

COMPLETED ACQUISITION BY TOBII AB OF SMARTBOX ASSISTIVE TECHNOLOGY LIMITED AND SENSORY SOFTWARE INTERNATIONAL LTD

Directions issued pursuant to Articles 8.1(a) and 15 of the Tobii AB (publ) and Smartbox Enforcement Order 2019 made by the Competition and Markets Authority on 19 December 2019

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**”).

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. 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**”);
- 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.

The Final Report further concluded that Tobii must dispose of Smartbox.

On 19 December 2019, the CMA made the Tobii AB (publ) and Smartbox Enforcement Order 2019 (the “**Enforcement Order**”) for the purpose of remedying, mitigating or preventing the SLC specified in the Final Report and any adverse effects which have resulted from, or may be expected to result from, the SLC specified in the Final Report and in performance of its duty under [section 41](#) and in exercise of its powers under [section 84\(1\)](#), (2) and (3), [section 86\(1\)](#) to (5), [section 87](#) and paragraphs 2, 11, 13, 19, 20C, 21, 22 of [Schedule 8](#) to the Act.

The CMA now issues written directions pursuant to Articles 8.1(a) and 15 of the Enforcement Order that, for the purpose of securing compliance with the Enforcement Order and implementing the divestiture of Smartbox, Tobii shall appoint a Divestiture Trustee, in accordance with the terms provided for in the Annex and shall comply with the obligations set out in the Annex.

Kip Meek

Remedy Group Chair
30 September 2020

Annex

Directions to appoint a Divestiture Trustee

Nomination of a Divestiture Trustee

1. Within the period of five working days following the date of these directions, Tobii shall submit to the CMA for approval a list of two or more persons whom Tobii proposes to appoint as Divestiture Trustee.
2. Each person on the list referred to in paragraph 1 above shall be independent of and unconnected to Tobii and Smartbox, possess the qualifications necessary for the performance of the Divestiture Trustee Mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
3. The CMA may approve or reject any or all of the proposed persons (such approval not to be unreasonably withheld) and may approve the proposed Divestiture Trustee Mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Divestiture Trustee Obligation. If only one proposed person is approved, Tobii shall use its reasonable endeavours to appoint the person concerned as Divestiture Trustee in accordance with the Divestiture Trustee Mandate approved by the CMA. If more than one proposed person is approved, Tobii shall decide which person to appoint as Divestiture Trustee from among the approved persons. Tobii shall appoint the Divestiture Trustee within two working days from the CMA's approval and on the terms of the Divestiture Trustee Mandate.
4. If all the proposed Divestiture Trustees are rejected by the CMA, Tobii shall submit the names of at least two further persons within four working days from being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 1 to 3 above.
5. The provisions of paragraph 6 shall apply if:
 - a. Tobii fails to nominate further persons in accordance with paragraph 4;
 - b. Those further persons nominated by Tobii in accordance with paragraph 4 are rejected by the CMA, acting reasonably; or
 - c. Tobii is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
6. The CMA shall nominate one or more persons to act as Divestiture Trustee, and Tobii shall appoint one of those Divestiture Trustees within two working

days starting with the date of nomination under the terms of the Divestiture Trustee Mandate.

7. The function of the Divestiture Trustee is distinct from the function of the Monitoring Trustee, although the two functions may be performed by the same person subject to that person meeting the requirements of paragraph 2.
8. Tobii shall remunerate and reimburse the Divestiture Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of his or her appointment and in accordance with the directions or instructions given in paragraph 10, in such a way so as not to impede the Divestiture Trustee's independence or ability to effectively and properly fulfil the Divestiture Trustee Obligation.

