

**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, the CMA has varied the derogation originally granted on 23 August 2019. 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, some members of Tobii's senior management 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 (the "**Sale Planning Purpose**").

Tobii must also be able to communicate with Smartbox and access certain confidential information relating to the Smartbox business to enable Tobii to prepare a teaser document and an Information Memorandum (together, the "**Initial Sale Materials**") which will contain information about the Smartbox business in a form suitable for prospective investors to consider (the "**Initial Sale Materials Purpose**"). The Initial Sale Materials 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. The information in Annex 1 will also facilitate the basis on which detailed due diligence information requirements can also be prepared, including for the purpose of a data room.

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, for the Sale Planning Purpose, the CMA grants consent for Tobii and Smartbox to meet and communicate with each other, subject to the following conditions:

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

[redacted]

(or as amended with prior written CMA approval);

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

[redacted]

(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) these discussions must be strictly limited and necessary for the Sale Planning Purpose;

- e) the Monitoring Trustee is copied into all written correspondence relating to the Sale Planning Purpose; and

- f) the Monitoring Trustee is notified of any meetings or calls between Smartbox and Tobii individuals mentioned in a) and b) and following any such meetings or calls, the Monitoring Trustee is provided with a detailed minute (which has been agreed by both Tobii and Smartbox) of the meeting or call within 3 business days.

For the Initial Sale Materials Purpose, the CMA grants consent for Tobii and Smartbox to meet and communicate with each other, subject to the following conditions that:

- a) these discussions must be strictly limited to and necessary for the Initial Sale Materials Purpose;

- b) any Smartbox information listed in Annex 1 is only shared with the individuals listed in Annex 2;

- c) all Tobii individuals mentioned in Annex 2 have entered into confidentiality agreements in a form agreed with the CMA;

- d) the CMA may amend the scope of the information set out in Annex 1 and the individuals listed in Annex 2 upon written request of Tobii and Smartbox;

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

- f) the Monitoring Trustee is notified of any meetings or calls between Smartbox and Tobii individuals (including any external advisors) mentioned in Annex 2 and following any such meetings or calls, the Monitoring Trustee is provided with a detailed minute (which has been agreed by both Tobii and Smartbox) of the meeting or call within 3 business days.



Kip Meek  
Inquiry Chair  
1 October 2019

**Annex 1 – Requested data**

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**Annex 2**

**Individuals granted access to information listed in Annex 1**

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