

Completed acquisition by Tobii AB of Assistive Technologies Ltd and Sensory Software International Ltd

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Appendix A: Terms of reference and conduct of the inquiry

Terms of reference

1. In exercise of its duty under [section 22\(1\)](#) of the Enterprise Act 2002 (the Act) the Competition and Markets Authority (CMA) believes that it is or may be the case that:
 - (a) a relevant merger situation has been created, in that:
 - (i) enterprises carried on by Tobii AB have ceased to be distinct from enterprises carried on by Smartbox Assistive Technology Limited and Sensory Software International Limited; and
 - (ii) the condition specified in [section 23\(2\)\(b\)](#) of the Act is satisfied; and
 - (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom for goods or services, including for the (upstream) supply of dedicated AAC hardware, the (upstream) supply of AAC software, the (downstream) supply of dedicated AAC solutions and for the (upstream) supply of eye gaze cameras.
2. Therefore, in exercise of its duty under [section 22\(1\)](#) of the Act, the CMA hereby makes a reference to its chair for the constitution of a group under [Schedule 4](#) to the Enterprise and Regulatory Reform Act 2013 in order that the group may investigate and report, within a period ending on 25 July 2019, on the following questions in accordance with [section 35\(1\)](#) of the Act:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

Mike Walker
Chief Economist
Competition and Markets Authority
8 February 2019

Conduct of the inquiry

3. Following the reference to phase 2, we published the biographies of the members of the inquiry group conducting the inquiry on the inquiry [webpage](#) on 8 February 2019 and the administrative timetable for the inquiry was published on the inquiry [webpage](#) on 13 February 2019.
4. In order to prevent actions that may impede any remedial action taken or required by the CMA following its phase 2 inquiry, on 18 February 2019, we imposed an interim order under [section 81\(3\)](#) of the Act on Tobii AB and Smartbox in relation to the acquisition of Smartbox Assistive Technology Limited and Sensory Software International Limited (Smartbox). This replaced the initial enforcement order (IEO) imposed by the CMA on 28 September 2018 during the initial stage (phase 1) of the CMA inquiry. The interim order also issued directions for the continued appointment of the monitoring trustee under the IEO, to ensure compliance with the interim order. The inquiry group considered and agreed a number of derogation requests from the Parties. The interim order and the notices of derogation are published on the inquiry [webpage](#).
5. On 14 December 2018, the phase 1 team directed Tobii AB to appoint a monitoring trustee. The directions to appoint a monitoring trustee were published on the inquiry [webpage](#) on 19 December 2018. In conjunction with the interim order, we re-appointed the monitoring trustee on 28 February 2019, which was published on the inquiry [webpage](#) on 28 February 2019.
6. In addition to the interim order, on 28 February 2019 we imposed an unwinding order under section 81(2) of the Act on Tobii AB and Smartbox to unwind the reseller agreement entered into on 15 August 2018, require reinstatement of the certain development projects and resupply of certain discontinued products. The CMA considered that the entering of the reseller agreement, the shelving of the development projects and the discontinuation of certain products constituted pre-emptive action under the Act – which is action that might prejudice the reference concerned or may impede any remedial action taken or required by the CMA following its phase 2 inquiry. The inquiry group also agreed to a variation of a derogation on 27 June 2019 in order to enable the Parties to comply with the terms of the unwinding order. This was published on the inquiry [webpage](#) on 27 June 2019.
7. We invited a wide range of interested parties to comment on the Merger. These included customers, interest groups, competitors and resellers of augmentative and assistive communication (AAC) hardware and software. We issued questionnaires to 69 customers of Tobii AB and Smartbox and to

17 interest groups to which we received 38 responses. We also obtained evidence through telephone conversations and written requests with 23 competitors and seven resellers, and used evidence from the CMA's phase 1 inquiry into the Merger.

8. We received written evidence from the Parties in the form of submissions and responses to information requests (a non-confidential version of their response to the phase 1 decision and the issues statement is published on the inquiry [webpage](#)). We also held separate hearings with the Parties on 29 April 2019 and 1 May 2019.
9. We received written evidence from the third parties in the form of submissions (a non-confidential version of their responses to the phase 1 decision, the issues statement, the provisional findings or the notice of possible remedies are published on the inquiry [webpage](#)).
10. On 26 February 2019, we published an issues statement on the inquiry [webpage](#) setting out the areas of concern on which the inquiry would focus, inviting comments.
11. On 5 March 2019, members of the inquiry group, accompanied by CMA staff, visited Smartbox's facility at Malvern, UK. On 18 March 2019, members of the inquiry group, accompanied by CMA staff, visited Tobii AB's Headquarters in Stockholm, Sweden.
12. During our inquiry, we sent the Parties a number of working papers for comment. We also provided Parties and third parties with extracts from our working papers for comments on accuracy and confidentiality. The Parties were also sent a copy of the annotated issues statement, which outlined our thinking to date prior to the main party hearings.
13. On 30 May 2019, we published a [notice of provisional findings](#), a [summary of our provisional findings report](#) and a [notice of possible remedies](#) on the inquiry [webpage](#). A non-confidential version of our provisional findings report was published on the inquiry [webpage](#) on 31 May 2019. Non-confidential versions of [Tobii's response to our provisional findings report](#) and Tobii's response to our [notice of possible remedies](#) were published on the inquiry [webpage](#).
14. We held separate response hearings with Tobii and Smartbox on 24 June 2019 and 25 June 2019 respectively. A remedies working paper was sent to Tobii on 5 July 2019 and to Smartbox on 9 July 2019 for comment. In addition we held a number of hearings with third parties on their views on different remedy options.

15. On 22 July 2019 we issued a [notice of extension](#) due to the need to allow sufficient time to take full account of representations received in response to the remedies working paper and the need to reach a fully reasoned decision within the statutory timeframe. This changed the statutory deadline to 19 September 2019.
16. A non-confidential version of the final report was published on the inquiry [webpage](#).
17. We would like to thank all those who have assisted us in our inquiry.

Appendix B: Brief descriptions of third parties

This appendix lists the third parties mentioned in the final report, and provides brief descriptions of the company or organisation.

