

## **REFERENCE RELATING TO THE COMPLETED ACQUISITION BY TOBII AB OF SMARTBOX ASSISTIVE TECHNOLOGY LIMITED AND SENSORY SOFTWARE INTERNATIONAL LTD**

### **Notice of provisional findings made under Rule 11.3 of the Competition and Markets Authority Rules of Procedure<sup>1</sup>**

On 8 February 2019, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) Enterprise Act 2002 (the Act), made a reference to its chair for the constitution of a group of CMA panel members (the Inquiry Group)<sup>2</sup> regarding the completed acquisition by Tobii AB of Smartbox Assistive Technology Limited ('Smartbox') and Sensory Software International Ltd. (together known as the Parties) and requiring it to report within a period ending by 25 July 2019.

#### **Provisional findings**

1. The Inquiry Group appointed to consider this reference has made the following provisional findings on the statutory questions it has to decide pursuant to section 35(1) of the Act:
  - (a) (a) a relevant merger situation has been created; and
  - (b) (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition due to:
    - (i) Horizontal competition concerns in the supply of dedicated augmentative and assistive communication (AAC) solutions in the UK;
    - (ii) Vertical competition concerns, with regard to input foreclosure by the merged entity of Smartbox's Grid software to the Parties' rivals in the downstream supply of dedicated AAC solutions in the UK; and

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<sup>1</sup> See [Rules of procedure for merger, market and special reference groups: CMA17](#).

<sup>2</sup> Under [Schedule 4](#) to the Enterprise and Regulatory Reform Act 2013.

- (iii) Vertical competition concerns with regard to customer foreclosure by the merged entity of Tobii's upstream competitors in the worldwide supply of eye gaze cameras to providers of dedicated AAC solutions, including customers based in the UK.
2. The Inquiry Group's reasons are set out in full in the provisional findings report, which is attached to this notice and are summarised in the summary of the provisional findings report (see note below).

## **The next steps**

3. Anyone wishing to comment on the provisional findings is now invited to provide the Inquiry Group with their reasons in writing as to why these provisional findings should not become final (or, as the case may be, should be varied).
4. These reasons should be received by the Project Manager on behalf of the Inquiry Group no later than **4pm on 20 June 2019**.
5. The Inquiry Group will have regard to any such reasons in making its final decisions on the statutory questions and any consequential actions. However, the Inquiry Group shall not be obliged to take into account reasons which are provided after the deadline specified in paragraph 4 above.
6. The Inquiry Group is also publishing a Notice of Possible Remedies which will set out the actions which it considers might be taken by the CMA to remedy the substantial lessening of competition and resultant adverse effects provisionally identified.

KIP MEEK

*Inquiry Group Chair*

30 May 2019

Note: A copy of this notice, the summary of the provisional findings report and the Notice of possible remedies will be placed on the CMA case page on 30 May 2019 and the provisional findings will be placed on the CMA case page on 30 May 2019 or shortly thereafter. The published version of the provisional findings will not contain any information which the Inquiry Group considers should be excluded from the report, having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [✂].

Comments should be made by email to [tobii.smartbox@cma.gov.uk](mailto:tobii.smartbox@cma.gov.uk) or in writing to:

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