

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

## Tobii AB (publ) and Smartbox Enforcement Order 2019

### Enforcement Order made by the Competition and Markets Authority pursuant to section 84 of the Enterprise Act 2002

#### Whereas:

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 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 (the “**Tribunal**”) pursuant to [section 120](#) of the Act for a review of the CMA’s decision in the Final Report.
10. 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.
11. 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). The CMA is making this 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.
12. NOW 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 makes the following Order:

## 1. Title, Commencement, Application and Scope

- 1.1 The title of this Order is the 'Tobii AB (publ) and Smartbox Enforcement Order 2019'.
- 1.2 The Order comes into force on the Commencement Date.
- 1.3 The Order may be varied or revoked by the CMA under [section 84](#) of the Act.
- 1.4 The Order applies to Tobii and its subsidiaries, including for the avoidance of doubt, Smartbox, and any person who is an Affiliate with respect to Tobii, and to a Divestiture Trustee or a Hold Separate Manager appointed under this Order.
- 1.5 The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
- 1.6 The Schedules form part of this Order.
- 1.7 The purpose of this Order is to give effect to the Final Report and this Order shall be construed accordingly. In the event of conflict between this Order and the Final Report, this Order prevails.
- 1.8 Any words or expressions used in this Order or the recitals of this Order shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act and the Final Report.
- 1.9 References to any statute or statutory provision shall be construed as references to that statute or statutory provisions as amended, re-enacted or modified, whether by statute or otherwise.

## 2. Interpretation

- 2.1 In this Order:

**AAC** means augmentative and assistive communication;

**the Act** means the Enterprise Act 2002;

**Affiliate** means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of [section 26](#) of the Act;

**Approved Purchaser** means any Potential Purchaser which the CMA considers to satisfy the Suitable Purchaser Criteria and approves in accordance with Article 3.4;

**CMA** means the Competition and Markets Authority;

**Commencement Date** means the date on which this Order is made by the CMA;

**Compliance Statement** means a statement provided by Tobii and Smartbox in accordance with Article 5 and Schedules 4 and 5;

**Development Projects** means the Smartbox discontinued development projects related to [X], unless otherwise agreed with the CMA;

**Discontinued Products** means the [X] unless otherwise agreed with the CMA;

**Distributor Agreement** means the distributor agreement entered into by Tobii Dynavox AB and Smartbox Assistive Technology Limited on 29 August 2018 whereby Tobii acts as a distributor for Smartbox, and which is also a Permitted Agreement;

**Divestment Business** means the business carried on by Smartbox as at the Commencement Date and all shares in Smartbox Assistive Technology Limited and Sensory Software International Limited and their subsidiaries, including for the avoidance of doubt, the senior management and development teams of the Smartbox Business;

**Divestiture Trustee** means any person appointed in accordance with Article 8;

**Divestiture Trustee Mandate** means the mandate approved by the CMA given by Tobii to the Divestiture Trustee on terms specified by the CMA in directions issued to appoint a Divestiture Trustee pursuant to Article 8;

**Divestiture Trustee Obligation** means the obligation on the Divestiture Trustee to bring about an Effective Divestiture of the Divestment Business;

**Effective Divestiture** means the completed divestment of the Divestiture Business to an Approved Purchaser in accordance with Article 3.6;

**Final Report** means the report of the CMA entitled *Completed acquisition by Tobii AB of Smartbox Assistive Technologies Limited and Sensory Software International Limited Final Report* published on 15 August 2019;

**Hold Separate Manager** means any person appointed in accordance with Article 9;

**Hold Separate Manager Mandate** means the mandate approved by the

CMA given by Tobii to the Hold Separate Manager on terms specified by the CMA in directions issued to appoint a Hold Separate Manager pursuant to Article 9;

**Hold Separate Manager Obligation** means the obligation on the Hold Separate Manager to exercise day-to-day management and control of Smartbox so as to preserve and, if necessary, restore effective competition in the markets affected by the Merger;

**Implementation Plan** means the plan as agreed between Smartbox and the CMA under paragraph 8 of the Unwinding Order;

**Initial Divestiture Period** means the period starting with the Commencement Date and ending [X] after the Commencement Date and, in the event of an extension under Article 7, means the period as extended;

**Initial Enforcement Order** means the order made by the CMA on 28 September 2018 pursuant to [section 72\(2\)](#) of the Act;

**Interim Order** means the order made by the CMA on 18 February 2019 pursuant to [section 81\(2\)](#) of the Act;

**key staff** means staff who are in positions of executive or managerial responsibility and/or whose performance affect the viability of the business;

**Merger** means the completed acquisition by Tobii of Smartbox;

**Monitoring Trustee** means the person appointed by Tobii pursuant to the directions issued by the CMA on 18 February 2019, under the Interim Order and whose appointment will continue in accordance with Article 6;