Company / Organisation	Category	Description/involvement in AAC
1 Voice	Interest group	UK Charity supporting a network of parents and professionals working with people with communication needs. http://www.1voice.info/
Abilia	AAC supplier/ reseller	Swedish company that supplies environmental solutions, AAC solutions, dedicated alarms and cognitive aid solutions. Abilia develops and manufactures its own range of assistive technology. The company sells its products through a network of distributors and has operations in Sweden, Norway and the UK. Abilia also acts as a reseller of Smartbox products. https://www.abilia.com/en
Ability World	AAC supplier/ reseller	UK manufacturer and supplier of assistive products for communication, access & learning support. https://www.ability-world.com/
ACE Centre North	Customer	NHS hub serving England's North West region. https://acecentre.org.uk/
ACE Centre South	Customer	NHS hub serving England's Wessex and Thames Valley region. https://acecentre.org.uk/
Alea	Eye gaze supplier	German company that develops and supplies eye gaze devices to many countries, including the UK where Smartbox acts as a reseller of Alea's eye gaze devices. https://www.intelligaze.com/en/
Apple	Technology company	US-based developer of the iPad and the IOS software platform, which hosts various AAC apps. Acquired the eye gaze competitor SMI in June 2017.
Assistive Communication Service	Customer	NHS hub serving England's London region. https://clch.nhs.uk/services/assistive-communication-service
AssistiveWare	AAC supplier/ reseller	Netherlands-based supplier of AAC products, focusing on developing AAC software for iOS. https://www.assistiveware.com/
AT Therapy	Customer	UK-based company providing therapy for individuals with speech, language and communication problems, specialising in the field of Assistive Technology. http://www.attherapy.co.uk/
Barnsley Hospital	Customer	NHS hub serving England's Yorkshire and Humber region. https://www.barnsleyhospital.nhs.uk/assistive-technology/
Beaumont College	Customer	Independent specialist college for learners with complex impairments, including those with AAC needs. https://www.beaumontcollege.ac.uk/
Birmingham Community Healthcare	Customer	NHS hub serving England's West Midlands region. http://www.bhamcommunity.nhs.uk/patients-public/rehabilitation/act/
Bristol Communication Aid Centre	Customer	NHS hub serving England's South West region. https://www.nbt.nhs.uk/bristol-centre-enablement/services-at-centre/bristol-communication-aid-service
CALL Scotland	Customer	Communication, Access, Literacy and Learning (CALL) Scotland is a support service primarily funded by the Scottish Government to help children and young people overcome disability and barriers to learning. https://www.callscotland.org.uk/Home/
Cambridge CASEE	Customer	Cambridge Communication Aids Service East of England (Cambridge CASEE) is a NHS hub serving the East of England region.

Company / Organisation	Category	Description/involvement in AAC
		https://www.cuh.nhs.uk/addenbrookes-hospital/services/communication-aids-service-east-england-casee
CandLE	Customer	Communication and Learning Enterprises (CandLE) is a UK organisation that supports students with complex communication needs. https://www.candleaac.org/
Cognita	Customer	A Norwegian supplier of assistive technology devices, specialising in cognition, communication and alternative computer access. Norwegian reseller of Smartbox's Grid 3 software. https://www.cognita.no/
Communication Matters	Interest group	UK-based charitable organisation that promotes the rights of AAC users. https://www.communicationmatters.org.uk/
Dad in a Shed	AAC supplier/ reseller	UK-based developer and reseller of equipment and software for AAC and special educational needs. http://www.dadinashed.com/
DH2 Solutions	AAC supplier/ reseller	UK-based supplier of assistive technology, focussed on the provision of environmental control and home automation solutions. https://dh2solutions.co.uk/
EyeTech	Eye gaze supplier	US company that develops eye gaze algorithms, hardware and software for eye gaze technology. https://www.eyetechds.com/
Forbes AAC (Forbes)	AAC supplier/ reseller	Manufacturer of dedicated AAC hardware which operates mostly in the US. https://www.forbesaac.com/
Google	Technology company	US-based developer of the Android software platform, which hosts various AAC apps.
Great Ormond Street Hospital (GOSH)	Customer	NHS hub serving England's London region. https://www.gosh.nhs.uk/medical-information/clinical-specialties/neurodisability-information-parents-and-visitors/clinics-and-services/augmentative-communication-service
Inclusive Technology	AAC supplier/ reseller	Inclusive Technology acts as a reseller of dedicated AAC solutions and provides special educational needs software, switches and computer access devices, simple communication aids, eye gaze and assistive technology for learners with a physical disability, sensory impairment or learning difficulty. http://www.inclusive.co.uk/
Irisbond	Eye gaze supplier	Spanish company that provides eye gaze cameras integrated with AAC software. Irisbond sells its cameras directly to customers in Spain and South America and through resellers in the US, UK and Europe. https://www.irisbond.com/en
Jabbla	AAC supplier/ reseller	Belgium-based provider of AAC solutions. Parent company of Techcess. http://www.jabbla.com/
LC Technologies	Eye gaze supplier	US company that manufactures and sells eye gaze equipment worldwide. LC Technologies is also a reseller of Smartbox's Grid software. https://eyegaze.com/
Leeds Community Health Care NHS Trust	Customer	NHS-funded institution (not categorised as a hub) providing specialised and non-specialised AAC services in the Leeds area. https://www.leedscommunityhealthcare.nhs.uk/
Liberator	AAC supplier/ reseller	Subsidiary of PRC which distributes AAC solutions in the UK. https://www.liberator.co.uk/

Company / Organisation	Category	Description/involvement in AAC
Lincolnshire EATS	Customer	Lincolnshire Electronic Assistive Technology Service (EATS) is a NHS hub serving England's East Midlands region. http://lincolnatservice.nhs.uk/
Lingraphica	AAC supplier/ reseller	US provider of AAC solutions focused on the aphasia segment of the market. https://www.aphasia.com/
Logan Technologies	AAC supplier/ reseller	Logan Technologies Ltd is the UK subsidiary of LoganTech, a US based company supplying the ProxTalker AAC hardware device. https://www.logan-technologies.co.uk/
Medequip Assistive Technology	Other	UK provider of community equipment services to local authorities and NHS. Indicated that it does not compete in the supply of dedicated AAC solutions. http://www.medequip-uk.com/
Microlink	AAC supplier/ reseller	UK-based supplier of workplace adjustments for disabled employees, which also acts as a reseller of AAC products. https://www.microlinkpc.com/
Microsoft	Technology company	US-based developer of the Surface tablet range and the Windows software platform, which is a platform that runs various AAC software.
KM CAT (Adults)	Customer	Kent and Medway Communication and Assistive Technology Service (KM CAT)'s Adult Team is a NHS hub serving adult AAC users in England's Kent and Medway region. https://www.ekhuft.nhs.uk/patients-and-visitors/services/radiological-sciences/medical-physics/kmcat/
News-2-you	AAC supplier/ reseller	US-based company providing software solutions with a focus on Education. https://www.n2y.com/
NHS Ayrshire & Arran	Customer	NHS-funded institution (not categorised as a hub) providing AAC services to Scotland's Ayrshire and Arran region.
NHS Lanarkshire	Customer	NHS-funded institution (not categorised as a hub) providing AAC services to Scotland's Lanarkshire region.
Prentke Romich Company Inc (PRC)	AAC supplier/ reseller	US company that manufactures and develops dedicated AAC solutions. Parent company of Liberator and Saltillo. https://www.prentrom.com/
Regional Communication Aid Service (RCAS)	Customer	NHS hub serving England's North East region. https://www.ntw.nhs.uk/services/regional-communication-aid-service-neurological-service-walkergate/
Rett UK	Charity	UK-based charity supporting people with Rett syndrome. https://www.rettuk.org/
Royal Hospital for Neuro Disability	Customer	NHS hub serving England's West London region. https://www.rhn.org.uk/what-makes-us-special/services/compass/
RSL Steeper	AAC supplier/ reseller	UK supplier of Assistive Technology https://www.steepergroup.com/
Saltillo	AAC supplier/ reseller	US company that manufactures and develops AAC solutions. Subsidiary of PRC. https://saltillo.com/
Scottish Centre of Technology for the Communication Impaired (SCTCI)	Customer	NHS-funded institution (not categorised as a hub) providing AAC information, evaluation equipment and advice to 11 of the 14 geographical health boards in Scotland.
Sensory Guru	AAC supplier/ reseller	UK supplier of Assistive Technology http://www.sensoryguru.com/
Sequal Trust	Customer	UK charity raising funds to provide AAC solutions to disabled people of all ages with severe speech, movement or learning difficulties. https://www.thesequaltrust.org.uk/

