

**Variation under section 81(5)(b) of the Enterprise Act 2002
(‘the Act’) of derogation originally granted by the
Competition and Markets Authority (‘CMA’) on 21
December 2018**

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

On 28 February 2019 for the purposes of restoring the position to what it would have been had pre-emptive action not been taken or otherwise for the purposes of mitigating its effects in accordance with section 81(2A) of the Act, the CMA made an Unwinding Order addressed to Tobii and Smartbox (the ‘Unwinding Order’).

The CMA also issued new Monitoring Trustee (‘MT’) directions on 28 February 2019 to ensure compliance with the Unwinding Order.

To ensure consistency with paragraphs 4 and 5 of the Unwinding Order, the CMA has varied the derogation (originally granted on 21 December 2018 and varied on 18 February 2019) below, showing the variation as follows:

- i. in double strike-through text to indicate new deletions of text which are made under this variation order; and
- ii. in bold and underlined text to indicate new text which are made under this variation order.

The variation of this derogation will take effect on 28 March 2019.

Text marked in single strike-through indicates deletions of text which were made when the derogation was varied on 18 February 2019.

Kip Meek

Inquiry Chair

27 March 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 Enterprise Act 2002 (‘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 **Distributor Agreement** ~~Reseller Agreements~~ and to implement various actions directly related to the **Distributor Agreement** ~~Reseller Agreements~~. Tobii is therefore requesting a derogation from the Initial Order to continue to operate the **Distributor Agreement** ~~Reseller Agreements~~.

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

- 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;
- 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 **Distributor Agreement** ~~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 **Distributor Agreement** ~~Reseller Agreements~~; and
- the Parties shall seek the CMA's consent before taking any action under the **Distributor Agreement** ~~Reseller Agreements~~ that would have the effect of requiring the continued operation of the **Distributor Agreement** ~~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 **Distributor Agreement** ~~Reseller Agreements~~.