**Monitoring Trustee Mandate** means the mandate containing the terms of appointment of the Monitoring Trustee, dated 20 March 2019;

**New Reseller Agreement** means a reseller agreement entered into by Tobii Dynavox AB and Smartbox Assistive Technology Limited on 27 March 2019 whereby Smartbox acts as a reseller for Tobii to supply Tobii eye gaze camera devices and supporting accessories in the UK and Ireland, and which is also a Permitted Agreement;

**Notice** means a written communication sent by post, personal delivery or, with prior consent of the recipient, by email;

**ordinary course of business** means a party's customary commercial transactions and practices in the day-to-day supply of dedicated AAC solutions;

**Permitted Agreements** means the Distributor Agreement and the New Reseller Agreement;

**Potential Purchaser** means a proposed purchaser of the Divestment Business put forward by Tobii for approval by the CMA in accordance with Article 3, and includes any members of a consortium or connected entities beneficially interested in the purchase of the Divestment Business;

**Pre-Approval Agreement** means any agreement between Tobii and an Approved Purchaser for the divestment of the Divestment Business which is conditional on CMA approval;

**Project X** means the [X] which is a Development Project under the Unwinding Order and referred to as Project [X] under the Implementation Plan, and the subject of previous variations on 26 June 2019 and 28 August 2019;

**Relevant Information** has the meaning given in Article 11.2;

**SLC** means a substantial lessening of competition pursuant to [section 35](#) of the Act;

**Smartbox** means Smartbox Assistive Technologies Limited and Sensory Software International Limited, including their subsidiaries;

**Smartbox Business** means the business run by Smartbox; and

**subsidiary** has the meaning given by section 1159 of the Companies Act 2006;

**Suitable Purchaser Criteria** means the criteria contained in Schedule 1 of this Order and shall be construed as consistent with and giving effect to paragraph 10.49 of the Final Report;

**Tobii** means Tobii AB (publ) and all of its subsidiaries;

**Tobii Business** means the business run by Tobii with the exclusion of Smartbox;

**Unwinding Order** means the Unwinding Order made by the CMA under [section 81\(2A\)](#) of the Act on 28 February 2019;

**working day** means any day which is not a Saturday, Sunday, Christmas Day, Good Friday or bank holiday in any part of the United Kingdom under the Banking and Financial Deadlines Act 1971.

### **3. Divestiture**

- 3.1 Tobii shall within the Initial Divestiture Period divest the Divestment Business to an Approved Purchaser pursuant to a Pre-Approval Agreement. Following the Commencement Date, and as soon as reasonably practicable, Tobii shall provide to the CMA, for its comment and approval, Tobii's proposed timetable setting out the key milestones to complete Effective Divestiture within the Initial Divestiture Period. Tobii shall notify the CMA as soon as reasonably practicable of any material changes or amendments to the timetable as approved by the CMA.
- 3.2 Tobii shall provide a written report to the CMA every four weeks from the Commencement Date, or on such other interval as agreed with the CMA, until Effective Divestiture. The report will outline the progress that Tobii has made towards Effective Divestiture and the steps that have otherwise been taken to comply with the Order (such reports may be provided through the Monitoring Trustee in accordance with Article 6.2, and shall in particular report on:
- (a) the progress that has been made against the timetable as approved by the CMA under Article 3.1;
  - (b) the status of any discussions that have been held with Potential Purchasers;
  - (c) the steps that have been taken towards reaching a Pre-Approval Agreement and the persons to whom any draft agreement has been distributed; and
  - (d) such other matters as may be directed by the CMA from time to time.
- 3.3 Tobii shall submit to the CMA for approval a list of one or more Potential Purchasers of the Divestment Business in accordance with the timetable as approved by the CMA under Article 3.1.
- 3.4 The CMA shall, following receipt from Tobii of a list of Potential Purchasers, and such information in relation to Potential Purchasers as the CMA may reasonably require, engage with the Potential Purchasers and confirm to Tobii which, if any, of the Potential Purchasers are Approved Purchasers.
- 3.5 Prior to entering into a Pre-Approval Agreement with an Approved Purchaser, Tobii shall submit the Pre-Approval Agreement to the CMA in accordance with Article 11 and the timetable as approved by the CMA under Article 3.1.



3.6 In accordance with the timetable as approved by the CMA under Article 3.1, the CMA shall, following further engagement with the relevant Approved Purchaser if necessary, assess any Pre-Approval Agreement submitted by Tobii, and approve a Pre-Approval Agreement which it considers would effectively remedy the SLC identified in the Final Report.

#### **4. Measures to maintain the Smartbox Business**

4.1 Except with the prior written consent of the CMA, but subject to the derogations previously granted by the CMA under the Initial Enforcement Order, the Interim Order or the Unwinding Order (including the derogations covering the Permitted Agreements), Tobii and Smartbox shall not, from the Commencement Date until Effective Divestiture, take any action that might prejudice the Effective Divestiture, the CMA's decisions in the Final Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating or preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC findings, including any action which might:

- (a) lead to the integration of the Smartbox Business with the Tobii Business;
- (b) transfer the ownership or control of the Smartbox Business or any of its subsidiaries; or
- (c) otherwise impair the ability of the Smartbox Business to compete independently in any of the markets affected by the Merger.