Company / Organisation	Category	Description/involvement in AAC
SensoMotoric Instruments GmbH (SMI)	Eye gaze supplier	German provider of dedicated computer vision applications with a major focus on eye tracking technology. Acquired by Apple in June 2017.
South Lanarkshire Council	Customer	Local authority in Scotland which provides support to students with disabilities aged 3 to 18, including those with AAC needs.
Suffolk Communication Aids Resource Centre	Customer	NHS-funded institution (not categorised as a hub) providing support to children and young people with communication difficulties.
Surrey County Council	Customer	Local authority in England providing assessment, funding and support to children and young people up to the age of 19 requiring AAC solutions.
Talk to Me Technologies	AAC supplier/ reseller	US-based supplier of AAC devices. Talk To Me Technologies provides consultative and evaluation services for users of AAC devices through its own team of speech-language pathologists or AAC Consultants. https://www.talktometechnologies.com/
Techcess	AAC supplier/ reseller	UK subsidiary of Jabbla, selling Jabbla hardware devices with either Jabbla-designed AAC software or with Smartbox's Grid software. https://www.techcess.co.uk/
The Communication Advice Centre, Belfast	Customer	NHS-funded institution (not categorised as a hub) providing AAC services across the Northern Ireland region.
Therapy Box	AAC supplier/ reseller	Developer of AAC apps, sold through the AppStore and PlayStore in the UK and internationally. In the UK only, it is also a reseller and supplier of AAC solutions, since it sells bundles combining its apps with AAC hardware (dedicated and non-dedicated) from other manufacturers. https://therapy-box.co.uk/
Treloar School and College	Customer	Registered charity that provides education, support and training to young people with physical disabilities, including those with AAC needs. https://www.treloar.org.uk/

Appendix C: Further Tobii submissions in respect of market definition

1. This appendix discusses some submissions made by Tobii on market definition and the question of whether non-dedicated solutions should be included in the relevant product market.

Framework for demand side substitution

Tobii's submission

2. Tobii submitted that the information gathered by the CMA was insufficient to reach robust conclusions on either market definition or competitive assessment. Tobii submitted that four fundamental questions had not been addressed:
 - (a) What exactly are the key dimensions of end-user needs that determine the extent of demand side substitutability between AAC solutions based on purpose-built devices and those based on consumer tablets?
 - (b) Are there any clear 'break points' within the spectrum of end-user needs, which allow well defined groups of end-users for whom substitutability options may be more limited to be identified?
 - (c) If a group of customers with more limited substitution options can be systematically identified, how ubiquitous are they, relative to customers for whom there is a high degree of substitutability between AAC solutions based on purpose-built devices and those based on consumer tablets?
 - (d) If a group of customers with more limited substitution options can be systematically identified, to what extent do the products supplied by the Parties specifically serve this group of customers, as opposed to, in addition, customers for whom there is a high degree of substitutability?
3. Tobii submitted that the CMA was inferring that the Parties are solely, or predominantly, serving an, as yet undefined, 'subset' of customers with limited substitution options, without providing any evidence to show that this is, in fact, the case.

Our assessment

4. We are defining a product market for the purpose of assessing a horizontal unilateral effects theory of harm (as well as some vertical theories of harm), so our assessment framework for market definition should be understood in

this light. The purpose of the assessment is essentially to identify the set of products that are likely to be considered by a significant number of the Parties' customers as their 'next best option'. It is the availability of these products that reduces the proportion of the Parties' customers who regard the other Party's products as their closest alternative, which is considered as a key determinant of horizontal effects.¹

5. Against this backdrop, we disagree with Tobii's suggestions in several respects. First, we do not consider that the purpose of the exercise is to analyse the whole 'spectrum' of needs of users of AAC solutions, or to identify 'break points' in that spectrum between different groups of users with different needs and substitutability options. Our focus should be on customers of the products supplied by the Parties, as it is the preferences of these customers that will shape the Parties' incentives to raise price post-Merger (or otherwise deteriorate quality, range or service levels). The preferences of individuals who use other products before the Merger is not relevant to this assessment. These individuals have opted for alternative options at pre-Merger prices, and therefore they would be unlikely to change their behaviour if the price of dedicated AAC solutions was higher (as it may be following the Merger).
6. Second, the purpose of the exercise is to elicit information on customers' relative preferences between dedicated and non-dedicated AAC solutions. The question is not whether the Parties' customers could or could not use a non-dedicated AAC solution, but whether a significant share of these customers consider non-dedicated AAC solutions as their closest alternative to the dedicated AAC solution they are using pre-Merger. The focus of the analysis should be on customers' relative preferences between products, rather than their general ability to use different solutions.
7. Third, it is not necessary for us to identify the specific needs of end-users that might drive preferences and diversion patterns. Customers have made it clear to us that each end-user has unique needs that must be taken into account in the purchasing decision and that it is not possible to establish a straightforward correspondence between the observable medical condition of an end-user and the type of solution that will be selected for him. We therefore consider that gathering evidence on substitutability at a more aggregate level from the organisations who purchase the solutions on behalf of end-users is more effective and more informative in this case.
8. Finally, we note that representations from customers (both qualitative views and responses to diversion questions) are considered together with other evidence on substitutability and closeness of competition. We have also taken

¹ [Merger Assessment Guidelines](#), paragraph 5.4.6.

account of representations from competitors and the Parties' internal documents to reach our view, as well as the pricing and features of different alternatives. While these are different sources of evidence, we would expect them to reflect the same fundamental drivers of competition. For example, we would expect the Parties' internal documents to monitor suppliers of products that are considered close substitutes to their own products by their customers. In this case, the evidence we have collected and analysed from the various sources is consistent.

Survey of end-users

Tobii's submission

9. Tobii commissioned a survey of end-users of AAC solutions and used the results to discuss demand-side substitution between dedicated and non-dedicated AAC solutions. Tobii discussed the design of the survey with the CMA before it went into the field and gave the CMA the opportunity to comment in writing on various aspects of the design including the draft questionnaire. Tobii was aware of the CMA's Survey Good Practice,² and referred to it in its submission.

Our assessment

10. We consider that some major issues have not been addressed and the survey has the following limitations. First, it is based on an online panel. Paragraph 2.29 of the CMA's Survey Good Practice explains that samples for such panels are not random and that the CMA tends to place less evidential weight on results from them. Given the non-random nature of the sampling methodology, the CMA made clear to the Parties the importance of transparency and rigour of panel recruitment and data weighting methods for assessing the robustness of survey evidence. The Parties' submission includes a description of the methodology for the online panel written by Dynata, the market research company that conducted the survey. However, this description is not specific and provides little useful information for assessing the validity of this survey's results.
11. Second, the relevance and size of the sample falls short of the CMA's usual requirements for survey evidence in merger cases. The survey was completed by 101 end-users of AAC solutions or individuals who are responsible for making decisions on their behalf. Of these, 62 were customers of the Parties. The number of responses to diversion questions is very low – 6 responses from customers of Tobii Dynavox devices, 9 from customers of its

² [Good practice in the design and presentation of survey evidence in merger cases \(CMA, May 2018\)](#).

software, 10 from customers of Smartbox devices and 19 from customers of its software. These numbers fall a long way short of the CMA's usual requirement of 100 respondents from customers of each Party. Tobii has acknowledged that the small sample sizes make it difficult to draw strong inferences from the survey results.

