the following actions, in respect of the specific paragraphs:

1. Paragraph 5(c) of the Initial Order

The CMA understands that, following completion of the acquisition of Smartbox by Tobii, Mr Paul Hawes (Chairman of the Smartbox Board) retired. In order to ensure the ongoing viability and independent operation of the Smartbox business, Smartbox has requested a derogation from the Initial Order to appoint [REDACTED] (currently the Technical Director of Smartbox) as Managing Director and Chairman of the Smartbox Board of Directors. In his role as Managing Director and Chairman of the Smartbox Board, [REDACTED] will be responsible for:

- providing visible leadership and direction for Smartbox whilst the Initial Order is in force;
- ensuring that Smartbox complies with the requirements of the Initial Order; and
- the research and development function at Smartbox.

The CMA consents to this derogation on the basis that it is necessary to ensure the ongoing viability and independent operation of the Smartbox business.

2. Paragraph 5(i) of the Initial Order

The CMA understands that Smartbox's previous Software Development Manager departed Smartbox in August 2018 and that this role has been vacant since that time

with recruitment ongoing both internally and externally. In order to ensure the ongoing viability and independent operation of the Smartbox business, Smartbox requests a derogation from the Initial Order to promote [X] (currently International Support Specialist at Smartbox) to the position of Software Development Manager. The role is part of the management team at Smartbox, which reports to the Smartbox Board of Directors.

The CMA consents to this derogation on the basis that it is necessary to ensure the ongoing viability and independent operation of the Smartbox business.

Compliance statement for Tobii

I [insert name] confirm on behalf of Tobii that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Tobii has complied with the Order made by the CMA in relation to the Merger on 18 February 2019 (the Order).
 - (b) Tobii's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Tobii or its subsidiaries that might prejudice a reference of the Merger under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Tobii business with the Smartbox business;
 - (ii) transfer the ownership or control of the Tobii business or the Smartbox business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Tobii business or the Smartbox business to compete independently in any of the markets affected by the Merger.
 - (b) The Tobii business has been carried on separately from the Smartbox business and the Tobii business separate sales or brand identity have been maintained.
 - (c) The Tobii business has been maintained as a going concern and sufficient resources have been made available for the development of the Tobii business on the basis of its pre-Merger business plans.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within the Tobii business except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Tobii business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Tobii business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Tobii business have been disposed of; and
 - (iii) no interest in the assets of the Tobii have been created or disposed of.
- (g) There has been no integration of the information technology of the Tobii business or Smartbox businesses, and the software and hardware platforms of the Tobii business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Tobii business have been carried out by the Tobii business alone and, for the avoidance of doubt, the Tobii business has not negotiated on behalf of the Smartbox business (and vice versa) or entered into any joint agreements with the Smartbox business (and vice versa).
- (i) All existing contracts of the Tobii business have been serviced by Tobii, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Tobii business.
- (k) No key staff have been transferred between the Tobii business and the Smartbox business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Tobii business.
- (m) Except as permitted by the Order, 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, has passed, directly or indirectly, from the Tobii business

on the one hand (or any of its employees, directors, agents or affiliates) to the Smartbox business on the other hand (or any of its employees, directors, agents or affiliates), or vice versa.

- (n) Except as listed in paragraph (o) below, there have been no:
- (i) key staff that have left or joined the Tobii business;
 - (ii) interruptions of the Tobii business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Tobii business; or
 - (iv) substantial changes in the Tobii business contractual arrangements or relationships with key suppliers.
- (o) list of material developments: *[list material developments here]*

3. Tobii and its subsidiaries remain in full compliance with the Order and will actively continue to keep the CMA informed of any material developments relating to the Tobii business and will procure that Smartbox will actively continue to keep the CMA informed of any material developments relating to the Smartbox business in accordance with paragraph 8 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF TOBII

Signature

Name

Title

Date

Compliance statement for Smartbox

I [insert name] confirm on behalf of Smartbox that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Smartbox has complied with the Order made by the CMA in relation to the Merger on 18 February 2019 (the Order).
 - (b) Smartbox's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Smartbox or its subsidiaries that might prejudice a reference of the Merger under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Smartbox business with the Tobii business;
 - (ii) transfer the ownership or control of the Smartbox business or the Tobii business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Smartbox business or the Tobii business to compete independently in any of the markets affected by the Merger.
 - (b) The Smartbox business has been carried on separately from the Tobii business and the Smartbox business separate sales or brand identity have been maintained.
 - (c) The Smartbox business has been maintained as a going concern and sufficient resources have been made available for the development of the Smartbox business, on the basis of its pre-Merger business plans.
 - (d) No substantive changes have been made to the organisational structure of the Smartbox business, except in the ordinary course of business.
 - (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Smartbox business have been maintained and preserved.

- (f) Except in the ordinary course of business for the separate operation of the two businesses:
- (i) all of the assets of the Smartbox business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Smartbox business have been disposed of; and
 - (iii) no interest in the assets of the Smartbox business has been created or disposed of.
- (g) There has been no integration of the information technology of the Smartbox business or Tobii business, and the software and hardware platforms of the Smartbox business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Smartbox business have been carried out by the Smartbox business alone and, for the avoidance of doubt, the Smartbox business has not negotiated on behalf of the Tobii business (and vice versa) or entered into any joint agreements with the Tobii business (and vice versa).
- (i) All existing contracts of the Smartbox business have been serviced by Smartbox, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Smartbox business
- (k) No key staff have been transferred between the Smartbox business and the Tobii business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Smartbox business.
- (m) Except as permitted by the Order, 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, has passed, directly or indirectly, from the Smartbox business on the one hand (or any of its employees, directors, agents or

affiliates) to the Tobii business on the other hand (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

- (i) key staff that have left or joined the Smartbox business;
- (ii) interruptions of the Smartbox business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Smartbox business; or
- (iv) substantial changes in the Smartbox business contractual arrangements or relationships with key suppliers.

(o) list of material developments: *[list material developments here]*

3. Smartbox and its subsidiaries remain in full compliance with the Order and will actively continue to keep the CMA informed of any material developments relating to the Smartbox business and will procure that Tobii will actively continue to keep the CMA informed of any material developments relating to the Tobii business in accordance with paragraph 8 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF SMARTBOX

Signature

Name

Title

Date