

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 dated 16 May 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, except with the prior written consent of 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 5(d) and 5(m) of the Interim Order

The CMA understands that Smartbox must have a presence in a Member State of the European Union (“EU”) to certify its products as ‘CE’ and ‘Medical Devices’ (the “**Required Certification**”). [REDACTED].

[REDACTED]. Smartbox is therefore requesting a derogation from the Interim Order to allow Smartbox to enter into discussions with Tobii for the purpose of enabling Smartbox to [REDACTED] agree a contingency plan that may involve Smartbox establishing a subsidiary in the EU (the “**Contingency Plan**”).

Therefore, in order to preserve Smartbox’s independence, viability and competitive capability in the event that the UK exits the EU [✂], the CMA grants consent for Smartbox to hold discussions with Tobii for the purpose of agreeing a Contingency Plan, subject to the following conditions that:

- (a) the individuals from Smartbox who will be party to these discussions are limited to:

[✂]

[✂]

[✂]

(or as amended with prior written CMA approval);

- (b) the individuals from Tobii who will be party to these discussions are limited to:

[✂]

[✂]

[✂]

[✂]

(or as amended with prior written CMA approval);

- (c) all Smartbox and Tobii individuals mentioned in a) and b) above have entered into confidentiality agreements in a form agreed with the CMA;
- (d) the Monitoring Trustee is copied into all correspondence relating to the subject-matter of this derogation; and
- (e) any implementation of the Contingency Plan will only take place with the prior written approval of the CMA.

2. Paragraph 5(m) of the Interim Order

The CMA understands that Smartbox would like to enter into preliminary discussions with Tobii [✂].

The CMA grants permission for Smartbox and Tobii [REDACTED] to enter into preliminary discussions [REDACTED]:

(a) the discussions between Smartbox and Tobii [REDACTED] and any information exchanged between Smartbox and Tobii [REDACTED] are strictly limited in scope [REDACTED];

(b) the individuals from Smartbox who will be party to these discussions are limited to:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(or as amended with prior written CMA approval);

(c) the individuals from Tobii [REDACTED] who will be party to these discussions are limited to:

[REDACTED]

[REDACTED]

(or as amended with prior written CMA approval);

(d) only those individuals at Smartbox and Tobii [REDACTED] who have been approved by the CMA (as mentioned in b) and c) above) and have signed a confidentiality agreement (in a form agreed with the CMA) will be authorised to participate in the relevant discussions and receive information exchanged between Tobii [REDACTED] and Smartbox for the purpose of this derogation;

(e) the Monitoring Trustee is copied into all correspondence relating to the subject-matter of this derogation; and

(f) [REDACTED]. [the outcome of the discussions will be shared with the CMA and Monitoring Trustee for review and will require prior written CMA approval]

Kip Meek

Inquiry Chair

26 June 2019