12. Third, we have some reservations about the credibility of the achieved sample. Tobii's submission states that in 2018 Tobii Dynavox sold just over [X] AAC products to [X] individual customers. The survey purports to have obtained responses from [X] purchasers of Tobii Dynavox products (hardware and software), ie 29% of the target population. This suggests that the online panel is either very large, or very significantly over-recruits among the types of people who are eligible for this survey. An alternative explanation might be that some respondents claimed to be eligible for the survey when they are not. The description of the online panel methodology makes clear that survey respondents are rewarded for taking part in surveys, and potential respondents therefore have an incentive to claim eligibility. Indeed, some of the survey metrics suggest that this may have happened; only 30 of the 101 survey respondents gave 'Disorder which requires technology to aid communication' as a response to one of the first two screener questions. The CMA has not been provided with sufficient information to assess the credibility of the achieved sample. In the absence of an explanation for the numbers obtained there remains a risk that some, or even most, respondents are not customers of the Parties, or of AAC solutions at all.
13. Fourth, the diversion question used by Tobii allowed respondents to divert to multiple brands without specifying the spend diverted to each brand.³ In our view, it is not possible to use responses to these questions to build diversion ratios that have a meaningful economic interpretation.
14. Sample surveys are most useful when they are of sufficiently high quality to be able to make robust inferences about whole populations from which the sample of responses are drawn. Our conclusion is that this survey falls a long way short of this and may not be used to make inferences about populations of end-users of dedicated AAC solutions in general, or more specifically of end-user customers of the Parties.
15. We note that surveys that do not meet that standard can sometimes be interpreted qualitatively as providing information about a small sample of customers in the market which, while not providing reliable evidence in its own right, might be used in conjunction with other confirmatory evidence as

³ For example, if a customer would buy a piece of software worth £200 from one supplier and a piece of hardware worth £3000 from another supplier to compose a solution, these two suppliers will receive the same weight on diversion ratios.

indicative of certain customer behaviours. However, our view, for the reasons given above, is that the results of this survey are potentially misleading and should not be given any evidential weight.

CMA questionnaire used to gather evidence from NHS hubs

Tobii's views

16. Tobii has submitted a review by Dr Jonathan Cave of a version of one questionnaire that we sent to the NHS. The review suggests that:
 - (a) It is likely that the sequencing and framing effects may have influenced the results and their external validity.
 - (b) Concentration on a subset of suppliers is likely to have influenced the results.
 - (c) The existence of side-markets unrelated to the NHS use of AAC solutions and components should (have been) considered.
 - (d) The varied and changing characteristics of end-users seem likely to have implications for demand elasticity and dynamic competition, but were not assessed.
 - (e) It is not clear whether the questionnaire was adequately tested. It does seem clear from the draft wording that all diversion options were not explicitly considered.
 - (f) The inclusion of the term '(tablets)' without clarification seems likely to have unduly focused respondents' understanding.
 - (g) The questionnaire is insufficiently clear as regards the 'neighbouring markets'.
17. The review concludes: 'As a result, I cannot say that consumer diversion estimates based on this questionnaire are robust or reliable in relation to a well-specified counterfactual.'

Our assessment

18. As discussed in paragraph 5.30, we have designed our questionnaire with care to limit the extent of any framing bias. The design of the questionnaire reviewed by Dr Cave built upon our earlier engagement with the NHS in phase 1, which included both written questionnaires and 6 calls with NHS organisations. The wording and terminology used in our phase 2 questionnaire reflected that experience, and when we spoke again to NHS

hubs in the course of this inquiry there was no indication that respondents did not understand any of the terms or the purpose of any of the questions. Respondents understood that we were interested in exploring substitutability between dedicated AAC solutions and solutions based on consumer tablets, and they commented on this issue qualitatively before answering the diversion question. We used the word ‘tablets’ accompanied with examples (eg an ‘iPad’ or a ‘Surface Pro’) to refer to non-dedicated AAC solutions as this was the terminology most commonly used by respondents. It was clear from their written responses and our verbal engagement with them that they understood that this referred to non-dedicated AAC solutions incorporating such tablets with other peripherals and specialised software. Our diversion question was framed by reference to percentages of expenditure, so that it could accommodate all diversion strategies (eg ‘unbundling’ a dedicated AAC solution to purchase various components from different suppliers, including a consumer tablet).

19. We chose to ask a ‘forced diversion’ question (‘what would you have done if product x was not available’), rather than ask alternative questions designed to explore the elasticity of demand to price changes and hence focus on the preferences of marginal customers (eg ‘what would you have done if the price of product x rose by 5%’). The main reason for this is that our theory of harm involves not just a possible increase in price, but also various other deteriorations in the offering of the Parties that could harm customers, for example a deterioration in the quality of the products or the level of service associated with them, or a reduction in the range of products offered. As the possible changes in the Parties’ offerings are varied and difficult to forecast, it is neither feasible nor meaningful to try to estimate demand elasticity through diversion questions. In this context, a forced diversion question is more appropriate to get an overall view of the closeness of competition between the merging parties.
20. The diversion ratios we have estimated are based on responses from NHS hubs. However, we consider that diversion ratios for the whole customer base are unlikely to be substantially different. The qualitative views on substitutability that we received from smaller customers were not materially different from those expressed by NHS hubs. Moreover, one of these customers, Surrey County Council, told us that it could not purchase mainstream devices because it did not have the insurance and technical support service to deal with any issues, which suggests that in some cases smaller customers might actually face additional barriers in using mainstream devices. Finally, NHS hubs account for [50-60%] of the Parties’ sales of dedicated AAC solutions in the UK ([60-70%] for Smartbox and [40-50%] for Tobii). Therefore, even if smaller customers considered non-dedicated AAC

solutions to be a closer substitute to the Parties' dedicated AAC solutions (than did the NHS Hubs), aggregate diversion to non-dedicated AAC solutions would remain low.

21. It is not clear from the submission what 'side markets' or 'neighbouring markets' are, or why they should have been explored as part of that exercise. As noted above, the relevant economic question in a merger assessment is not whether some individuals use non-dedicated AAC solutions to address their needs (we do not dispute that this is the case), but whether current users of the Parties' dedicated AAC solutions (or the individuals/organisations who purchase these solutions on their behalf) consider non-dedicated solutions to be close substitutes for their needs.

Regulatory distortions

Tobii's view

22. Tobii has submitted a note describing the regulatory framework in the US market and how it has affected Tobii's products and business. [REDACTED].

Our assessment

23. We recognise that the US regulatory framework may have shaped Tobii's product offering (and possibly that of some of its competitors) to a degree, but this does not invalidate our approach to market definition or the competitive assessment. Clearly, some UK customers are finding that Tobii's dedicated AAC solutions are the best option to meet their needs, otherwise they would not buy them. We are interested in the preferences of these UK customers, and the extent to which they regard other products as close substitutes. We have used evidence from these UK customers and their suppliers to come to a view on this question.