4.2 Further and without prejudice to the generality of Article 4.1, Tobii and Smartbox shall at all times until Effective Divestiture procure that, except with the prior written consent of the CMA:

- (a) the Smartbox Business is carried on separately from the Tobii Business and the Smartbox Business's separate sales or brand identity is maintained;
- (b) the Smartbox Business is maintained as a going concern and sufficient resources are made available for the development of the Smartbox Business on the basis of its current business plans;
- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within the Smartbox Business;
- (d) no changes have been made to the organisational structure of the Tobii Business which would alter, impede or frustrate the implementation, carrying out or enforcement of the Order;

- (e) except in the ordinary course of Tobii's competing business no action is taken to solicit the transfer of customers from the Smartbox Business to other Tobii entities;
- (f) no action is taken which may lead to a change of location of the Smartbox Business;
- (g) except in the ordinary course of business, no substantive changes are made to the management responsibilities within the Smartbox Business;
- (h) the nature, description, range and quality of goods and/or services supplied by the Smartbox Business are maintained and preserved;
- (i) except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Smartbox Business are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of the Smartbox Business are disposed of (save for the purpose of the Effective Divestiture); and
  - (iii) no interest in the assets of the Smartbox Business is created or disposed of (save for the purpose of the Effective Divestiture).
- (j) There is no integration of the information technology of the Smartbox and Tobii Businesses, and the software and hardware platforms of the Smartbox Business shall remain essentially unchanged, except for routine changes and maintenance;
- (k) The customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Smartbox Business will be carried out by the Smartbox Business alone and the Tobii Business will not negotiate on behalf of the Smartbox Business (and vice versa) or enter into any joint agreements with the Smartbox Business (and vice versa);
- (l) All existing contracts of the Smartbox Business and the Tobii Business continue to be serviced by the business to which they were awarded;
- (m) No changes are made to key staff of the Smartbox Business;
- (n) No key staff are transferred between the Smartbox Business and the Tobii Business;

- (o) All reasonable steps are taken to encourage all key staff to remain with the Smartbox Business;
- (p) No business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Smartbox Business (or any of its employees, directors, agents or Affiliates) to the Tobii Business (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) and on the basis that, following Effective Divestiture, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed;
- (q) No action is taken which would prevent the Smartbox Business from being in a position to accept orders and otherwise supply the Discontinued Products to end customers in the UK on an on-going basis pursuant to the Implementation Plan;
- (r) No action is taken to prevent the Smartbox Business from reinstating the Development Projects, including investment and R&D staff allocations, to the position that existed at the end of July 2018 pursuant to the Implementation Plan; and
- (s) Tobii shall not request or receive any details of the Implementation Plan and the Development Projects, except with the prior written consent of the CMA.

4.3 All directions and derogations (including that set out in Schedule 6) issued in relation to or pursuant to the Initial Enforcement Order, Interim Order or Unwinding Order shall continue in force until Effective Divestiture unless cancelled or revoked by the CMA.

## **5. Compliance**

5.1 Tobii shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Tobii with this Order. In particular, on 19 January 2020 and subsequently every month thereafter (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer, President and Chief Operating Officer of Tobii or other persons as agreed with the CMA shall, on behalf of Tobii provide a statement to the CMA in the form set out in Schedule 4 to this Order confirming compliance with this Order.

- 5.2 Smartbox shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Smartbox with this Order. In particular, on 19 January 2020 and subsequently every month thereafter (or, where this does not fall on a working day, the first working day thereafter) the Managing Director of Smartbox or other persons as agreed with the CMA shall, on behalf of Smartbox provide a statement to the CMA in the form set out in Schedule 5 to this Order confirming compliance with this Order.
- 5.3 At all times, Tobii shall, and shall procure that Smartbox shall, actively keep the CMA informed of any material developments relating to the Smartbox Business, which includes but is not limited to:
- (a) Details of key staff who leave or join the Smartbox Business;
  - (b) Any interruption of the Smartbox Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for any period of time that could be expected to have a material and detrimental impact on Smartbox and/or its customers;
  - (c) All substantial customer volumes won or lost or substantial changes to the customer contracts for the Smartbox Business including any substantial changes in customers' demand; and
  - (d) Substantial changes in the Smartbox Business's contractual arrangements or relationships with key suppliers.

