

DEROGATION LETTER

IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002

**Consent under section 72(3C) of the Enterprise Act 2002 (the 'Act') to certain
actions for the purposes of the Initial Enforcement Orders made by the Competition
and Markets Authority ('CMA') on 14 November 2022**

**Anticipated acquisition by Cochlear Limited of the hearing implants division of
Demant A/S, known as Oticon Medical**

Dear Mr Parker,

We refer to your submission dated 11 November 2022 requesting that the CMA consent to derogations to the Initial Enforcement Order of 14 November 2022 (the '**Initial Order**'). Unless otherwise stated, the terms defined in the Initial Order have the same meaning in this letter. Further, in this letter:

Oticon Medical Support Activities means any activities carried out by the Demant business which support the activities of Oticon Medical in relation to the procurement, supply and/or development of Oticon Medical's products. The Oticon Medical Support Activities include (without limitation) any operational, relationship management, strategic, development, technical or back-office activities or services.

Under the Initial Order, save for written consent by the CMA, Demant and Oticon Medical, are required to refrain from taking any action which might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any remedial action which may be justified by the CMA's decisions on such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, the CMA consents to Demant and Oticon Medical carrying out the following actions, in respect of the specific paragraphs:

1. Paragraphs 6(c) and 6(e) of the Initial Order

Demant derogation request

Demant has sought CMA consent to limit the application of the above-mentioned provisions of the Initial Order so that they only apply to activities of Demant's Oticon Medical Support Activities (thereby excluding unrelated activities within the wider Demant business from the scope of the above-mentioned provisions).

Based on the information provided and representations made by Demant, the CMA understands that certain of Oticon Medical's activities are integrated within the Demant business's wider group operations including [X], and therefore cannot be readily ring-fenced for the purposes of applying the Initial Order. Additionally, the Oticon Medical business relies on the Demant business for the provision of [X].

Derogation

On the basis of the information provided by Demant and in the particular circumstances of this case, the CMA consents to a derogation to limit the application of paragraphs 6(c) and 6(e) of the Initial Order, so that they only apply to the Oticon Medical business and the Oticon Medical Support Activities, strictly subject to the following exclusions:

- i. Demant is not permitted to carry out any organisational or financial restructuring to its business which could negatively impact the Oticon Medical business or the Oticon Medical Support Activities;
- ii. Demant is not permitted to dispose of any assets (tangible or intangible) where this action could negatively impact the Oticon Medical business or the Oticon Medical Support Activities; and
- iii. Demant is not permitted to terminate any existing products or pipeline development products or otherwise take any action which could negatively impact the Oticon Medical business or the Oticon Medical Support Activities.

For the avoidance of doubt, this derogation does not affect the fact that, by virtue of the Initial Order:

- i. Demant is not permitted to take any action which could degrade the Oticon Medical Support Activities or otherwise adversely impact the ability of the Oticon Medical business to carry out its pre-merger business plan pursuant to the obligations under paragraph 6(b) of the Initial Order.

- ii. Demant is required to provide continued support to Oticon Medical and to the Oticon Medical Support Activities (~~[X]~~) to ensure the continued viability and competitive capability of the Oticon Medical business.

2. Paragraphs 6(i) and 6(k) of the Initial Order

Demant has sought CMA consent to limit the application of the above-mentioned provisions of the Initial Order so that they only apply to Oticon Medical key staff and Demant key staff engaged in the Oticon Medical Support Activities (i.e. in addition to the Oticon Medical business key staff).

Based on the information provided, and representations made by Demant, the CMA understands that the Demant staff who carry out the Oticon Medical Support Activities hold broader responsibilities in respect of Demant business activities unrelated to the Transaction, and that the Oticon Medical Support Activities ~~[X]~~.

On the basis of the information provided by Demant and in the particular circumstances of this case, the CMA consents to a derogation to limit the application of paragraphs 6(i) and 6(k) of the Initial Order, so that they only apply to the Oticon Medical business key staff and to those Demant staff engaged in the Oticon Medical Support Activities as listed in Annex 1.

This derogation is granted, strictly on the basis that:

- i. Annex 1 includes all Demant business key staff, for the purposes of paragraphs 6(i) and 6(k) of the Initial Order, who are engaged in the Oticon Medical Support Activities;
- ii. The list of key staff in Annex 1 can be varied with the prior written consent of the CMA, which may be given via email.

3. Paragraph 9 of the Initial Order

Further to derogations at sections 1 and 2 above, Demant has sought CMA consent to limit its reporting obligations under paragraph 9 of the Initial Order so that it is only required to report on Oticon Medical Support Activities (thereby excluding non-Oticon Medical Support Activities within the Demant business from the scope of the reporting requirements under paragraph 9 of the Initial Order).

The CMA consents to a derogation to limit Demant's reporting requirements pursuant to paragraph 9 of the Initial Order so that Demant is not required to report on those material

developments that, as a result of the relevant derogations above, are now outside the scope of paragraphs 6(c), 6(e), 6(i) and 6(k) of the Initial Order.

For the avoidance of doubt, the remainder of Demant's reporting requirements under paragraph 9 of the Initial Order remain intact.

The CMA grants the aforementioned derogations from paragraphs 6(c), 6(e), 6(i), 6(k) and 9 of the Initial Order strictly on the basis that these derogations will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decisions on a reference.

Yours sincerely,

Adam Cooper

Director

Remedies, Business and Financial Analysis

Annex 1: Key Demant staff engaged in Oticon Medical Support Activities

Name	Area
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]