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 30 November 2022 requesting that the CMA consent to a derogation 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.

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. **Paragraph 6(d) of the Initial Order**

Demant has sought CMA consent for the discontinuance of certain products supplied in the UK by the Oticon Medical business.

Oticon Medical has decided to discontinue the Ponto 3 family of products. In particular, this includes the Ponto 3, Ponto 3 Power, Ponto 3 SuperPower, Genie Medical 2016, the Oticon Medical Streamer and associated products (such as dummies, skins, colour samples and stickers) (together, the '**Ponto 3 Products**').

Demant submitted that the planned discontinuation of the Ponto 3 Products is part of ordinary course of business product lifecycle planning and it is entirely unrelated to the transaction. Following the release of next generation products, demand for the

Ponto 3 Products has fallen and going forwards Oticon Medical will continue to provide newer and suitable alternatives to customers, whilst maintaining support for those customers using the discontinued products. Demant submitted evidence to the CMA which demonstrated that these product decisions took place in [✂] and [✂], and do not coincide with Demant's consideration and anticipation of the transaction.

On the basis of the representations made by Demant, and in the circumstances of this case, the CMA consents to a derogation from paragraph 6(d) to implement the changes described above, strictly on the basis that:

(i) These changes will not have an adverse impact on Oticon Medical's operations or alter its strategic direction;
(ii) These decisions have been taken on a commercial basis and were taken without consideration of or anticipation of the transaction;
(iii) End-users of the Ponto 3 Products will continue to receive high quality support for the duration of their relevant warranty periods. Cross compatibility ensures that end-users of Ponto 3 Products are able to use upgraded products once their Ponto 3 Products require replacement; and
(iv) These changes will not prejudice a CMA reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

Sincerely,

Faye Fullalove
Assistant Director
Mergers
7 December 2022