

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 22 August 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 (together "**Smartbox**"), 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:

Paragraphs 5(a), 5(b) and 5(m) of the Interim Order

The CMA understands that in order to comply with the CMA's Final Report, Tobii and Smartbox (the "**Parties**") must be able to communicate with one another and access certain confidential information relating to the Smartbox business to enable Tobii to prepare an Information Memorandum ("**IM**") which will contain information about the Smartbox business in a form suitable for prospective investors to consider. The IM will contain a description of the Smartbox business together with its most recent financial position and its business plans. Annex 1 provides a schedule of the information required at this stage.

Tobii's senior management also need to communicate and meet with Smartbox's senior management to organise and coordinate the potential sale and to discuss the future corporate structure of Smartbox and potential buyers.

These discussions will also facilitate the preparation of a data room, and provide a basis on which detailed due diligence information requirements can also be prepared.

The CMA recognises it is important to allow Tobii and Smartbox to initiate these communications as soon as possible to proceed efficiently and enable effective decision making to take place.

Therefore, the CMA grants consent for Smartbox to hold discussions with Tobii for the purpose of creating an IM and planning for the divestiture of the Smartbox business, derogating from Paragraphs 5(a), 5(b) and 5(m) of the Interim Order, subject to the following conditions that:

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

- i. [X]
- ii. [X]
- iii. [X]

(or as amended with prior written CMA approval);

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

- i. [X]
- ii. [X]
- iii. [X]
- iv. [X]
- v. [X]

(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) any Smartbox information shared with the individuals listed in Annex 2 is strictly limited to the information set out in Annex 1;

e) Tobii's independent financial advisors listed in Annex 2 will enter into confidentiality agreements in a form agreed with the CMA to ensure that any Annex 1 information it receives is not shared with Tobii individuals who are not named in Annex 2 (or as amended with prior written CMA approval).

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

g) any implementation of any divestiture will only take place with the prior written approval of the CMA.

Kip Meek
Inquiry Chair
23 August 2019

Annex 1 – Requested data

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Annex 2 – Individuals requiring access to the data in Annex 1

[Redacted]