

REFERENCE RELATING TO THE COMPLETED ACQUISITION BY TOBII AB (PUBL) OF SMARTBOX ASSISTIVE TECHNOLOGY LIMITED AND SENSORY SOFTWARE INTERNATIONAL LIMITED

Notice of intention to make an Order pursuant to section 84 and Schedule 10 of the Enterprise Act 2002 and public consultation on the proposed Order

Introduction

1. On 1 October 2018, Tobii AB (publ) (“**Tobii**”) completed its acquisition of Smartbox Assistive Technology Limited and Sensory Software International Limited (the last two together “**Smartbox**”) (the “**Merger**”).
2. On 8 February 2019, the Competition and Markets Authority (the “**CMA**”) made a reference (the “**Reference**”) to its chair in accordance with section 22(1) of the Enterprise Act 2002 (the “**Act**”) for the constitution of a Group under Schedule 4 of the Enterprise and Regulatory Reform Act 2013 to investigate and report on the completed acquisition by Tobii of Smartbox.
3. On 18 February 2019, the CMA made an interim order pursuant to section 81 of the Act (the “**Interim Order**”) to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which may be justified by the CMA’s decisions on the Reference.
4. On 28 February 2019, the CMA made an unwinding order addressed to Tobii and Smartbox (the “**Unwinding Order**”) in accordance with section 81(2A) of the Act for the purpose of reversing certain actions taken prior to the making of the Interim Order, which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA’s decisions on the Reference.
5. On 15 August 2019, the CMA published its final report (the “**Final Report**”), concluding that:

- (a) the completed acquisition by Tobii of Smartbox may be expected to result in the creation of a relevant merger situation;
 - (b) the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (“**SLC**”) in the market for the supply of dedicated augmentative and assistive communication (“**AAC**”) solutions in the UK;
 - (c) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it; and
 - (d) undertakings should be given to the CMA or where undertakings are not agreed, an order made to give effect to the remedies identified by the CMA in Chapter 10 of the Final Report.
- 6. The Final Report further concluded that Tobii must dispose of Smartbox.
- 7. The implementation of the divestiture will be subject to the following safeguards:
 - (a) The CMA will need to satisfy itself of the suitability of the Potential Purchaser of the Divestment Business (see Schedule 1);
 - (b) Provisions are included in this Order for the CMA’s ability to appoint a Divestiture Trustee:
 - (i) if Tobii fails to achieve an Effective Divestiture by the end of the Initial Divestiture Period;
 - (ii) if the CMA reasonably believes there is a risk of delay or failure to achieve an Effective Divestiture by the end of the Initial Divestiture Period, including but not limited to circumstances where Tobii has breached any provision of Article 3;
 - (iii) if the CMA reasonably believes that Tobii is not engaging constructively in the divestiture process; or
 - (iv) if there is a material deterioration in the Smartbox Business during the divestiture process.
 - (c) Tobii will be required to sell the Divestment Business.
- 8. The Interim Order and the Unwinding Order cease to be in force on the date on which this Order is made, pursuant to section 81(8) of the Act.
- 9. On 13 September 2019, Tobii made an application to the Competition Appeal Tribunal pursuant to section 120 of the Act for a review of the CMA’s decision in the Final Report.

10. The CMA has been unable to reach agreement with Tobii on the terms of undertakings to remedy the SLC and now proposes to make an Order to give effect to the remedy identified by the CMA in Chapter 10 of the Final Report.
11. The proposed Order is annexed to this Notice.

Notice of proposal to make an Order

12. The CMA now gives notice of the proposal to make the Order and invites written representations on it from any person or persons who wish to comment. Representations should reach the CMA by **5pm on Friday 1 November 2019** and should be addressed to:

Lizzie Akita
Remedies Officer
Tobii/Smartbox Merger Inquiry
Competition and Markets Authority
The Cabot
25 Cabot Square
London E14 4QZ

or by email to tobii.smartbox@cma.gov.uk

13. The CMA will have regard to any representations made in response to this Notice and may make modifications to the proposed Order as a result. In the absence of any written representations, or in the event that the CMA decides, on consideration of representations made, not to make material amendments to the Order, the CMA proposes to make the Order pursuant to section 84 of the Act. If the CMA considers that any representation necessitates any material change to the proposed Order, the CMA will give notice of the proposed modifications.
14. The Order may be varied or revoked by the CMA in accordance with sections 84(3) and 162 of the Act.
15. This Notice and the proposed Order will be published on the CMA website.

(signed) Kip Meek
Inquiry Chair

2 October 2019