

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

Notice of making an Order pursuant to section 84 and Schedule 10 of the Enterprise Act 2002

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 has resulted 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 following

respects:

- (i) Horizontal competition concerns in the supply of dedicated augmentative and assistive communication (“**AAC**”) solutions in the UK;
- (ii) Vertical competition concerns with regard to input foreclosure by the merged entity of Smartbox’s Grid software to the Parties’ rivals in the downstream supply of dedicated AAC solutions in the UK; and
- (iii) Vertical competition concerns with regard to customer foreclosure by the merged entity of Tobii’s upstream competitors in the worldwide supply of eye gaze cameras to providers of dedicated AAC solutions, including providers serving customers 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 **Error!**
Reference source not found.;
- (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 (the “**Tribunal**”) pursuant to [section 120](#) of the Act for a review of the CMA’s decision in the Final Report.
10. On 2 October 2019, the CMA published a notice of its intention to make an order to remedy the adverse effects on competition that it had identified and invited written representations from any interested person or persons by 1 November 2019. The CMA received two responses to its notice. The CMA carefully considered these responses and concluded that no modifications were necessary to the order.
11. The initial statutory period for the CMA either to accept final Undertakings or make a final Order was 7 November 2019. On 6 November 2019, the Group decided to extend by six weeks under [section 41A\(2\)](#) of the Act the period for the discharge of its duty under [section 41\(2\)](#) of the Act, as it considered that there were special reasons to do so. In taking this decision, the Group had regard to the fact that the statutory deadline under [section 41A\(1\)](#) of the Act was due to expire during the hearing of Tobii’s application to the Tribunal (between 6 November and 8 November 2019). As a result, the statutory period for the CMA either to accept final Undertakings or make a final Order was extended to 19 December 2019.
12. At the time of making this notice, the Tribunal’s judgment setting out its conclusion on each of the grounds of review (the “**Judgment**”) remains pending. The CMA has a statutory duty to accept final undertakings or make a final order by the extended deadline of 19 December 2019, with no scope for a further extension (pursuant to [section 41B\(2\)](#) of the Act).
13. The CMA is now making this order (the “**Order**”) to reflect the CMA’s findings in the Final Report, and will take such further action as appropriate to reflect the Judgment once it is handed down.
14. The Order will come into force on 19 December 2019.
15. The Order may be varied or revoked by the CMA under [section 84\(3\)](#) of the Act.
16. On the making of this Order the reference has now been finally determined.
17. This Notice and a non-confidential version of the Order will be published on the CMA website, alongside an Explanatory Note which provides an

explanation of how the Order is expected to operate. The CMA has excluded from the non-confidential version of the Order information which it considers should be excluded having regard to the three considerations set out in [section 244](#) of the Act. These omissions are indicated by [✂].

(signed) Kip Meek
Inquiry Chair

19 December 2019