AAC profitability analysis

Tobii's view

24. Tobii has submitted an analysis of the profitability of a sample of providers of AAC solutions. [REDACTED].

Our assessment

25. In our view, this analysis has a number of limitations that make it difficult to draw any strong inferences on the profitability of AAC suppliers. In particular, the comparator companies used by Tobii (Liberator, Abilia, and Steeper) are involved in a different segment of the value chain (the distribution of products

rather than their development) and, in the case of Abilia and Steeper, supply a broader range of assistive technologies than the Parties.

26. In any case, the relevant question for our inquiry is not whether competition in the relevant market was effective pre-Merger, but whether the Merger could lead to a substantial lessening of that competition. Even if this analysis were robust and clearly indicated that suppliers of AAC solutions were subject to competitive constraints pre-Merger, if some of these constraints arose from the competitive interactions between Tobii and Smartbox they would be lost following the Merger. Tobii's analysis of profitability does not provide any insights on the nature and the origin of the competitive constraints acting on suppliers, which is what is relevant for our inquiry.
27. For these reasons, we have not put any weight on this evidence.

Appendix D: Full divestiture remedy – Parties’ and third parties’ views

1. In relation to a full divestiture remedy, this appendix sets out the views of the Parties and third parties on:
 - (a) the scope of the divestiture package (see paragraphs D.2 to **Error! Reference source not found.**);
 - (b) the suitability and availability of potential purchasers (see paragraphs D.10 to D.18);
 - (c) the need for further interim measures (see paragraphs D.19 to D.26);
 - (d) the treatment of the distributor agreement (see paragraphs D.27 to D.29);
 - (e) the appropriate timescale for completing divestiture (see paragraphs **Error! Reference source not found.** to D.37); and
 - (f) the timing of the appointment of a Divestiture Trustee (see paragraphs D.38 to D.40).

Parties’ and third parties’ views on the scope of the divestiture package

2. We explored with third parties during their response hearings whether a differently configured divestiture package could also be effective. None of the third parties we spoke to or who responded to our Remedies Notice told us that we should consider a partial divestiture remedy, or that a partial divestiture of Smartbox would be effective.
3. The following third parties emphasised the importance of the Grid to Smartbox’s business and competitive capability, with many citing the importance of keeping the Smartbox business intact under a divestiture remedy:
 - (a) [REDACTED] told us that Smartbox should be considered an ‘indivisible’ business and that the key assets underpinning its competitive capability included not only its Grid source code, but also its people, knowhow, international footprint and distribution network, as well as the trust and good practice it had built, which would take time for others to replicate. It emphasised that none of these key assets was separable and that they were all essential to the Smartbox business. It told us that Smartbox’s non-core hardware business was built around its Grid software, and that in its view, ‘anybody’ could create Smartbox’s hardware. It also told us that ‘Look to Learn’ was an integral part of Smartbox’s software suite.

- (b) [REDACTED] told us that any divestiture remedy that involved a break-up of the Smartbox business would not be effective and that Smartbox required both its hardware and software businesses to compete. It added that if Smartbox did not have the Grid, it could not see how a stand-alone Smartbox hardware business could be an effective competitor given that the Grid was the 'key component', and hardware could easily be sourced from third parties.
- (c) [REDACTED] told us that Smartbox's whole business and expertise were built around the Grid and customer service. It therefore considered that any divestiture package should have both the Grid and the hardware devices that hosted the software. It added that if Smartbox was broken up, it would change the business 'drastically'. [REDACTED] also told us that 'Look to Learn' should not be regarded as separate from the Grid, but rather the two should be regarded as a 'process' with 'Look to Learn' helping users learn how to use eye tracking devices from a young age before eventually using the Grid.
- (d) [REDACTED] told us that it believed that if a divestiture package did not include the Grid, its source code and the underlying intellectual property, the new owner of the Smartbox business would have 'nothing' to sell. It also told us that it believed that the current Smartbox development team would be the 'most effective group' to continue the advancement of the Grid, so the new owner should get that team to maximise its future competitive effectiveness. It added that it would be difficult to see what parts of Smartbox Tobii could retain under any partial divestiture remedy without constraining new Grid growth.
- (e) [REDACTED] told us that the Grid and its source code were the key assets Smartbox would need to compete effectively in AAC solutions. It explained that these were underpinned by the many years of development that went into the Grid, its customer network, distribution and its brand and customer awareness, as well as the knowhow gained over the years. It added that the Grid was Smartbox's 'only attractive asset' and that there might be challenges for a purchaser to purchase Smartbox's hardware business, as most of its hardware consisted of 'wrapped devices'. It also told us that there were synergies between Smartbox's hardware and software businesses, and that the hardware business was needed for its revenue stream which could then be used for the development of software, education and training. [REDACTED].
- (f) [REDACTED] told us that the Grid was a key and essential asset to ensure that Smartbox could compete effectively in the future, as it had helped build Smartbox's current reputation, and also represented its key business. It

told us that while some of Smartbox's software products could be retained by Tobii with little effect on the Smartbox business, if this resulted in a break-up of Smartbox's team, this would change the Smartbox business and have an adverse impact on its culture and business knowhow.

- (g) [REDACTED] told us that to achieve the 'best outcomes' for customers, it was important that Smartbox was retained as a complete entity with products, people, processes and all elements packaged, as this would enable the success of the company to continue without compromise. It added that splitting off any product or element might risk losing a key part of its 'successful model', and that retaining 'the whole company' would also preserve the less tangible but equally important ethos, culture, vision and missions of Smartbox which have underpinned its growth and success.
4. Neither of the Parties or any third party told us that a partial divestiture of Tobii would be effective or should be pursued, with one third party ([REDACTED]) citing that a divestiture of the Tobii Dynavox business would leave behind a residual business which [REDACTED].
 5. Smartbox told us at its response hearing that it could not identify a smaller divestiture package [REDACTED].
 6. [REDACTED]. It added that in order to meet the complex and varying needs of end-users, it would require the full range of its hardware devices (with their different product features). It also told us that excluding Smartbox Inc. from the sale would [REDACTED].
 7. [REDACTED]
 8. As part of our discussions on the potential scope of a divestiture package under a full divestiture remedy, Smartbox told us at its response hearing that if it did not own the Grid, the viability of any divested business would be 'questionable', as it would need the software to gain access to the international reseller market, which accounted for around [REDACTED] of its total revenues. In this regard, it told us that Smartbox's sales of AAC solutions were driven primarily by its software rather than its hardware, and there would be reduced incentive for resellers to buy from Smartbox if it did not own the Grid.
 9. [REDACTED]

Parties' and third parties' views on potential purchasers

10. A number of third parties placed particular importance on the new owner of Smartbox preserving Smartbox's customer-oriented 'culture':

