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Glossary

Appendix A: Terms of reference

1. In exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**) the Competition and Markets Authority (**CMA**) believes that it is or may be the case that:

   a) arrangements are in progress or in contemplation which, if carried into effect will result in the creation of a relevant merger situation, in that:

      (i) enterprises carried on by Cochlear Limited will cease to be distinct from enterprises carried on by the hearing implants division (**Oticon Medical**) carried on by Demant A/S; and

      (ii) the condition specified in section 23(2)(b) of the Act is satisfied; and:

   b) the creation of that situation may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom for goods or services, including the supply of bone conduction solutions.

2. Therefore, in exercise of its duty under section 33(1) of the Act, the CMA hereby makes a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group may investigate and report, within a period ending on 5 June 2023, on the following questions in accordance with section 36(1) of the Act:

   a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

   b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

Sorcha O'Carroll
Competitions and Markets Authority
20 December 2022

Appendix B: Conduct of the inquiry

1. On 20 December 2022, the CMA referred the Merger for an in-depth phase 2 inquiry.

2. We published the biographies of the members of the Inquiry Group conducting the inquiry on the inquiry webpage on 21 December 2022 and the relevant administrative timetable was published on the inquiry webpage on 20 January 2023.

3. We invited interested parties to comment on the Merger. We sent detailed requests for information to the Parties' competitors and customers, and a number of these also provided us with further information by video conference calls as well as by responding to supplementary written questions. Evidence submitted to the CMA during phase 1 was also considered in phase 2.

4. We received written evidence from the Parties in the form of submissions and responses to information requests, including a large number of internal documents.

5. On 20 January 2023, the CMA published an Issues Statement on the inquiry webpage setting out the areas on which the phase 2 inquiry would focus. A non-confidential version of the Parties' joint response to the CMA's Issues Statement was published on the inquiry webpage on 21 March 2023.

6. On 23 and 26 January 2023, members of the Inquiry Group, accompanied by CMA staff, attended in person and via video conference, teach-ins (in lieu of site visits) separately with each Party and its advisers.

7. During our inquiry, we sent the Parties a number of working papers for comment. We also provided the Parties and third parties with extracts from our working papers for comments on accuracy and confidentiality. The Parties were also sent an annotated issues statement, which outlined our emerging thinking to date prior to their respective main party hearings, which were held separately with each Party on 21 and 22 March 2023. The Parties provided joint comments on our annotated issues statement and working papers on 23 March 2023.

8. A non-confidential version of our provisional findings report has been published on the inquiry webpage. As we have provisionally concluded that (i) the Merger constitutes arrangements in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and (ii) that the creation of that situation may be expected to result in an SLC

in the supply of BCS products in the UK, a notice of possible remedies (**Remedies Notice**) has also been published on the inquiry webpage.

9. We would like to thank all those who have assisted in our inquiry so far.

Appendix C: Evidence on competitive constraints from the Parties' internal documents

Introduction

1. In this appendix we present evidence relating to competitive constraints from the Parties' internal documents and consider submissions made by the Parties on these. We begin by presenting evidence from Cochlear's documents, before considering Oticon Medical's documents.

Cochlear's internal documents

2. We first begin by setting out evidence on Cochlear's strategic priorities, before setting out evidence on the competitors which Cochlear identifies, monitors and to which Cochlear responds.

Cochlear's strategic priorities

3. The Parties submitted that Cochlear has a longstanding core strategic priority to grow the hearing implant market and routinely assesses its own business performance and strategies by reference to this addressable market.[1] We consider that Cochlear's internal documents show that it is seeking growth, particularly with Osia, but that gaining market share is also a key priority:

   (a) In its [✂], Cochlear outlines that its must-wins are to retain market leadership, grow the hearing implant market and deliver consistent revenue and earnings growth. In relation to growth in implants, the document identifies barriers and describes activities that Cochlear is undertaking for growth, such as supporting clinical research, generating health economic evidence, building a professional network, growing awareness, and generating segment growth. In the section of the document titled 'Retain market leadership', the document names Oticon Medical and MED-EL under the heading 'Largest direct competitors continue to invest'. Cochlear also compares its BCS products to those offered by Oticon Medical and MED-EL on a scorecard of factors. The document presents a 'Product & Services Plan', which includes reference to Cochlear's advantages over other BCS suppliers and key risks posed by these.[2]

[1] Parties' response to the AIS and WPs, dated 23 March 2023, paragraphs 3.3 and 3.4.
[2] Annex 151 to the FMN - [✂].