Divestiture Trustee Obligation

9. The Divestiture Trustee shall undertake such preparatory matters as it considers necessary to discharge the Divestiture Trustee Obligation and for these purposes may give written directions to Tobii. Tobii shall comply with any such written directions.
10. The CMA may, on its own initiative or at the request of the Divestiture Trustee or Tobii, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of the Divestiture Trustee Obligation (including directions as to the divestiture of such property, assets, rights, consents, licences, privileges or interests as the CMA considers necessary to bring about Effective Divestiture).
11. The Divestiture Trustee may enter into such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of its Divestiture Trustee Obligation, on such terms and conditions as it reasonably considers appropriate.
12. The Divestiture Trustee shall protect the legitimate financial interests of Tobii subject to the Divestiture Trustee's overriding obligation to give effect to the Divestiture Trustee Obligation which may include the Effective Divestiture of the Divestment Business at [✂].
13. The Divestiture Trustee shall take such steps and measures as it considers necessary to discharge the Divestiture Trustee Obligation. To that end the Divestiture Trustee may give written directions to Tobii. Tobii shall comply with such directions and take such steps as the Divestiture Trustee may specify.
14. The Divestiture Trustee shall act solely on the instructions of the CMA in the performance of the Divestiture Trustee Obligation and shall not be bound by any instruction of Tobii. Tobii shall not seek to create or vary the obligations

and duties of the Divestiture Trustee except with the CMA's prior written consent.

15. The Divestiture Trustee shall every four weeks until the date on which Effective Divestiture takes place, report to the CMA on its progress towards Effective Divestiture, compliance with the Enforcement Order and any other matter specified by the CMA.

Divestiture Trustee – obligations of Tobii

16. Tobii shall enable the Divestiture Trustee to carry out the Divestiture Trustee Obligation.
17. Tobii shall provide the Divestiture Trustee with all such cooperation, assistance and information (including the production of financial or other information whether or not such information is in existence at the time of the request but excluding any material subject to legal privilege) as the Divestiture Trustee may reasonably require in the discharge of the Divestiture Trustee Obligation.
18. The Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of its duty (save where material is subject to legal privilege). Tobii shall provide the Divestiture Trustee with copies of any such document upon request. On the request of the Divestiture Trustee, Tobii shall make available to the Divestiture Trustee one or more offices on its premises and ensure that personnel are available where necessary for meetings in order to provide the Divestiture Trustee with all information necessary for the performance of the Divestiture Trustee Obligation.
19. Tobii shall grant reasonable and comprehensive powers of attorney to the Divestiture Trustee on terms approved by the CMA to enable the Divestiture Trustee to discharge the Divestiture Trustee Obligation. Tobii shall, upon the reasonable request of the Divestiture Trustee, execute the documents required to give effect to the Divestiture Trustee Obligation. The powers of attorney shall include the appointment of advisers to assist with the divestiture process. Before appointing any advisers, the Divestiture Trustee will consider using the advisers already appointed by Tobii and will only appoint advisers (whether in replacement of, or in addition to Tobii's advisers) if it reasonably considers the appointment of such advisers necessary or appropriate in the discharge of the Divestiture Trustee Obligation. The CMA may issue directions requiring any action specified in this paragraph.
20. Tobii shall hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the

Divestiture Trustee Obligation. The Divestiture Trustee, its employees, agents or advisers shall have no liability to Tobii for any liabilities arising out of the performance of the Divestiture Trustee Obligation.

21. Tobii shall make no objection to the fulfilment by the Divestiture Trustee of the Divestiture Trustee Obligation or any part thereof save on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial interests of Tobii, subject always to the Divestiture Trustee Obligation; and where Tobii wishes to make an objection on these grounds it shall submit to the CMA a notice setting out its objections promptly and no later than two working days from the day on which it became aware of the facts giving rise to its objection.

Divestiture Trustee – replacement, discharge, and reappointment

22. If the Divestiture Trustee ceases to perform the Divestiture Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may issue directions to dismiss the Divestiture Trustee.
23. If the Divestiture Trustee is removed under paragraph 22 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure in paragraphs 1 to 6.
24. Other than in accordance with paragraph 22, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time when all the functions with which the Divestiture Trustee has been entrusted have been met.

Interpretation

25. In these directions references to the Enforcement Order are references to Tobii AB (publ) and Smartbox Enforcement Order 2019 made by the CMA on 19 December 2019. Terms and expressions defined in the Enforcement Order shall have the same meaning in these directions, save as the context otherwise requires.