## **6. Monitoring Trustee**

- 6.1 The appointment of the Monitoring Trustee under the Initial Enforcement Order shall be extended by Tobii and shall continue from the Commencement Date. Subject to Article 6.4 the appointment and work of the Monitoring Trustee shall continue until Effective Divestiture.
- 6.2 In addition to the obligations of the Monitoring Trustee under the Monitoring Trustee Mandate, from the Commencement Date the Monitoring Trustee shall monitor and, every four weeks until the date on which Effective Divestiture takes place, report to the CMA on:
- (a) the progress made by Tobii against the timetable as approved by the CMA under Article 3.1 and the steps that have otherwise been taken to comply with the Order;
  - (b) monitoring the conduct of Tobii and Smartbox during the divestiture process, including but not limited to any conflict of interest that may arise as a result of the Smartbox management team wishing to put

itself forward as a potential purchaser, either alone or with one or more third parties;

- (c) the compliance with the Order of any operation of any data room and clean teams;
- (d) reviewing the divestiture marketing materials;
- (e) assisting the CMA to ensure Effective Divestiture;
- (f) any issues arising which the Monitoring Trustee considers might prejudice the intended and effective outcome of the divestiture process, or Effective Divestiture within the Initial Divestiture Period; and
- (g) any other matter that the CMA may direct.

6.3 Tobii shall make such changes to the Monitoring Trustee Mandate (to be approved by the CMA) as are required to give effect to Articles 6.1 to 6.2.

6.4 The monitoring obligation imposed under Article 6.2 shall cease to apply to the Monitoring Trustee in the event that a Divestiture Trustee is appointed under Article 8.

## **7. Extension of time limits**

7.1 The CMA may issue directions extending the Initial Divestiture Period following receipt of a request in writing from Tobii or at its own discretion. Directions extending the Initial Divestiture Period specified shall specify the duration of the extension.

## **8. Divestiture Trustee**

8.1 The CMA may issue directions to Tobii to appoint a Divestiture Trustee, in accordance with Schedule 2, to bring about Effective Divestiture (the Divestiture Trustee Obligation):

- (a) if Tobii fails to achieve an Effective Divestiture by the end of the Initial Divestiture Period;
- (b) 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;
- (c) if the CMA reasonably believes that Tobii is not engaging constructively in the divestiture process; or

(d) if there is a material deterioration in the Smartbox Business during the divestiture process.

8.2 To give effect to Article 8.1, Tobii shall enter into a Divestiture Trustee Mandate with the Divestiture Trustee.

## **9. Hold Separate Manager**

9.1 In the event that the CMA, upon reasonable grounds, considers that there has been a material change in relation to the existing Smartbox senior management team, Tobii shall appoint a Hold Separate Manager at the written direction of the CMA, in accordance with Article 15 and Schedule 3.

9.2 The Hold Separate Manager shall perform the functions set out in paragraphs 9 to 15 of Schedule 3 and shall undertake such matters preparatory to giving effect to those functions as the CMA may specify in the directions referred to in Article 9.1.

## **10. Re-acquisition prohibition**

10.1 Tobii shall not, without the prior written consent of the CMA, re-acquire the Divestment Business (in whole or in part) or any assets relating to the Smartbox Business, or acquire any material influence over them, for a period of 10 years from Effective Divestiture.

## **11. Procedure for consent and approval**

11.1. Where the consent or approval of the CMA is required by Tobii (however that requirement is expressed in this Order), Tobii will seek the consent or approval in writing.

11.2. Any application by Tobii for the CMA's consent or approval must make full disclosure of every fact and matter within its knowledge that it reasonably believes is relevant to the CMA's decision (the "**Relevant Information**"). Where the CMA considers that full disclosure has not been provided, it shall inform Tobii, and Tobii must promptly provide such additional information as the CMA requires.

11.3. Where the CMA grants consent or approval on the basis of misleading or incomplete information, the consent or approval is voidable at the election of the CMA.

11.4. In the event that Tobii discovers that an application for consent or approval has been made without full disclosure of the Relevant Information to the CMA, Tobii must:

- (a) inform the CMA in writing, identifying the Relevant Information that it omitted to include in the application for consent within two working days of becoming aware that the Relevant Information is incomplete or incorrect; and
- (b) at the same time, or no later than two working days starting with the date on which Tobii has informed the CMA of the omission or inaccuracy, provide to the CMA an application for consent that includes the missing and/or correct Relevant Information.

11.5. Tobii must use all reasonable endeavours to make each application for consent or approval so that it is received by the CMA at least 15 working days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of this Order.

## **12. Severability**

12.1. If any provision of this Order is or becomes contrary to law or invalid for any reason, Tobii and Smartbox shall continue to observe the remaining provisions.

12.2. Tobii shall not rely on any default or want of authority on the part of Tobii or Smartbox or of any officer or employee of Tobii or Smartbox in the execution of this Order unless directed so to do by the CMA.

## **13. Provision of Information to the CMA**

13.1. Any person to whom this Order applies shall promptly provide to the CMA such information as the CMA may reasonably require for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order; to review the effectiveness of the operation of this Order, or any provision of this Order; or perform any of its functions under this Order or sections 84 and 92, 93 or 94 of the Act.