(b) In a competitive update document from December 2020, Cochlear categorises the key growth opportunities for Osia as market growth opportunities and market share growth opportunities. The document outlines how market growth opportunities include apathy, reconstructive middle-ear surgery and hearing aids and contains high-level comparisons of Osia to hearing aids and middle-ear surgery. The document also includes more detailed comparisons and benchmarking of Osia with MED-EL's Bonebridge, Oticon Medical's Ponto and non-surgical products.[3]

(c) An internal [✂] identifies that there is a compelling opportunity for Cochlear to grow the market. The document includes estimations of the return on investment from cochlear implants and a comparison of outcomes between patients with cochlear implants and hearing aids. Most of the document is focused on cochlear implants, but the document notes that Osia provides an opportunity for Cochlear to grow the market through indication and geographic expansion. The document also identifies that acoustics growth is heavily influenced by new product introductions and market share shifts from competitors' new products.[4]

The competitors which Cochlear identifies, monitors, and to which it responds

4. Cochlear's internal documents show that it considers a wide range of hearing solutions in relation to its Passive BCS products, including other Passive BCS products, MED-EL's Bonebridge product and other types of hearing solutions. However, the documents show that it views Oticon Medical's Passive BCS product as [✂] to its Passive BCS product, that MED-EL's Bonebridge product is [✂] and that the constraint from other hearing solutions is limited.

(a) Cochlear's internal strategy and marketing documents for new Baha product releases show that it considers [✂].[5] [✂].[6] [✂].[7] Another document discusses MED-EL's ADHEAR non-surgical BCS product and notes that 'clinicians seem less impressed by the product's output power' but 'clinicians are interested in the concept mainly due to its discreteness'.[8]

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[3] Cochlear's response to the CMA's S109, 10 January 2023, Q7, Annex 218, '[✂], December 2020.
[4] Annex 011 to the FMN, [✂], March 2021. [✂].
[5] Cochlear's response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 234, [✂], page 17); and Cochlear's response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 227, [✂] 20 January 2020, page 5. (Annex 227 – [✂]).
[6] Cochlear's response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 227, [✂], 20 January 2020, page 6. (Annex 227 – [✂]).
[7] Cochlear's response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 227, [✂] 20 January 2020, page 6. (Annex 227 – [✂]).
[8] Cochlear's response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 226, '[✂] (Annex 226 – [✂]).

(b) In an internal training presentation, Cochlear identified a range of surgical and non-surgical products with which it competes. In the surgical space, it compares its Baha 6 product with Oticon Medical's Ponto product, [✂]. In the non-surgical space, [✂]. The presentation contains a chart showing the wider competitive landscape which includes solutions such as middle-ear implants, cochlear implants and hearing aids. These are only mentioned once, and Cochlear does not provide details about how its products compare to these solutions or who the competitors are, as it does for the alternative BCS products.[9]

5. Cochlear's documents consider a range of other solutions in the context of its Active BCS product, including MED-EL's Bonebridge product, Passive BCS products and other hearing solutions. However, the documents also show that it considers MED-EL's Bonebridge product to be [✂] and, [✂], Oticon Medical's Ponto product, but that other hearing solutions are not close competitors.

(a) In an internal strategy and marketing document for Osia, Cochlear states that one of the key business objectives for its new Osia system release is [✂].[10] It also states that it 'expects the strongest competition will come from [✂].[11] Elsewhere in the document, Cochlear states that the Osia system must be competitive regarding all other hearing solutions, including middle-ear surgery and/or hearing aids and that these are the main competitors to Osia.[12] The document goes on to provide seven personas for target users. Many of these have tried hearing aids but with either inadequate benefit or side-effects (such as infections) with the implication being that hearing aids are not likely viable alternatives to BCS for them.

