

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 14 November 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 Smartbox's compliance with paragraphs 7 and 12 of the Unwinding Order the CMA has varied the derogation (originally granted on 14 November 2018) below, showing the variation as follows:

- i. in bold and underlined text to indicate new text under this variation order.

The variation of this derogation will take effect on 26 June 2019.

Kip Meek

Inquiry Chair

26 June 2019

Derogation originally granted under IEO 14 November 2018

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 emails of 1 November 2018, 7 November 2018 and 13 November 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 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. Paragraph 5(I) of the Initial Order

The CMA understands that Tobii and Smartbox exchange technical information for the purpose of enabling Smartbox products to work and interact with Tobii products. As this is a market where solutions are not particularly standardised, and the needs of end users vary, Tobii and Smartbox submitted that providers often need to collaborate to make solutions work for end users where the individual components are manufactured by different suppliers. Tobii is therefore requesting a derogation from the Initial Order to continue to exchange the necessary technical information in order to ensure interoperability between the hardware and software components of Tobii and Smartbox for the benefit of end users.

The CMA consents to this derogation, subject to the following conditions:

- i. the information exchanged must be technical in nature only, as described in Tobii's submission dated 9 October 2018;
- ii. the technical information exchanged between Tobii and Smartbox is solely for the purposes of enabling Smartbox products to work and interact with Tobii products;
- iii. the technical information is shared only to allow the interaction of the Smartbox products that were interacting with the Tobii products prior to the Transaction; and

- iv. only those individuals at Tobii and Smartbox who have been approved by the CMA (as listed in Tobii's submission dated 1 November 2018) and have signed a non-disclosure agreement (NDA) (the form of which has been agreed with the CMA) will be authorised to receive the technical information exchanged between Tobii and Smartbox.

2. Paragraph 5(l) of the Initial Order

The CMA understands that Tobii requires certain financial information from Smartbox in order to comply with its regulatory reporting requirements imposed by the Nasdaq Stockholm stock exchange (the "Exchange") where Tobii is listed. Tobii, as an issuer listed on the Exchange, must establish and maintain adequate procedures, controls and systems, including systems and procedures for financial reporting, to enable compliance with its obligations to provide the market with timely, reliable, accurate and up-to-date information as required by the Exchange. This obligation extends to Smartbox as a subsidiary of Tobii. The raw data received from Smartbox for the purposes of this financial reporting to the Exchange will be held in a Tobii finance database which is not capable of being ring-fenced, although access is limited to Tobii's finance team. Tobii is requesting a derogation from the Initial Order in order to receive certain commercially-sensitive financial information from Smartbox in order to comply with its regulatory requirements.

The CMA consents to this derogation, subject to the following conditions:

- i. the Smartbox financial information shared with Tobii will be in a format agreed with the CMA and will be limited to that which is strictly necessary for the purposes of consolidating Tobii and Smartbox accounts to comply with reporting requirements imposed by the Exchange;
- ii. The financial information required from Smartbox for these purposes will be made available to the following individuals: [X] (Interim Group Financial Controller), [X] (Finance Manager) and [X] (Business Controller), on the basis and only to the extent that Smartbox employees are unable to consolidate the financial information required by Tobii themselves;
- iii. [X], [X] and [X] will enter into an NDA, the form of which has been agreed with the CMA;
- iv. Tobii will put in place a written policy informing Tobii's finance team that only [X], [X] and [X] are authorised to access the Smartbox raw financial information stored in the Tobii finance database for the purposes of consolidating the Smartbox financial information;
- v. Smartbox financial information will only be shared with [X] (the CFO of Tobii) where specifically necessary in order to answer a query by the three approved Tobii finance individuals relating to consolidation of the Smartbox information which is necessary to comply with the reporting requirements imposed by the Exchange;

- vi. The CFO will enter into an NDA (in a form approved by the CMA) stating that he will not disclose any of Smartbox's financial information to any other individuals at Tobii or use it in any commercial decision-making process;
- vii. Other than the CFO of Tobii, no other person at Tobii who is (i) engaged in preparing any data or material used for commercial decision-making at Tobii or (ii) is responsible for commercial decision-making at Tobii maintains access/will gain access to the finance database where the raw data of Smartbox is stored; and
- viii. Where information which contains Smartbox financial information is provided to the Executive Management Team and/or the Tobii Board, the Smartbox information will be consolidated so that it is not visible to Tobii.

3. Paragraph 5(l) of the Initial Order

The CMA understands that Tobii is required to comply with so-called "market abuse" requirements as a business listed on the Exchange. Tobii, as an issuer listed on the Exchange, must disclose inside information in accordance with applicable Swedish Market Abuse Regulations and is required to ensure that all market participants have simultaneous access to any inside information about Tobii and its subsidiaries. Tobii is requesting a derogation from the Initial Order to permit Smartbox to provide Tobii with information (some of which may be commercially sensitive) about certain types of events which must be reported in order for Tobii to fulfil its regulatory requirements to the Exchange.

The CMA consents to this derogation, subject to the following conditions:

- i. The information shared by Smartbox with Tobii will be limited to that which is strictly necessary to enable Tobii to meet its regulatory disclosure requirements to the Exchange;
- ii. Where Smartbox proposes to share commercially sensitive information with Tobii for these purposes, the information reported by Smartbox to Tobii must be provided to the CMA in parallel; and
- iii. Smartbox information will only be provided to [X] (President of Tobii Dynavox) and [X](CFO of Tobii), each of whom will (a) sign an NDA in a format agreed with the CMA and (b) agree to use the Smartbox information which is reported purely for the "market abuse" compliance purposes only.

4. Paragraphs 5(a) and 5(l) of the Initial Order

While [X] (Managing Director of Smartbox) remains responsible for the day-to-day management of the Smartbox business, Tobii has submitted that in order to maintain the ongoing viability of Smartbox, to ensure sufficient funds are made available to Smartbox and to ensure that sufficient control mechanisms are in place at Smartbox in order to prevent fraud, it may be necessary from time to time for a named individual within Tobii to review and approve or veto certain expenditure of the Smartbox business which exceed £50,000.

The CMA consents to this derogation, subject to the following conditions:

- i. Smartbox has confirmed that payments exceeding £50,000 are not made by Smartbox in the ordinary course of business;
- ii. where the £50,000 threshold is exceeded and Smartbox is required to seek Tobii's approval for such expenditure, information will be shared only with [X](Finance Manager) and will be kept to the minimum strictly necessary (ie only the identity of the payee and the amount of the payment) in order to allow Mr Hedin to take a decision on the proposed expenditure;
- iii. [X] will sign an NDA, the form of which has been approved by the CMA;
- iv. [X] will not be involved in commercial decision-making at Tobii in respect of any activities in markets where Tobii and Smartbox overlap or attend meetings where such commercial decisions are to be made, whilst the Initial Order is in place; and
- v. approval of payments by Tobii must not be unreasonably withheld and the CMA will be provided with prior notification from Tobii of the exercise of its right to veto expenditure proposed by Smartbox which exceeds the levels of delegated authority described above and will be provided with the reasons for any proposed veto by Tobii.
- vi. **Smartbox does not require Tobii's consent under this derogation to make a payment of [X] for [X] relating to development of the [X] [Development Project under the CMA's Unwinding Order].**

If Tobii wishes to vary any of the individuals which have been approved by the CMA for the purposes of these derogations, it will seek the prior approval of the CMA. Where approval is granted by the CMA, the conditions set out above shall apply to each individual.