

Acquisition by Cochlear Limited of the hearing implants division of Demant A/S

DECISION TO REFER

ME/6999/22

The CMA's decision to refer under section 22 of the Enterprise Act 2002 given on 20 December 2022.

Introduction

1. Cochlear Limited (**Cochlear**) has agreed to acquire the hearing implants division (**Oticon Medical**) of Demant A/S (the **Merger**). Cochlear and Oticon Medical are together referred to as the **Parties**.
2. On 6 December 2022, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).¹
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, in order to allow the Parties the opportunity to offer undertakings to the CMA for the purposes of section 73(2) of the Act, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so before the end of the five working day period specified in section 73A(1)(a) of the Act. The SLC Decision stated that the CMA would refer the Merger for a phase 2 investigation pursuant to sections 33(1), and in accordance with section 34ZA(2) of the Act, if no undertakings for the purposes of section 73(2) of the Act were offered to the CMA by the end of this period (ie by 13 December 2022); if the Parties indicated before this deadline that

¹ See [Cochlear / Oticon merger inquiry](#).

they did not wish to offer such undertakings; or if the undertakings offered were not accepted.

5. On 13 December 2022, the Parties informed the CMA that they would not offer such undertakings to the CMA.

Decision

6. Therefore, pursuant to sections 33(1) and in accordance with section 34ZA(2) of the Act, the CMA has decided to refer the Merger to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to conduct a phase 2 investigation.

Sorcha O'Carroll
Competition and Markets Authority
20 December 2022