13.2. Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of this Order.

13.3. Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.

13.4. Subject always to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

13.5. If Tobii has any reason to suspect that any provision of this Order has been breached or is likely to be breached it shall immediately write to the CMA to advise the CMA of the circumstances of such suspicions.

#### **14. Service**

14.1. Any communication from Tobii to the CMA under this Order shall be addressed to [tobii.smartbox@cma.gov.uk](mailto:tobii.smartbox@cma.gov.uk) or to the Remedies Officer, Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ or to such other person or address as the CMA may notify to Tobii in writing.

#### **15. Powers of direction**

15.1. The CMA may give directions falling within this Order to:

- (a) A person specified in the directions; or
- (b) A holder for the time being of an office so specified in any body or person corporate or unincorporated.

15.2. Directions fall within this Article if they are written directions:

- (a) To take such steps as may be described in the directions for the purpose of carrying out or ensuring compliance with this Order; or
- (b) To do, or refrain from doing, anything so described which the person might be required by this Order to do or refrain from doing.

15.3. The CMA may vary or revoke any directions so given.

#### **16. Governing Law**

16.1. This Order shall be governed and construed in all respects in accordance with English law.

16.2. Any dispute arising concerning this Order shall be subject to the jurisdiction of the courts of England and Wales.

16.3. Any contractual obligations arising out of or in connection with this Order shall be governed and construed in all respects in accordance with English law.

#### **17. Termination**

17.1. This Order shall continue in force until such time as it is varied or revoked under the Act.



17.2. The variation or revocation of this Order shall not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.

## **Schedule 1: Suitable Purchaser Criteria**

The criteria on which the suitability of a Potential Purchaser of the Divestment Business will be assessed are as follows:

*(a) Independence:*

- i. The Potential Purchaser must have no significant connection to Tobii or conflicts of interest that may compromise its incentives to compete effectively with Tobii (eg an equity interest, common significant shareholders, shared directors). The CMA will consider the nature and materiality of any existing structural or financial links between the Potential Purchaser and Tobii, including any form of collaboration (eg in product development or product sales and marketing) and trading relationship.
- ii. The CMA will also pay close attention to any ongoing links between Tobii and the Potential Purchaser that would likely arise as a result of a full divestiture remedy. The CMA may require, if necessary, that such links be severed or otherwise addressed as a condition for any approval.

*(b) Capability:*

- i. The Potential Purchaser must have access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets to enable the Smartbox business to be an effective competitor in the market. This access should be sufficient to enable Smartbox to continue to develop as an effective competitor.
- ii. The CMA will also consider the ability of the Potential Purchaser to complete the transaction in a timely manner and within the agreed divestiture process timetable.

*(c) Commitment:*

The CMA will wish to satisfy itself that the Potential Purchaser has an appropriate business plan (eg the continuation and/or further development of Smartbox's pre-Merger strategy) and objectives for competing in the relevant markets, and that the Potential Purchaser has the incentive and long-term commitment to maintain and operate the Smartbox business as part of a viable and active business in competition with Tobii and other competitors in the relevant markets and to support end-users who use dedicated AAC solutions.

*(d) Absence of competition concerns:*

The CMA must be confident that the Potential Purchaser does not itself create a realistic prospect of competition concerns within any market or markets in the UK, and that it would not expect to investigate an acquisition of Smartbox by this Potential Purchaser regardless of whether or not the transaction constitutes a relevant merger situation under the Act. The CMA will also consider whether the terms of the agreement (and any other agreements or arrangements ancillary or connected to the agreement) would give rise to a material risk that the sale of the Divestment Business to the Potential Purchaser would not remedy the SLC and any adverse effects likely to arise from it.

## Schedule 2: Appointment and Functions of the Divestiture Trustee

### *Nomination of a Divestiture Trustee*

1. Within the period of five working days following the day on which the CMA issues a direction pursuant to Article 8 of this Order, 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 this 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.

## **Schedule 3: Appointment and Functions of the Hold Separate Manager**

### *Nomination of a Hold Separate Manager*

1. Tobii shall within the period of five working days starting with the day on which a direction is made by the CMA pursuant to Article 9 of this Order, submit to the CMA for approval a list of two or more persons who they propose to appoint as Hold Separate Manager. The proposal shall contain sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 2 below and shall include a schedule of the steps to be taken to give effect to the Hold Separate Manager Mandate.
2. Each person on the list referred to in paragraph 1 above shall be independent of and unconnected to Tobii, possess the qualifications necessary for the performance of the Hold Separate Manager 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 mandate subject to any modifications it deems necessary for the Hold Separate Manager to fulfil the Hold Separate Manager Obligation. If only one proposed person is approved, Tobii shall use its reasonable endeavours to appoint the person concerned as Hold Separate Manager in accordance with the Hold Separate Manager Mandate. If more than one proposed person is approved, Tobii shall decide which person to appoint as Hold Separate Manager from among the approved persons. Tobii shall appoint the Hold Separate Manager within two working days from the CMA's approval and on the terms of the Hold Separate Manager Mandate.
4. If all the proposed Hold Separate Managers 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 Hold Separate Manager within the time limit specified by the CMA.



