

Submission from Assistiveware (in response to the Issues Statement)

Thank you for contacting us again about the acquisition by Tobii AB of Smartbox Assistive Technology Limited and Sensory Software International Ltd (Smartbox). We do agree that a more in-depth inquiry is warranted. While we do not have direct concerns about the impact on our own business we are concerned with the impact of this merger on the UK market (and other markets) as a whole.

Regarding article 11b:

Is the CMA only considering Windows software here that can be purchased for use on any Windows device, or also iOS and Android apps?

Regarding article 12:

We agree with the CMA's position that dedicated AAC hardware is distinct from consumer tablets and should constitute a separate product frame of reference. These are essentially two markets. The dedicated AAC hardware is typically used for people with significant motor disabilities requiring alternate access methods such as switches, head tracking, or eye gaze. Also, in many countries only such dedicated AAC hardware is funded/covered by insurance, whereas consumer tablet-based solutions are often not. In most countries AAC resellers prefer to resell dedicated AAC hardware over consumer tablet-based solutions (this is related to margins as well as funding requirements). Consumer tablet-based AAC solutions tend to be used more by individuals without motor-impairments, such as autism, Down syndrome, etc. As a consequence dedicated AAC hardware-based solutions do not compete directly with consumer tablet-based solutions.

Additionally, even if these two markets were considered as one, then the amount of competition in the consumer tablet market is far more limited than one would expect considering the large number of players. There are only a handful of players that really matter in the UK and Tobii ABs and Smartbox's products are among the dominant ones.

Regarding article 13:

We do not agree with Tobii's position that the software scope should be expanded to all software to support ATS/AAC solutions. The ATS market consists of many different sub-markets that do not compete with one another, because each piece of hardware and software is intended for a specific kind of need/use. For example, you

cannot speak with a braille keyboard or a Windows screen reader, or enlarge print with an AAC device or app. Build-in accessibility features in iOS or Windows do not provide relevant AAC features.

Additionally, many products are platform specific. For example, apps for iOS cannot be used on Windows or Android. Similarly, the Windows-based AAC products developed by Tobii and Smartbox cannot be used on an iOS or Android tablet. Given the limited inter-operability products such as Proloquo2Go (iOS) do not compete with products such as Tobii Communicator (Windows).

Regarding article 14:

We agree with the CMA's position that complex needs software cannot be substituted with less complex needs software and that they are essentially different markets. We also agree that it does not make sense to broaden the scope to the broader ATS market. We think the focus should remain strictly on the AAC market. A marker where this merger will have a considerable negative affect on the amount of competition, innovation and the options for customers.

Regarding article 23a:

We do expect a SLC on the supply of dedicated AAC hardware with this merger of two key players.

Regarding article 23b:

It depends on what the definition of AAC software is. If the focus is on Window's based software then we do expect a SLC.

Regarding article 23c:

As far as we know based on anecdotal information, SmartBox owns maybe 70 to 75% of the UK market and Tobii another 10-15%. Two players such as Liberator/PRC and Techcess/Jabbla make up the remainder.

Regarding article 25b:

From our perspective both Tobii and Smartbox have for many years followed a software plus hardware strategy. We have never seen one as a software company and the other as a hardware company, so we do not agree with Tobii's position.

We have also heard rumors that following the merger several hardware and software products from both parties will be discontinued to avoid overlap.

Regarding article 25c:

We agree with the CMA, assuming that 23b is focussed on Windows-based software.

Final remarks:

Regarding theories of harm, we do want to raise one concern we picked up in the market, which is that Smartbox plays an important role in making available access hardware in the UK that is imported from elsewhere and to which SmartBox then adapts their AAC products. Smartbox has a reputation of listening to UK customers and trying to accommodate to their needs by working on this kind of interoperability and importing access hardware. We are hearing concerns that this will end as a consequence of the merger. If accurate this could significantly reduce the diversity of available access solutions in the UK.

We think it might be of interest for the CMA to speak with some distributors and resellers of Tobii or Smartbox products in other countries as to how they expect this merger to affect their business. This might help in assessing the upstream impact as well as provide insight into the plans of Tobii and Smartbox.

We hope the provided response is helpful. If there is anything more we can do, please let us know.

On behalf of David Niemeijer, AssistiveWare CEO

Martijn Leopold, AssistiveWare CFO/CTO