(b) A Cochlear competitive update internal document contains a detailed comparison of Osia and Bonebridge. [✂]. It also contains a comparison of Osia to percutaneous, transcutaneous and non-surgical BCS. The presentation begins by identifying a market growth opportunity from targeting those who have not been helped by hearing aids and middle-ear surgeries, but these solutions are just mentioned once and not identified in the context of being competitors.[13] Another Cochlear internal training

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[9] Cochlear's response to the CMA's S109, 10 January 2023, Q7, Annex 220, [✂]17 October 2022, pages 3, 5, 25, 34. [✂].
[10] Cochlear's response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 231, [✂] page 3.
[11] Cochlear's response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 231, '[✂], page 15.
[12] Cochlear's response to the CMA's S109, 10 January 2023. Q7, 17, 18, Annex 231, '[✂], page 5.
[13] Cochlear's response to the CMA's S109, 10 January 2023, Q7, Annex 218, [✂], 2 December 2020. ([✂]).

presentation focuses on a detailed comparison of Osia and Bonebridge, without reference to any other products.[14]

(c) In a [✂] Cochlear competitive update on MED-EL's Bonebridge and ADHEAR products, Cochlear notes some perceived weaknesses of these products. In particular, Cochlear notes that Bonebridge requires complex surgery, is not compatible with MRI scans (in the US), has a lower clinical fitting range than Cochlear's Passive BCS products, and has had reliability issues. ADHEAR is noted as having a lower fitting range than Cochlear's non-surgical BCS products.[15] A Cochlear internal document compares the features of MED-EL's Bonebridge to Cochlear's Osia and notes that Osia has advantages compared to Bonebridge, for example a higher fitting range and superior connectivity.[16]

6. Across both Active BCS products and Passive BCS products, Cochlear's documents show that it views Oticon Medical and MED-EL as its main competitors and that the competition from other hearing solutions is more limited.

(a) In an internal document relating to the 2023 financial year Cochlear identifies a number of [✂]. Out of the [✂] identified, [✂].[17] In an internal document for the 2022 financial year [✂], Cochlear identifies [✂].[18]

(b) In a 2019 internal document Cochlear directly compares its products with Oticon Medical's Ponto product. The document contains a slide which notes that there is increasing competition from middle-ear surgery, hearing aids, wireless CROS and cochlear implants, but no direct comparisons are made to these products.[19]

The constraint from other hearing solutions

7. The Parties submitted that they do not dispute that some of Cochlear's internal documents make clear reference to Oticon Medical as a direct Passive BCS competitor and contain more information on Oticon Medical's products than non-BCS hearing solutions such as hearing aids.[20] However, the Parties also submitted that they disagree that Cochlear's internal

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[14] Cochlear's response to the CMA's S109, 10 January 2023, Q7, Annex 219, [✂], 27 May 2021. [✂].
[15] Cochlear's response to the CMA's S109, 10 January 2023, Q7, Annex 216, [✂].
[16] Cochlear's Merger Notice Annexes in responses to Q10, Annex 108, [✂], October 2021, slide 1. (Annex 108 – [✂]).
[17] Cochlear's response to the CMA's S109, 10 January 2023, Q7, Annex 213, [✂], 8 November 2022, tab [✂]. [✂].
[18] Cochlear's response to the CMA's S109, 10 January 2023, Q7, Annex 214, [✂]. ([✂]).
[19] Cochlear's response to the CMA's S109, 10 January 2023, Q7, Annex 221[✂] page 6. [✂].
[20] Parties' response to the AIS and WPs, dated 23 March 2023, paragraph 1.4 of Annex.

documents show that it faces limited competition from other hearing solutions and that:

(a) This is demonstrated by other hearing solutions being referred to as competitors, rather than market context, in a significant majority of documents and the fact that other hearing solutions do not always feature in less detail than BCS products.[21]

(b) The fact that Cochlear assesses its technology against other BCS products in more detail than other hearing solutions does not in itself mean that these pose a more limited competitive constraint.[22] The Parties state that other hearing solutions provide a competitive constraint even if they are mentioned in less detail. At different points in their submissions, they variously state that this reflects the fact that Cochlear has less knowledge of hearing aids,[23] that Cochlear has [✂] information on hearing aids through its alliance with GN Hearing,[24] and that certain documents are operational and technical rather than strategic.[25]