6. The CMA shall nominate one or more persons to act as Hold Separate Manager, and Tobii shall appoint one of those Hold Separate Managers within two working days starting with the date of nomination under the terms of the Hold Separate Manager Mandate.
7. The function of the Hold Separate Manager is distinct from the function of the Divestiture 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 Hold Separate Manager 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 12, in such a way so as not to impede the Hold Separate Manager's independence or ability to effectively and properly fulfil the Hold Separate Manager Obligation.

#### *Hold Separate Manager Obligation*

9. The primary obligation of the Hold Separate Manager will be to exercise day-to-day management and control of Smartbox so as to preserve and, if necessary, restore effective competition in the markets affected by the Merger. The Hold Separate Manager will exercise management and control of Smartbox in such a way as to ensure that it is held separate from the Tobii Business.
10. The Hold Separate Manager Obligation shall include the performance of any other act or task necessary for the performance of the primary obligation of the Hold Separate Manager including the performance of the reporting obligations at paragraph 15 below.
11. The Hold Separate Manager shall take such steps as the Hold Separate Manager reasonably considers necessary including but not limited to:
  - (a) Giving such directions to the officers and staff of Tobii or Smartbox including any person holding such position on a temporary basis as are necessary for the fulfilment of the Hold Separate Manager Obligation;
  - (b) Attending such meetings of employees, officers (including board meetings, and meetings of any committee of the board) and members of Tobii and Smartbox as the Hold Separate Manager considers necessary for the fulfilment of the Hold Separate Manager Obligation; and
  - (c) Complying with such requests as the CMA may reasonably make for the purpose of ensuring Tobii and Smartbox enable the Hold Separate Manager to fulfil the Hold Separate Manager Obligation.

12. The CMA may, on its own initiative or at the request of the Hold Separate Manager or Tobii, give written directions or instructions to the Hold Separate Manager in order to assist it in the discharge of the Hold Separate Manager 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).
13. The Hold Separate Manager may enter into such agreements, deeds, instruments of transfer and other instruments and documents on behalf of Smartbox as are necessary for the performance of its duty, on such terms and conditions as it reasonably considers appropriate.
14. The Hold Separate Manager shall work with the Divestiture Trustee, if applicable, to bring about Effective Divestiture in a timely manner.

#### *Hold Separate Manager Reporting Obligations*

15. The Hold Separate Manager will provide to the CMA:
  - (a) Within seven days from the date of his appointment a written report reporting on such matters as are specified by the CMA, including any events giving rise to their appointment as Hold Separate Manager; and
  - (b) Thereafter at such other times to be agreed with the CMA from the Hold Separate Manager's appointment to Effective Divestiture a written report on the matters set out in paragraphs 9 to 14 above.

#### *Hold Separate Manager – Tobii and Smartbox Obligations*

16. Tobii and Smartbox shall enable the Hold Separate Manager to carry out the Hold Separate Manager Obligation.
17. The Hold Separate Manager shall act solely on the instructions of the CMA in the performance of the Hold Separate Manager Obligation and shall not be bound by any instruction of Tobii. Tobii shall not seek to create or vary the Hold Separate Manager Obligation except with the CMA's prior written consent.
18. Tobii shall remunerate the Hold Separate Manager and reimburse the Hold Separate Manager in full for all reasonable costs and expenses properly incurred, in accordance with the terms and conditions of the Hold Separate Manager's appointment, provided that such remuneration and reimbursement shall not give rise to any conflict of interest or otherwise impair the ability of the Hold Separate Manager to discharge the Hold Separate Manager Obligation. For the avoidance of doubt such reimbursement shall include the fees and disbursements of such legal or other professional advisers,

consultants and assistants as the Hold Separate Manager reasonably considers necessary for the discharge of the Hold Separate Manager Obligation.

19. The Hold Separate Manager may give written directions to Tobii and/or Smartbox. Tobii and Smartbox shall comply with such directions as the Hold Separate Manager may specify and cooperate fully with the Hold Separate Manager in its performance of the Hold Separate Manager Obligation.
20. Without prejudice to the generality of paragraph 19 above, that cooperation shall include:
  - (a) The grant to the Hold Separate Manager of all such rights, powers and authorities as are necessary for the performance of the Hold Separate Manager Obligation;
  - (b) Ensuring that personnel are available where necessary for meetings in order to provide the Hold Separate Manager with all information necessary for the performance of the Hold Separate Manager Obligation;
  - (c) The provision of such facilities as are necessary for the discharge by the Hold Separate Manager of the Hold Separate Manager Obligation; and
  - (d) The provision of full and complete access to all personnel, books, records, documents, facilities and information of Smartbox as the Hold Separate Manager may reasonably require.

