

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

**Directions issued on 18 February 2019 pursuant to paragraph 13 of
the interim order imposed by the Competition and Markets
Authority on Tobii AB and Smartbox Assistive Technology Limited
and Sensory Software International Ltd on 18 February 2019**

On 1 October 2018, Tobii AB (**Tobii**) completed the acquisition of Smartbox Assistive Technology Limited and Sensory Software International Ltd (together, **Smartbox**) (the **Merger**). Tobii and Smartbox are together referred to as the Parties.

On 28 September 2018, the CMA made an Initial Enforcement Order (the **IEO**) addressed to Tobii in accordance with section 72(2) of the Enterprise Act 2002 (the **Act**) to prevent pre-emptive action. The IEO came into force on 1 October 2018.

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 LLP (**BDO**) was appointed as MT and the terms of the mandate governing the appointment were approved by the CMA on 28 December 2018.

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 for goods or services.

On 18 February 2019, the CMA made an interim order (the **Order**) addressed to Tobii and Smartbox in accordance with section 81 of the Act to prevent pre-emptive action. The IEO ceases to be in force under section 72(6) of the Act when the CMA makes an Order under section 81 of the Act.

The CMA now issues written directions under paragraph 13 of the Order that, for the purpose of securing compliance with the Order, Tobii shall re-appoint, or otherwise continue the appointment of, BDO as MT in accordance with the terms provided for in this Annex and shall comply with the obligations set out in the Annex.

Signed

Kip Meek

Inquiry Chair
18 February 2019

Annex

Directions to appoint a monitoring trustee

Interpretation

In these Directions:

'the Act' means the Enterprise Act 2002.

'CMA' means the Competition and Markets Authority.

'MT' means the monitoring trustee appointed in accordance with paragraphs 1 to 4 below;

'Derogations' means any derogations granted whether before or after the appointment of the MT by the CMA by which the Parties may undertake certain actions that derogate from the Order.

'Order' means the interim order made by the CMA on 18 February 2019 and addressed to Tobii and Smartbox.

'Parties' means Tobii and Smartbox and their subsidiaries.

'Smartbox' means Smartbox Assistive Technology Limited, company number 05541084 and Sensory Software International Ltd, company number 03662043;

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

'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 of the IEO;

Terms and expressions defined in the Order have the same meaning in these directions, unless the context requires otherwise.

Appointment

1. Tobii must appoint a MT in order to ensure compliance with the Order, in particular to:
 - a. monitor and report to the CMA on compliance by the Parties with the Order; and
 - b. support the CMA taking any remedial action which may be required to maintain the Smartbox businesses as a going concern.

2. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
3. For the purposes of paragraphs 1 and 2, Tobii must re-appoint, or otherwise continue the appointment of, BDO on the same terms of the mandate governing the appointment, which were approved by the CMA on 28 December 2018.
4. Tobii and Smartbox must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Tobii and Smartbox as set out in these directions.

General

5. The MT must possess appropriate qualifications and experience to carry out his or her functions.
6. The MT must neither have, nor become exposed to, a conflict of interest that impairs his or her objectivity and independence in discharging his or her duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
7. Tobii shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.

Functions

8. The functions of the MT will be to:
 - a. ascertain and report to the CMA in relation to the current level of compliance by Tobii and its subsidiaries with the Order;
 - b. assess and report to the CMA in relation to the arrangements made by Tobii for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
 - c. identify and supervise if necessary the arrangements made by Tobii for ensuring compliance with the Order;
 - d. monitor compliance by Tobii and its subsidiaries with the Order; and
 - e. without prejudice to the right of Tobii and Smartbox to contact the CMA, respond to any questions which Tobii and Smartbox may have in relation to compliance with the Order, in consultation with the CMA.

9. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Tobii business and the Smartbox business, such as written and electronic communications, telephone conversations and meetings as may be required.
10. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by Tobii with the Order.

Obligations of Tobii and Smartbox

11. Tobii, Smartbox and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
 - a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Tobii business and the Smartbox business as the MT may reasonably require; and
 - b. the provision of such office and supporting facilities as the MT may reasonably require.
12. If the Tobii business or the Smartbox business are in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification.
13. If Tobii or Smartbox has any reason to suspect that the Order may have been breached, it must notify the MT and the CMA immediately.

Reporting functions

14. The MT must provide a statement to the CMA every two weeks with the first statement to be provided on 4 March 2019 (or otherwise as required by the CMA) stating whether or not, in his or her view, Tobii and its subsidiaries have complied with the Order. At the same time, the MT must provide the CMA with a report setting out the following:
 - a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:
 - i. anything has caused him or her to be concerned as to whether Tobii and its subsidiaries have complied with the Order, and if it has, whether those concerns have been resolved and why;
 - ii. he or she has any remaining doubts or uncertainties as to whether Tobii and its subsidiaries have complied with the Order; and

- iii. anything that causes him or her to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
 - b. details of the performance of the Smartbox business, including any factors that might indicate asset deterioration;
 - c. whether appropriate steps are being taken to maintain the Smartbox business as a going concern;
 - d. the extent to which Tobii, Smartbox and their subsidiaries have cooperated with the MT in his or her task of monitoring its compliance with the Order and details of any aspects of the cooperation of Tobii or Smartbox that he or she considers could be improved;
 - e. the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of Tobii, Smartbox and their subsidiaries with the Order and if there is anything that the MT considers would assist him or her in monitoring compliance;
 - f. any current or anticipated requests for consent to vary the Order; and
 - g. the information he or she used to compile the report.
- 15. When providing reports to the CMA, the MT must ensure that he or she does not disclose any information or documents to the CMA which Tobii or Smartbox would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Tobii or Smartbox to produce any information or documents to the MT which are privileged.
- 16. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Order has been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 15 above).
- 17. All communications between the MT and the CMA (including the statements and reports referred to in paragraph 14 are confidential and should not be disclosed to Tobii or to Smartbox, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.