8. The Parties' have also submitted that we should give more weight to Cochlear's strategic documents as these demonstrate its strategy and are presented to the Board or the market.[26]

9. We note that a number of documents show other hearing solutions being referenced as market context rather than as competitors. For example:

(a) A [✂] for a Baha system release provides a single diagram depicting the broader competitive landscape, including cochlear implants, middle-ear implants and hearing aids. This is presented once and is not referred to again. The same document states that the main competitor is Ponto and outlines the expected benefits of Ponto 3. It also outlines expected developments with two non-surgical BCS products (MED-EL's ADHEAR and BHM's Contact Forte).[27]

(b) Other hearing solutions are also referred to as context rather than competitors in the competitive update document outlined in paragraph 5(b) above and the training presentation outlined in paragraph 4(b).[28] The Parties submitted that the training presentation is for Cochlear staff that are going into surgeries to discuss options for a

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[21] Parties' response to the AIS and WPs, dated 23 March 2023, paragraph 3.18.
[22] Parties' response to the AIS and WPs, dated 23 March 2023, paragraph 3.19 and paragraph 1.4 of Annex.
[23] Parties' response to the AIS and WPs, dated 23 March 2023, paragraphs 1.4 of the Annex.
[24] Parties' response to the AIS and WPs, dated 23 March 2023, paragraph 3.14.
[25] Parties' response to the AIS and WPs, dated 23 March 2023, paragraphs 1.8 of Annex.
[26] Parties' response to the AIS and WPs, dated 23 March 2023, paragraph 1.8 of Annex.
[27] Cochlear's Response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 234, [✂], 11 June 2021.
[28] Cochlear's Response to the CMA's S109, 10 January 2023, Q7, Annex 220: [✂] 17 October 2022.

patient once a decision is taken to use a BCS product.[29] However, we note that other hearing solutions are similarly referenced as context in other more strategic documents.

10. Furthermore, even in documents where other hearing solutions are referenced as competitors, other BCS products are typically considered in considerably more detail. Whereas many documents include detailed comparisons between Cochlear's BCS products and other BCS products, no such comparisons are made with other solutions and in most cases no specific suppliers or brands of other hearing solutions are named. For example:

(a) A [✂] for a new Baha sound processor states that there are direct competitors with bone conduction solutions as well as competing hearing treatments – but does not name any specific product or competitor. The document then goes on to present a detailed comparison with Ponto.[30] Similarly, a [✂] (described in paragraph 5(a)) states that an objective is to grow the market and the main competitors are middle-ear surgery and/or hearing aids. However, the document also states that another objective is to [✂] and that it expects the strongest competition to come from these products. It also describes in detail how Osia compares to these two products whilst no such comparisons of Osia with hearing aids or middle-ear surgery are made nor is a specific supplier or brand of these named.[31]

(b) Similarly, a [✂] states that indirect competitors are mainly [✂] but does not name a specific competitor. The document goes on to make detailed comparisons between Osia [✂].[32]

(c) Another [✂] states that the main competitor to Osia is middle-ear surgery and/or hearing aids followed by other BCS suppliers but does not name any individual supplier. However, the document also states that one objective of the release is to [✂]and goes on to compare Osia to Bonebridge on dimensions including [✂].[33]

11. The Parties submitted that some documents mention other hearing solutions in detail but do not mention Oticon Medical or Ponto (or only do so briefly), and that these show non-BCS solutions driving Cochlear's innovation and R&D efforts.[34] We consider that whilst these documents show Cochlear

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[29] Parties' response to the AIS and WPs, dated 23 March 2023, paragraph 1.4(a) of the annex.
[30] Cochlear's response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 227, '[✂], 20 January 2020, (Annex 227 – [✂]).
[31] Cochlear's response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 231, [✂].
[32] Cochlear's response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 235, [✂].
[33] Cochlear response to the CMA's S109, 10 January 2023, Annex 237, [✂].
[34] Parties' response to the AIS and WPs, dated 23 March 2023, paragraph 1.5 of the Annex.

monitoring developments in hearing aids, this is with the stated aim of gaining competitive advantage against other BCS suppliers rather than competing with other hearing solutions.

