

**Consent under section 81 of the Enterprise Act 2002
to certain actions for the purposes of the Interim
Order made by the Competition and Markets Authority
(‘CMA’) on 18 February 2019**

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

We refer to your email and accompanying note dated 21 March 2019 requesting that the CMA consents to derogations to the Interim Order of 18 February 2019. The terms defined in the Interim Order have the same meaning in this letter.

Under the Interim 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 Interim Order, based on the information received from you and in the particular circumstances of this case, Tobii and Smartbox may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 4(a), 4(c), 5(a) and 5(h) of the Interim Order

The CMA understands that:

- The CMA issued an Unwinding Order on 28 February 2019 whereby Tobii and Smartbox were obliged to terminate the Smartbox Reseller Agreement; and
- The Unwinding Order included provision under paragraph 8(a) of the Unwinding Order for Smartbox to propose alternative supply arrangements for Tobii Dynavox eye gaze camera devices.

Pursuant to paragraph 8(a) of the Unwinding Order, Tobii and Smartbox wish to enter into a new Reseller Agreement on terms provided to the CMA on 25 March 2019 (the '**New Reseller Agreement**') whereby Smartbox acts as a reseller for Tobii.

The CMA understands that the New Reseller Agreement:

- is limited in scope to enable Smartbox to supply Tobii eye gaze camera devices and supporting accessories, in the UK and Ireland;
- is intended to ensure that Smartbox and its customers are not adversely affected by the Unwinding Order; and
- would not have the effect of excluding or unfairly disadvantaging third-party providers of eye gaze camera devices (in relation to which, Smartbox provided the CMA with a forecast of its best estimate of the likely volume of sales of eye gaze cameras from various manufacturers in the UK during 2019).

Smartbox is therefore requesting a derogation from the Interim Order to enter into the New Reseller Agreement.

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

- (i) the 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 New Reseller Agreement. Tobii and Smartbox therefore acknowledge that the derogation does not permit any wider integration which is unrelated to the New Reseller Agreement;
- (ii) Smartbox will take reasonable measures to ensure that third-party eye gaze camera devices are promoted and supported by Smartbox in the UK and Ireland; and
- (iii) the monitoring trustee monitors Smartbox's ongoing supply of eye gaze camera devices in the UK and Ireland from Tobii and third-party manufacturers, as set out in Smartbox's Implementation Plan, as approved by the CMA.

For the avoidance of doubt, any orders made under the New Reseller Agreement for Tobii eye gaze camera devices (and supporting accessories) will not be considered to be an Open Order within the meaning of the Unwinding Order.

Kip Meek

Inquiry Chair

27 March 2019