*Hold Separate Manager – replacement, discharge, and reappointment*

21. If the Hold Separate Manager ceases to perform the Hold Separate Manager Obligation, or for any other good cause, including the exposure of the Hold Separate Manager to a conflict of interest, the CMA may issue directions to dismiss the Hold Separate Manager.
22. If the Hold Separate Manager is removed under paragraph 21 above, the Hold Separate Manager may be required to continue in its post until a new Hold Separate Manager is in place to whom the Hold Separate Manager has effected a full handover of all relevant information. The new Hold Separate Manager shall be appointed in accordance with the procedure in paragraphs 1 to 6.
23. Other than in accordance with paragraph 21, the Hold Separate Manager shall cease to act as Hold Separate Manager only after the CMA has discharged it from its duties at a time when all the functions with which the Hold Separate Manager has been entrusted have been met.

## Schedule 4: Compliance Statement for Tobii

I [insert name] confirm on behalf of Tobii AB. that:

### *Compliance in the Relevant Period*

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Tobii has complied with the Order made by the CMA in relation to the Merger on 19 December 2019 (the Order); and
  - (b) Tobii's subsidiaries have also complied with this Order.
2. Except with the prior written consent of the CMA:
  - (a) No action has been taken by Tobii that might prejudice the Effective Divestiture, the CMA's decisions in the Final Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating and preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC finding, including any action which might:
    - (i) Lead to the integration of the Smartbox Business and the Tobii Business;
    - (ii) Transfer the ownership or control of the Smartbox Business or any of its subsidiaries; or
    - (iii) Otherwise impair the ability of the Smartbox Business to compete independently in any of the markets affected by the Merger;
  - (b) The Smartbox Business has been carried on separately from the Tobii Business and the Smartbox Business's separate sales or brand identity has been maintained;
  - (c) The Smartbox Business has been maintained as a going concern and sufficient resources have been made available for the development of the Smartbox Business, on the basis of its pre-merger business plans;
  - (d) No substantive changes have been made to the organisational structure of the Smartbox Business, except in the ordinary course of business;
  - (e) No changes have been made to the organisational structure of the Tobii Business which would alter, impede or frustrate the implementation, carrying out or enforcement of the Order;

- (f) Except in the ordinary course of Tobii's competing business no action is taken to solicit the transfer of customers from the Smartbox Business to other Tobii entities;
- (g) No substantive changes are made to the management responsibilities within the Smartbox Business except in the ordinary course of business;
- (h) The nature, description, range and quality of goods and/or services supplied by the Smartbox Business have been maintained and preserved;
- (i) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) All of the assets of the Smartbox Business, including facilities and goodwill, have been maintained and preserved;
  - (ii) None of the assets of the Smartbox Business have been disposed of; and
  - (iii) No interest in the assets of the Smartbox Business has been created or disposed of;
- (j) There has been no integration of the information technology of the Smartbox and Tobii Businesses, and the software and hardware platforms of the Smartbox Business have remained essentially unchanged, except for routine changes and maintenance;
- (k) The customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Smartbox Business have been carried out by the Smartbox Business alone and the Tobii Business has not negotiated on behalf of the Smartbox Business (and vice versa) or entered into any joint agreements with the Smartbox Business (and vice versa);
- (l) All existing contracts of the Smartbox Business and the Tobii Business have been serviced by the business to which they were awarded;
- (m) No changes have been made to key staff of the Smartbox Business;
- (n) No key staff have been transferred between the Smartbox Business and the Tobii Business;
- (o) All reasonable steps have been taken to encourage all key staff to remain with the Smartbox Business;
- (p) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other

information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Smartbox Business (or any of its employees, directors, agents or Affiliates) to the Tobii Business (or any of its employees, directors, agents or Affiliates), or vice versa;

- (q) No action was taken which would prevent the Smartbox Business from being in a position to accept orders and otherwise supply the Discontinued Products to end customers in the UK on an on-going basis pursuant to the Implementation Plan;
- (r) No action was taken to prevent the Smartbox Business from reinstating the Development Projects, including investment and R&D staff allocations, to the position that existed at the end of July 2018 pursuant to the Implementation Plan;
- (s) Tobii shall not request or receive any details of the Implementation Plan and the Development Projects, except with the prior written consent of the CMA;
- (t) Except as listed in paragraph (u) below, there have been no:
  - (i) Changes to the key staff of the Smartbox Business;
  - (ii) Interruptions of the Smartbox Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for any period of time that could be expected to have a material and detrimental impact on Smartbox and/or its customers;
  - (iii) Substantial customer volumes won or lost or substantial changes to the customer contracts for the Smartbox Business; or
  - (iv) Substantial changes in the Smartbox Business's contractual arrangements or relationships with key suppliers.