(a) For example, a 2020 [✂] relating to the [✂]. However, the document explicitly states that although [✂] are prevalent in the hearing aid industry, as none of its direct BCS competitors offer it, this will allow them to obtain a first-mover advantage.[35]

(b) Another 2020 [✂] for a [✂] in the hearing aid sector but states that the objective of this development is to protect market share in developed markets and grow in emerging markets.[36]

12. A number of documents also include references to other BCS products but do not reference other hearing solutions. For example:

(a) A [✂] from 2019 for [✂] describes one of the objectives of this as being to [✂]. The document goes on to compare Osia with Bonebridge and Sentio. Other hearing solutions are not mentioned in this document.[37]

(b) A [✂] for Baha 6 describes the key objectives as being to [✂], gain market share and grow new system sales especially in emerging markets. The document considers how Baha should be positioned against Osia and Ponto. Elsewhere the document states that Ponto is the main direct competitor and Cochlear outlines its expectations of the main benefits of Ponto. Cochlear also refers to MED-EL's ADHEAR and BHM's Contact Forte. The only other hearing solution mentioned is Soundbridge which is included in one diagram and not referred to again.[38]

13. We consider that the explanations provided by the Parties for why other hearing solutions may not provide a limited constraint even if they are mentioned in less detail, as described in paragraph 7(b), are not supported by the evidence.

14. In our view, a range of Cochlear's documents – including strategy, risk, product development and training documents – show that it faces a more limited constraint from other hearing solutions than other BCS products. As outlined in paragraph 8, the Parties have submitted that not all documents should be given the same weight from an evidentiary perspective – and strategic documents should be given more weight than operational and

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[35] Cochlear's response to the CMA's S109, 10 January 2023, Q7, Annex 230, [✂], 13 October 2020.
[36] Cochlear's response to the CMA's S109, 10 January 2023, Q7, Annex 228, [✂] 28 January 2020.
[37] Cochlear's response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 225, [✂], 10 April 2019. Annex 225, [✂].
[38] Cochlear's Response to the CMA's S109, 10 January 2023, Q7, 17, 18, Annex 234, [✂], 11 June 2021.

technical documentation. We do not consider that such weighting is necessary as our finding that other hearing solutions provide a limited constraint compared to other BCS products is consistent across different types of documents.

Oticon Medical's internal documents

15. Oticon Medical's internal documents show that it considers Cochlear to be its [✂] competitor for Passive BCS products and, [✂], MED-EL:

    (a) A 2021 internal document identifies opportunities and threats for Oticon Medical in relation to Cochlear and MED-EL's products and includes suggested actions for Oticon Medical to take in light of these. The same document compares the [✂] of the three suppliers' Passive BCS products and Active BCS products.[39]

    (b) In a March 2019 document, Oticon Medical compares its BCS market share to Cochlear's over time. The same document contains a brief reference to MED-EL and Sophono noting that MED-EL has [✂] but is [✂].[40] A number of other documents focus on Cochlear and make very limited reference to any other competitors, including MED-EL.[41]

    (c) A 2022 document states that a key milestone for Oticon Medical is breaking into [✂].[42] Similarly, a 2020 document identifies Oticon Medical's top 20 accounts and identifies [✂]. The same document also refers to [✂].[43]

    (d) An Oticon Medical internal document sets out its sales strategy when competing against Osia, including [✂].[44]

    (e) In a 2021 internal document Oticon Medical describes its view of the strategies of Cochlear and MED-EL.[45]

16. Oticon Medical's internal documents also show that MED-EL and other hearing solutions have some [✂]:

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[39] Demant's response to the CMA's S109, 10 January 2023, Q7, 9, 12, 17, 18, [✂], October 2021, slide 18, 20. [✂].
[40] Demant's response to the CMA's S109, 10 January 2023, Q11, [✂], 20 March 2019, slide 4, 5, 7. [✂].
[41] Demant's response to the CMA's S109, 10 January 2023, Q7, 10, [✂], 25 April 2019, slide 6-9 [✂]; and Demant's response to the CMA's S109, Q7, 11, [✂], October 2019, slide 7. [✂].
[42] Demant's response to the CMA's S109, 10 January 2023, Q12, 14, [✂], November 2022, slide 4. [✂].
[43] Demant's response to the CMA's S109, 10 January 2023, Q7, 8, [✂], 29 August 2019, slide 24, 26, 27.
[44] Demant's response to the CMA's S109, 10 January 2023, Q7, 10, [✂], 4 January 2018.
[45] Demant's response to the CMA's S109, 10 January 2023, Q7, 10, [✂], August 2021, page 4. [✂].