- (a) Barnsley Hospital NHS Foundation Trust Assistive Technology Team told us that there was a risk that the divestiture of Smartbox would be to a party that would 'overly' focus on profit rather than long-term commitment to the end-users and consumers and to equivalent levels of quality, service and future R&D. It told us that given the nature of this industry and the vulnerable consumers it served, it requested that the CMA carefully considers whatever safeguards are possible to ensure that the divestiture does not harm the future prospects of the UK market and the end consumers.¹
- (b) CandLE told us that Smartbox needed a remedy that secured its future in a way that ensured that it had control over how Smartbox managed its customer services and provision of devices and software. It therefore considered a sale to a competitor of any description to be 'out of the question', and that it would be equally concerned to see any entrepreneurial acquisition from the private sector who would be likely to put profits over services.² Similarly, SCandLE told us that Smartbox should not be compromised through any sale to competitors nor to private sector individuals nor consortia who might dilute the customer services and resources that Smartbox have made available in the UK AAC market.³
- (c) [REDACTED] told us that Smartbox's 'culture' was an important asset, ie its focus on client needs, and added that if the founders left, then this culture could change and have an impact on the value of the Smartbox business. It added that maintaining Smartbox's culture depended on the new owner.
- (d) [REDACTED] from a UK charity supporting users of AAC solutions, told us that a divestiture of Smartbox to a 'random' and 'unknown buyer', who did know about AAC, would have a detrimental impact on the lives of those with disabilities, eg the new owner of Smartbox could decide to discontinue the Grid and consequently take away people's language systems, which would have significantly negative consequences on families who had invested into that particular system. In contrast, [REDACTED] told us that Tobii was committed to the Grid and to carrying on these language systems. [REDACTED] added there would also be no way of knowing whether an 'unknown' purchaser of Smartbox would regard Smartbox 'solely' as a 'money-making field' or would decide to make many support staff redundant. [REDACTED] explained that the families who were supported relied heavily on these

¹ Barnsley Hospital NHS Foundation Trust Assistive Technology Team response to our Remedies Notice.

² CandLE response to our Remedies Notice.

³ SCandLE response to our Remedies Notice.

support staff to enable users to have reliable access to their communication system (their voice).⁴

11. Smartbox told us at its response hearing that a suitable purchaser should, among other things, be committed to giving vulnerable customers ‘a voice’ and focused on the UK market, and that Smartbox should not be sold to a purchaser looking to sell the business quickly or to break it up.
12. In relation to the suitability of PRC (Liberator) and Jabbla (Techcess) as a potential purchaser:
 - (a) [REDACTED]
 - (b) [REDACTED]
 - (c) A number of third parties considered that a market participant with its own AAC software in competition with the Grid (eg Jabbla) could raise potential competition concerns. One third party ([REDACTED]) told us that a divestiture of Smartbox to another market participant with its own AAC software, such as Jabbla, would ‘narrow the field of AAC software suppliers and therefore raise potential horizontal and/or vertical competition concerns’.
13. A number of third parties considered an MBO of the Smartbox business led by the current Smartbox management team would represent the preferred outcome for a divestiture remedy:
 - (a) [REDACTED] told us that an MBO would represent the ‘best outcome’ for the AAC market, and that Smartbox management would be the only purchaser who would fully satisfy all of the CMA’s purchaser suitability criteria.
 - (b) [REDACTED] told us that Smartbox management would be a suitable purchaser, and [REDACTED] told us that a sale of Smartbox to Smartbox’s management would represent a ‘good outcome’ for [REDACTED].
 - (c) CandLE told us that a situation where Smartbox management could be the acquirer of the Smartbox business appeared to be the ‘safest course of action’ as it would enable the current Smartbox management to remain firmly in charge of the future of an organisation that was ‘admirably’ meeting the needs of students in the UK who relied on AAC.⁵

⁴ Email to the CMA from an individual who supports people with Rett syndrome and their families, carers and professionals.

⁵ CandLE response to our Remedies Notice.

- (d) [REDACTED] told us that an MBO would be the ‘best option’ as it most guaranteed the effectiveness of the remedy and the continuation of the pre-Merger situation.
14. In relation to Tobii’s view on a potential MBO of the Smartbox business, Tobii told us in its response to our RWP, that while the CMA was ‘clearly of the view’ that an MBO of Smartbox would be an effective remedy, [REDACTED].
15. In relation to the suitability of other AAC market participants as a potential purchaser of Smartbox under a full divestiture remedy:
- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) Cognita told us that other companies with similar lines of products within AAC, [REDACTED] would potentially face the same risks as the Merger. It told us that there was a need for a long-term partner with intentions that went beyond ‘turnover’. It told us that while such a purchaser would be ‘difficult’ to find, a ‘foundation’ of a certain size would be a good match, as it would have the funds to acquire the company and the long-term goal of making this investment worthy of both the end-user and the profit margin.
- (e) [REDACTED]
16. In relation to the suitability of a mainstream technology company (eg Microsoft, Apple and Google) as a potential purchaser:
- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
17. Lastly, in relation to the suitability of a financial buyer:
- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
18. In relation to the likely availability of a suitable purchaser:

(a) Tobii told us that it had received a number of unsolicited approaches from potentially interested parties, [REDACTED], but did not provide further details either of the parties or the nature of their interest. In its response to our RWP, Tobii told us that it agreed with us that there was likely to be considerable interest in any divested business and that it was not necessary at this point to assess potential purchasers.

(b) [REDACTED]

(c) [REDACTED] told us that there were no obvious buyers for the company, and that Smartbox would be unable to use the technology and software for innovation without a considerable period of ‘convalescence’. It added that this would add to the continuing period of uncertainty, rather than being beneficial to the user.⁶

(d) [REDACTED]

Parties’ and third parties’ views on the need for further interim measures

19. At its response hearing, Tobii told us that it did not have an incentive to undermine Smartbox’s business as it would be in the interests of any vendor of a business to ensure that the business was sold as a going concern.

20. In its response to our RWP, Tobii agreed with our provisional view that no ‘additional’ interim measures were required at this stage, and that it was not necessary to appoint a Hold Separate Manager. Tobii also accepted that a Monitoring Trustee would be required during the divestiture period but requested that the CMA should ensure that the work undertaken by the Monitoring Trustee was reasonable and proportionate.

21. [REDACTED]

22. In its response to our RWP, Tobii told us [REDACTED].

23. Smartbox told us that since the CMA’s interim measures were put in place upon completion of the Merger, limited integration had taken place between Tobii and Smartbox, with Smartbox able to ‘reboot’ itself as an independent business during the CMA’s investigation. It told us that its successful launch of Grid Pad 12 (prior to completion of the Merger) had put Smartbox on a ‘sound financial footing’ throughout the CMA’s inquiry.

24. However, [REDACTED].

⁶ Individual E response to our Remedies Notice.

25. Smartbox also told us that under a full divestiture remedy, given that Tobii would be a 'future competitor' to Smartbox, it would be concerned if Tobii were to gain access to Smartbox's commercially sensitive information.
26. None of the third parties commented on the role of the Monitoring Trustee during a divestiture process.

Parties' and third parties' views on the distributor agreement

27. At its response hearing, [REDACTED]. Tobii subsequently clarified that [REDACTED].
28. Following a full divestiture remedy, Smartbox told us that Tobii and Smartbox would each likely make a decision in its own commercial interests, which may not be to continue the DA, but that the CMA should not terminate it abruptly as it would harm end-users.
29. Third parties were generally not concerned about the continued operation of the DA following a divestiture of Smartbox, provided that the DA did not grant Tobii exclusivity and Smartbox was still able to supply the Grid to other market participants.