(u) *[list of material developments]*

3. Tobii and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Smartbox or the Tobii Businesses in accordance with Article 4 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF TOBII AB

Signature .....

Name .....

Title .....

Date .....

## Schedule 5: Compliance Statement for Smartbox

I [insert name] confirm on behalf of Smartbox. that:

### *Compliance in the Relevant Period*

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Smartbox has complied with the Order made by the CMA in relation to the Merger on 19 December 2019 (the Order); and
  - (b) Smartbox's subsidiaries have also complied with this Order.
2. Except with the prior written consent of the CMA:
  - (a) No action has been taken by Smartbox. that might prejudice the Effective Divestiture, the CMA's decisions in the Final Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating and preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC finding, including any action which might:
    - (i) Lead to the integration of the Smartbox Business and the Tobii Business;
    - (ii) Transfer the ownership or control of the Smartbox Business or any of its subsidiaries; or
    - (iii) Otherwise impair the ability of the Smartbox Business to compete independently in any of the markets affected by the Merger;
  - (b) The Smartbox Business has been carried on separately from the Tobii Business and the Smartbox Business's separate sales or brand identity has been maintained;
  - (c) The Smartbox Business has been maintained as a going concern and sufficient resources have been made available for the development of the Smartbox Business, on the basis of its pre-merger business plans;
  - (d) No substantive changes have been made to the organisational structure of the Smartbox Business, except in the ordinary course of business;
  - (e) No changes have been made to the organisational structure of the Smartbox Business which would alter, impede or frustrate the implementation, carrying out or enforcement of the Order;
  - (f) No substantive changes are made to the management responsibilities within the Smartbox Business except in the ordinary course of business;



- (g) The nature, description, range and quality of goods and/or services supplied by the Smartbox Business have been maintained and preserved;
- (h) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) All of the assets of the Smartbox Business, including facilities and goodwill, have been maintained and preserved;
  - (ii) None of the assets of the Smartbox Business have been disposed of; and
  - (iii) No interest in the assets of the Smartbox Business has been created or disposed of;
- (i) There has been no integration of the information technology of the Smartbox and Tobii Businesses, and the software and hardware platforms of the Smartbox Business have remained essentially unchanged, except for routine changes and maintenance;
- (j) The customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Smartbox Business have been carried out by the Smartbox Business alone and the Tobii Business has not negotiated on behalf of the Smartbox Business (and vice versa) or entered into any joint agreements with the Smartbox Business (and vice versa);
- (k) All existing contracts of the Smartbox Business and the Tobii Business have been serviced by the business to which they were awarded;
- (l) No changes have been made to key staff of the Smartbox Business;
- (m) No key staff have been transferred between the Smartbox Business and the Tobii Business;
- (n) All reasonable steps have been taken to encourage all key staff to remain with the Smartbox Business;
- (o) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Smartbox Business (or any of its employees, directors, agents or Affiliates) to the Tobii Business (or any of its employees, directors, agents or Affiliates), or vice versa;

- (p) Smartbox was in a position to accept orders and otherwise supply the Discontinued Products to end-customers in the UK on an on-going basis, unless otherwise agreed in the Implementation Plan;
- (q) To the extent it is in Smartbox's control or power, Smartbox has reinstated the Development Projects, including investment and R&D staff allocations, to the position as existed at the end of July 2018, unless otherwise agreed in the Implementation Plan;
- (r) Smartbox has not provided any details of the Implementation Plan and Smartbox's Development Projects to Tobii;
- (s) Except as listed in paragraph (t) below, there have been no:
  - (i) Changes to the key staff of the Smartbox Business;
  - (ii) Interruptions of the Smartbox Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for any period of time that could be expected to have a material and detrimental impact on Smartbox and/or its customers;
  - (iii) Substantial customer volumes won or lost or substantial changes to the customer contracts for the Smartbox Business; or
  - (iv) Substantial changes in the Smartbox Business's contractual arrangements or relationships with key suppliers.

(t) *[list of material developments]*

3. Smartbox and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Smartbox or the Tobii Businesses in accordance with Article 4 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF SMARTBOX

Signature .....

Name .....

Title .....

Date .....

## Schedule 6: Variation to the 14 November 2018 derogation

1. To ensure Smartbox's compliance with Article 4.2(r) of this Order, the CMA has varied the derogation (originally granted on 14 November 2018 under the Initial Enforcement Order) such that the fourth derogation, which requires Smartbox to seek Tobii's approval for expenditure exceeding the £50,000 threshold, shall not apply to Smartbox's expenditure relating to:
  - (a) stock purchases for Smartbox's existing products; and
  - (b) stock purchases of finished products under Project X, one of the Development Projects, where Smartbox's purchase of finished products under Project X will be subject to prior CMA approval and subject to a minimum volume commitment that does not exceed [X] units and does not exceed \$ [X].