(a) In a September 2020 Oticon Medical business review slide deck, Oticon Medical notes that whilst MED-EL's Bonebridge product is a [✂].[46]

(b) In the same slide deck, Oticon Medical notes that MED-EL is the main producer of middle-ear implants. It notes that middle-ear implants are fairly invasive, the surgery is complicated and expensive and that it is not reimbursed in the majority of countries.[47]

(c) In a January 2022 Oticon Medical business plan slide deck, Oticon Medical states that it considers MED-EL's [✂].[48]

17. In the Parties' response to the AIS and WPs, they submitted that Oticon Medical's internal documents do not focus on the competitive constraint from hearing aids and the competitive interaction between hearing aids and BCS products because Oticon Medical is a small part of Demant's corporate group that focuses on hearing aids.[49] However, we have not seen any evidence from Oticon Medical's internal documents of it referring to hearing aids as a competitor in relation to BCS products or drawing on Demant's expertise in hearing aids.

18. The Parties also make reference to an Oticon Medical internal document from 2022 which they say shows that the addressable market for BCS is larger than the universe of patients that have opted for a BCS implant.[50] The document contains a slide which outlines how access and awareness will drive growth, and lists activities to achieve this, including [✂][51] The document does not contain any reference to specific non-BCS products. The same document contains [✂] information on Cochlear and MED-EL, including Oticon Medical's expectations for their [✂] and comparisons of their BCS products. We consider that this is consistent with non-BCS products providing a weaker constraint.

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[46] Demant's response to the CMA's S109, 10 January 2023, Q7, 10, 11, [✂], September 2020, slide 23. [✂].
[47] Demant's response to the CMA's S109, 10 January 2023, Q7, 10, 11, [✂], September 2020, page 22. [✂].
[48] Demant's response to the CMA's S109, 10 January 2023, Q10, 11, 12, 14, 15, 17, 18, [✂], January 2022, page 15. [✂].
[49] Parties' response to the AIS and WPs, dated 23 March 2023, paragraph 1.9 of Annex.
[50] Parties' response to the AIS and WPs, dated 23 March 2023, paragraph 1.9 of Annex.
[51] Demant's response to the CMA's S109, 10 January 2023, Q7, 10, 11, 12, 17, 18, [✂], slide 37 [✂].

Appendix D: The transaction structure and valuation

Introduction

1. This appendix sets out our understanding of the process by which Cochlear assessed the opportunity to acquire Oticon Medical. This Appendix explores the qualitative and quantitative aspects of Cochlear's evaluation, drawing on evidence from the Parties' submissions and the Parties' internal documents.

The Transaction

2. On 27 April 2022, Cochlear and Demant entered into a Put Option Agreement and agreed the form of the Asset Sale and Purchase Agreement, which was signed on 25 May 2022 (the **ASPA**).[1]

3. Under the terms of the ASPA, Cochlear will, upon completion, acquire sole control over Oticon Medical through the acquisition of:

   (a) all of the shares (100%) of the following legal entities:

      (i) Oticon Medical AB, a Swedish private limited liability company;

      (ii) Oticon Medical Maroc, a Moroccan limited liability company;

      (iii) Oticon Medical, LLC, a US limited liability company incorporated in New Jersey;

      (iv) Neurelec S.A.S, a French simplified joint-stock corporation; and

      (v) Oticon Medical A/S, a Danish private limited company;[2] and

   (b) certain other assets (eg relevant IP) and the transfer of current employees employed within the Target Subsidiaries (located in Sweden, France, the US and Morocco).[3]

[1] FMN, paragraph 55.
[2] FMN, paragraph 56. FMN, Annex 201, clause 1.1.
[3] FMN, paragraph 56.