Parties' and third parties' views on the divestiture period

30. [REDACTED]
31. [REDACTED]
32. [REDACTED]
33. In its response to our RWP, Tobii accepted that an Initial Divestiture Period [REDACTED] would be appropriate for a full divestiture remedy, subject to it having the right to request an extension if it was not possible to complete a divestiture within this period for reasons that were outside of its reasonable control, [REDACTED].
34. [REDACTED]
35. [REDACTED]
36. In relation to a potential divestiture process, Smartbox told us that the previous sales materials were readily available and could be easily refreshed should it need to provide this information in a data room.
37. In relation to the views of third parties on the appropriate timescale to complete a divestiture, we received submissions ranging from around six weeks to up to one year.

Parties' and third parties' views on appointment of a Divestiture Trustee

38. At its response hearing, Tobii told us that there was no indication that an appointment of a Divestiture Trustee would be appropriate at the outset of the divestiture process and that such an appointment would be disproportionate. It added that under this remedy, Tobii should be given a period of time to sell Smartbox sufficient to enable it to get the 'best value'.
39. Smartbox told us that it did not consider it necessary to appoint a Divestiture Trustee at the outset of the divestiture process.
40. In relation to the possible appointment of a Divestiture Trustee, one third party ([REDACTED]) told us that a Divestiture Trustee should be appointed at the outset of the divestiture process as it [REDACTED]. [REDACTED] however, told us that a Divestiture Trustee should only be appointed if there was a risk that a sale would not complete within the agreed timescales and that Tobii should first be given a reasonable period of time to recoup its investment. Another third party ([REDACTED]) told us that it believed that the need for a Divestiture Trustee depended on whether Tobii would act 'in good faith' to complete a divestiture within the agreed timescales but added that if this was not the case, then the appointment of a Divestiture Trustee would be appropriate.

Appendix E: Tobii's Remedy Proposal – divestiture package scope

1. In relation to the scope of this partial divestiture package, Tobii told us that to ensure that the divested Smartbox hardware business was an effective competitor, it would include the following:¹
 - (a) all current Smartbox hardware and accessories, as well as all products that were under development;
 - (b) all related intellectual property rights and domain names, including the 'Smartbox' name;
 - (c) all related employees in the UK, including R&D, product development, manufacturing, product specification and support staff, whether located at Malvern, Bristol or elsewhere (eg home-based employees);
 - (d) Smartbox's US sales and marketing activities, and all existing contracts with Smartbox resellers and distributors, worldwide;
 - (e) the manufacturing, product assembly and repair activities located at Smartbox's premises in Malvern;
 - (f) all existing contracts with third-party contract manufacturers and suppliers (eg of components, eye gaze cameras and accessories);
 - (g) a perpetual worldwide licence of all Smartbox software including (but not limited to) Grid 3 and Grid for iPad (including all upgrades and new versions of the software) on a FRAND basis and on the same terms as Smartbox currently licensed such software to third-party suppliers of AAC solutions; and
 - (h) an agreement permitting Smartbox to resell all current and future Tobii Dynavox eye gaze cameras developed for AAC application.

¹ [Tobii response to the Remedies Notice](#), paragraph 25.

Appendix F: Tobii's Modified Proposal – divestiture package scope

1. This appendix sets out the scope of the divestiture package proposed by Tobii under Tobii's Modified Proposal.
2. Tobii told us that under Tobii's Modified Proposal, the purchaser would obtain the following:
 - (a) the entire Smartbox hardware portfolio, including current hardware and hardware that was under development, and relate to peripherals and accessories;
 - (b) a worldwide licence to install and resell the Grid software and all other software presently owned by Smartbox (including 'Look to Learn', in respect of which no SLC was identified), in each case, including all future versions, updates and upgrades thereof and in all applicable languages;
 - (c) the right to modify, adapt and customise the Grid software for its own use;
 - (d) full rights to the source code to the Grid software, which would enable it to develop a 'forked' version of the software, which it could sell itself under its own brand name;
 - (e) Smartbox's distribution and reseller network;
 - (f) all Smartbox employees identified by the purchaser as being necessary for the business being acquired by it, including in product development, R&D, production, sales, and customer support functions;
 - (g) to the extent required by the purchaser, the right to occupy Smartbox's premises in Malvern and/or Bristol; and
 - (h) a right to purchase Tobii eye tracking devices on standard terms and conditions and on a FRAND basis.

Appendix G: Tobii's Modified Proposal – examples of specification risks

1. This appendix sets out some examples of elements of Tobii's Modified Proposal which we consider are likely to give rise to specification risks, making effective implementation, monitoring and enforcement difficult:
 - (a) **Specification risk associated with the version of the source code to be obtained by the Acquirer:** the [X] states that the Acquirer would have the right to obtain 'a copy of any most recent version of Tobii's version of the source code of the Grid'. The terms of any such right of the Acquirer would need to be considered in greater detail than the current drafting of the [X]. For example, it is not clear whether this excludes versions of the Grid that are work-in-progress, under development, in testing or any other forms of incomplete and untested code. The terms of any [X] would need to be drafted in a way that allows for the rights and obligations of Tobii and the Acquirer to be unambiguously interpreted.
 - (b) **Specification risk associated with training to be offered by Tobii:** as part of Tobii's Modified Proposal, Tobii would provide training, a transfer of 'knowhow' and assistance which is 'reasonably requested' by the Acquirer. We consider that similar specification risks would arise here as those identified in relation to the Grid FRAND access proposal under Tobii's Remedy Proposal,¹ particularly in terms of the need to interpret unambiguously the obligations of Tobii under any such proposal and the need to ensure a robust complaints procedure or dispute resolution process.
 - (c) **Specification risk associated with development work to be undertaken by Tobii on behalf of the Acquirer under the licensing arrangement:** Tobii is to provide development services to develop 'reasonable' new and/or customisable features for the Grid at the Acquirer's request. We consider that this element of Tobii's Modified Proposal presents similar risks as those described in (b) above.
 - (d) **Specification risk associated with the consideration payable to Tobii:** Under the terms of the [X], the Acquirer is to pay a royalty to Tobii per copy of any software product developed by the Acquirer which makes any use of any source code that originates from the Grid. Similar to the above, we consider that this presents specification risks and is likely to be open

¹ See paragraphs 10.158(d) and 10.168.

to dispute and misinterpretation. As with those risks highlighted above, it is important that the terms of Tobii's Modified Proposal are sufficiently specific to be clear to the Acquirer (and the CMA) so that it is apparent what conduct constitutes compliance and what does not.