4. Under the ASPA, the CI business of Demant was assigned an Enterprise Value (**EV**)[4] of DKK [✂] and the BCS business was assigned an EV of DKK [✂] million (approximately equivalent to GBP [✂] million).[5,6]

5. Under the terms of the ASPA, [✂], the Parties agree to [✂].[7] These are as follows:

   (a) [✂];[8] or

   (b) [✂].[9]

6. In addition, the ASPA sets out that [✂].[10] [✂].[11]

7. With respect to the Parties' rationale for the [✂], in a board paper prepared shortly prior to the announcement of the Merger,[12] Cochlear noted that:

   '[✂]'.

8. The Parties have submitted that this [✂], as contemplated by the ASPA and as set out above, was agreed [✂],[13] and that the BCS business is not viable on a standalone basis.[14] The Parties' submissions on this issue are considered in the Counterfactual chapter.

Cochlear's evaluation of Oticon Medical

Cochlear's initial assessment and considerations

9. Cochlear first assessed the opportunity to acquire Oticon Medical in late 2021.[15] The Parties submitted to the CMA that the Oticon Medical business was marketed to potential acquirers through direct outreach from Søren

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[4] Enterprise Value means the value of the business to all of its funders (including its debt holders and its shareholders) regardless of the 'mix' of that funding, ie whether predominantly from debt or equity. Adjustments are subsequently made to this 'headline' value to account for the debt of the target business, its cash, and its 'ordinary' working capital position, producing an Equity Value valuation. Equity Value is the value of the business to shareholders, and represents the amount paid for the acquisition of the target business's shares.
[5] FMN, Annex 201, definitions for 'BAHS Enterprise Value' and 'CI Enterprise Value'. FMN, paragraphs 55 and 58. The GBP figure is derived from a conversion of DKK based on the Bank of England exchange rate as of 12 September 2022 (GBP 1 = DKK 8.95920) (FMN, footnote 79).
[6] Following estimates of net debt and working capital adjustments, the 'equity value' (ie price paid to shareholders) was estimated to be DKK [✂] million (approximately equivalent to GBP [✂] million) in respect of the CI business at the time of the transaction.
[7] FMN, Annex 201 – Agreed Form Asset and Share Purchase Agreement – Executed version, [✂].
[8] FMN, Annex 201 – Agreed Form Asset and Share Purchase Agreement – Executed version, [✂].
[9] FMN, Annex 201 – Agreed Form Asset and Share Purchase Agreement – Executed version, [✂].
[10] FMN, Annex 201 – Agreed Form Asset and Share Purchase Agreement – Executed version, [✂].
[11] FMN, Annex 201 – Agreed Form Asset and Share Purchase Agreement – Executed version, [✂].
[12] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[13] FMN, paragraph 32.
[14] FMN, paragraph 27.
[15] FMN, paragraph 107.

Nielsen (CEO of Demant) to relevant key decision-makers, rather than through a more formal or open process.[16]

10. At a board meeting held on [✂] presented a paper to the Board assessing a potential acquisition of Oticon Medical, and including an update on his ongoing discussions with Søren Nielsen.[17] The paper noted that:

    '[✂].[18]

11. We note that, at this early stage of the process, Demant informed Cochlear both that (i) only one other party had been approached, and that (ii) this party had not indicated interest. However, at this stage of the process, Demant appears to have been 'testing the market' and 'exploring options' for Oticon Medical, but had indicated that no decision had yet been taken to sell the business.

12. This appendix explores the dynamics of the hearing aid industry from Cochlear's perspective, and the opportunities these may present for Cochlear. Exploring Demant's potential rationale for the sale, Cochlear commented that:[19]

    '[✂]'.

13. Cochlear subsequently explored potential changes happening in the hearing aid industry, [✂].[20] Offering a potential rationale for a 'full-service hearing provider', such as Demant, looking to sell its hearing implants capability, Cochlear noted that:

    '[✂]'.[21]

14. Later in the document, Cochlear noted that hearing aid manufacturers, such as Demant and Sonova, may [✂]. Cochlear stated that [✂].[22] Cochlear assessed that [✂].