Appendix H: Tobii's Modified Proposal – third parties' views

1. This appendix sets out the views received from third parties in relation to Tobii's Modified Proposal.
2. In response to Tobii sharing details of Tobii's Modified Proposal on a confidential basis, we received several submissions from third parties as follows:
 - (a) Anna Reeves, CEO of ACE Centre, told us that she 'recognised that [Tobii's Modified Proposal] could be a solution for the AAC market'. The submission added that [REDACTED] would offer the 'AAC sector' reassurance of product diversity and maintain 'healthy competition'.
 - (b) [REDACTED]
 - (c) [REDACTED]
 - (d) The Compass service from the Royal Hospital for Neuro-disability (Compass Assistive Technology Service) told us that:
 - (i) Tobii's Modified Proposal was a 'good option' rather than Smartbox being sold to a company that 'does not have any experience or interest in AAC and may just purchase [Smartbox] as an investment opportunity';
 - (ii) under Tobii's Modified Proposal, the links between Tobii and the Acquirer would be minimal (essentially only the purchase of the Grid under license) and that competition could still be promoted by both companies developing and selling both hardware and software;
 - (iii) [REDACTED]; and
 - (iv) [REDACTED], depending on the plan for Smartbox staff, both companies would benefit from the Smartbox support model.
 - (e) Callie Ward from Rett UK told us that:
 - (i) Rett UK's biggest concern, should the Merger not proceed, was that the Grid would not be reliably maintained, resulting in the loss or discontinuation of the language systems of end-users;

- (ii) Tobii's Modified Proposal would mean that the Grid would still be developed and supported by Tobii as well as there being competition [REDACTED];
 - (iii) customers could purchase the Grid [REDACTED] and this would eliminate confusion caused by buying hardware and software from separate providers; and
 - (iv) in any remedy, there should be clauses to ensure that the Grid continued to be maintained, updated and supported (along with all its language systems). In addition, no Smartbox employees should be made redundant (including maintaining the support team at its current size, or bigger).
- (f) A parent of an AAC user and Trustee for AngelmanUK told us [REDACTED] that Tobii's Modified Proposal 'would be an acceptable alternative' to Tobii retaining ownership of Smartbox. The submission emphasised that the needs of AAC users should be prioritised in any remedy proposal and that selling Smartbox to a purchaser that was not committed to meeting the needs of AAC users would not be a viable option.
- (g) [REDACTED]

Glossary

Term	Definition
AAC	Augmentative and assistive communication; a range of techniques that support or replace spoken communication. The techniques include gestures, signing, symbols, communications boards and books, as well as powered computer devices, with techniques appropriate for children and adults.
AAC software	Software that is specifically designed for people with communication needs to allow them to communicate. The software allows the user to input a message in different ways, ranging from electronic picture boards to more complex language systems. The message can then be communicated in several ways, eg speech generation. The software often includes computer control and may also include additional content and functionality such as educational software, accessible apps, third party content or environmental control.
AAC solutions	Solutions that combine hardware and software to enable people with communication needs to communicate. They can also include accessories and/or related services.
Access means /Access methods	The ways in which an end user can access AAC hardware and control AAC software . They include touch screens, special keyboards, switches, joysticks, head mice, eye gaze cameras and infrared cameras. The required access method will depend on the user's disability and physical impairments. For example, if the user has impaired mobility, an eye gaze camera may be required, as the user would not be able to touch a screen or operate a switch.
the Act	The Enterprise Act 2002.
App	A computer program or software application.
ATS or Assistive Technology Solutions	Technology designed to support people in maintaining or improving their independence, safety and wellbeing. ATS products are designed to address a number of conditions including visual, hearing and communication impairments.

Communication impairment	A difficulty in communicating due to a variety of different diagnosed conditions that relate to physical, sensory, intellectual, learning or cognitive disability.
Communicator 5	AAC software developed by Tobii Dynavox. Communicator is an AAC software platform that converts text and symbols into clear speech, and that gives individuals computer access and more.
Compass	AAC software developed by Tobii Dynavox. Compass offers a full-breadth of pre-stored communication, built-in supports and many other tools for communication and support.
Customer support	Encompasses training, technical support and repairs. This support can be provided to the purchaser of the solution (eg a NHS hub) or directly to the end user.
DA	Distributor Agreement
Dedicated AAC solutions	<p>Solutions that consist of four components: dedicated AAC hardware, AAC software, access means, and customer support.</p> <p>Dedicated AAC solutions enable people with communication needs to communicate, including those with more complex needs than can be the case for some users of non-dedicated AAC solutions.</p>
Dedicated AAC hardware	Either ‘purpose-built’ devices or ‘wrapped tablets’. A purpose-built device is an integrated device designed specifically for the purpose of meeting AAC needs. A ‘wrapped tablet’ combines a consumer or a commercial tablet with a purpose-built component, typically a ‘backbox’ or a ‘bracket’ that incorporates additional batteries, speakers, ports and mounting options.
DynaVox	DynaVox Systems LLC, a former US supplier of speech-generating devices and symbol-adapted special education software.
EBITDA	Earnings before interest, tax, depreciation and amortisation

EEA	European Economic Area
EUROW	Europe and the rest of the world
Eye gaze camera	A camera that tracks the user's eye movement to operate an AAC solution . Also used in the same context as 'eye tracking'.
EyeTech	EyeTech Digital Systems Inc. (EyeTech) is a US company that develops eye tracking algorithms, hardware and software for eye tracking technology.
Grid	AAC software developed by Smartbox which is an open platform and allows third parties to integrate their own hardware and access devices with the Grid. The Grid can be combined with a range of third party devices, allowing customers and users to adopt the Grid as part of their preferred dedicated AAC solution, even where individual hardware device requirements and preferences vary.
Merger Assessment Guidelines	Originally published jointly by the Office of Fair Trading and the Competition Commission and adopted by the CMA Board.
MBO	Management buy-out
Medically graded devices	AAC solutions that are certified to meet the requirements for eligibility for Medicare funding as durable speech generating devices in the US.
Merged entity	The combination of Tobii AB, Smartbox Assistive Technology Limited and Sensory Software International Limited
MT	Monitoring Trustee
NHS	National Health Service
Non-dedicated AAC solution	AAC solutions that customers build based on a mainstream consumer device (eg an iPad or a Microsoft Surface tablet).
OEM	Original Equipment Manufacturer

OFT	The Office of Fair Trading, the predecessor to the CMA
Peripherals	A device that can be attached to the main hardware of an AAC solution such as special keyboards, wheelchair mounts and rough cases.
RA	Reseller Agreement
Reseller	Organisation that act as a local distributor for suppliers of dedicated AAC solutions
R&D	Research and Development
RMS	Relevant merger situation
ROCE	Return on capital employed
SATL	Smartbox Assistive Technology Limited, a UK-based company which focuses on developing and re-selling ATS for people with disabilities, including communication aids, environmental control devices, computer control technology and interactive learning solutions
SEK	Swedish Krona
SGD	Speech Generating Devices
SLC	Substantial Lessening of Competition
Smartbox	The combination of Smartbox Assistive Technology Limited (SATL) and Sensory Software International Limited (SSIL).
Snap + Core First	AAC software developed by Tobii Dynavox. Snap + Core First is a symbol-based communication app.
SPA	Share Purchase Agreement
SSIL	Sensory Software International Limited, which previously developed the software products of SATL but which no longer carries out meaningful business activities.
Tobii	Tobii AB, a supplier of ATS and eye gaze solutions which is headquartered in Sweden with 15 offices in the US, Europe and Asia, as well as a global network of resellers.

Tobii Dynavox	A division of Tobii, which provides assistive technology for people with reduced ability to communicate and for special education.
WACC	Weighted average cost of capital

For a brief description of the third parties mentioned in this report, please refer to Appendix B.