15. [✂]:

    (a) [✂].[23] [✂].[24]

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[16] Parties' response to Issues Statement, 3 February 2023, paragraph 1.20.
[17] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[18] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[19] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[20] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[21] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[22] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[23] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[24] Cochlear response to P1 s109 request dated 21 July 2022, [✂].

(b) [✂].[25]

16. [✂].[26] [✂].[27]

17. This assessment implies that Cochlear understood at an early stage of the process, and on the basis of preliminary research and senior-level conversations, the following:

    (a) the potential rationale on the part of Demant for the decision to sell the business;

    (b) that the BCS business represented [✂]; and

    (c) that there were risks and uncertainties associated with [✂].

An initial valuation and indicative offer for the Oticon Medical business

18. On [✂], Cochlear's board was presented with a follow-up paper recommending that Cochlear submit a non-binding offer of AUD [✂] million to acquire Oticon Medical.[28] The recommendation acknowledged that Cochlear [✂].[29] Underpinning this recommendation were the following analysis and observations:

    (a) That the Oticon Medical business had been growing until the pandemic, with revenues nearly doubling between 2014 and 2019, but that it had faced [✂]. difficulties during the pandemic, with its CI product recall, and perhaps as a result of [✂].[30]

    (b) [✂].[31]

    (c) The BCS business was noted to have [✂] and an expected FY21 revenue of approximately AUD [✂] million. On the basis of this limited data, Cochlear conducted a [✂].[32] This assumed that, under Cochlear's ownership, the BCS business would [✂].[33] [✂] Cochlear compared this output to its own metrics (it noted that it was presently valued at [✂] in the public markets), and referenced [✂]:

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[25] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[26] [✂].
[27] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[28] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[29] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[30] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[31] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[32] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[33] [✂].

'[✂]'

(d) Discounting this output (perhaps for the impact of the problems noted by Cochlear with the CI business), Cochlear recommended an indicative offer of AUD [✂] million.

(e) In reference to the possibility that Demant may exit the hearing implants market, Cochlear commented:

[✂]

More detailed analysis conducted around this time

19. [✂]).

Figure 1: [✂]

[✂]

Source: Cochlear response to P1 s109 request dated 21 July 2022, [✂].

20. As can be seen in Figure 1, [✂].[34] [✂].[35] [✂].

21. Figure 2 outlines [✂][36] [✂].

Figure 2: [✂]

[✂]

Source: Cochlear response to P1 s109 request dated 21 July 2022 [✂].

22. As can be seen in Figure 2, this analysis by Cochlear assessed that – [✂].

23. Figure 3 shows [✂].

Figure 3: [✂].

[✂]

Source: Cochlear response to P1 s109 request dated 21 July 2022 [✂].

24. As seen in Figure 3, [✂].[37,38] [✂] [39] [✂].

25. Figure 4 and Figure 5 provide summaries of Cochlear's assessment of [✂].

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[34] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[35] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[36] [✂].
[37] [✂].
[38] [✂].
[39] [✂].

Figure 4: [✂]

[✂]

Source: Cochlear response to P1 s109 request dated 21 July 2022 [✂].

Figure 5: [✂]

[✂]

Source: Cochlear response to P1 s109 request dated 21 July 2022 [✂].

26. Figure 4 and Figure 5 show that, at this stage, [✂].

27. During the valuation process, it is clear that Cochlear considered [✂]:

    (a) As set out in Figure 1, Cochlear considered [✂].

    (b) Internal analysis [✂]:

        '[✂]'.[40]

[✂]

28. [✂].[41] [✂]:

    (a) [✂]

    (b) [✂]

    (c) [✂]:

        (i) [✂] and

        (ii) [✂].

29. Cochlear also presented an estimate to the board of the financial impact of the Transaction, expecting that, largely as a result of [✂] (see Figure 6).

Figure 6: [✂]

[✂]

Source: Cochlear response to P1 s109 request dated 21 July 2022, [✂].

[40] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[41] Cochlear response to P1 s109 request dated 21 July 2022, [✂].

[✂]

30. In March 2022, shortly before the Merger was announced, a Cochlear board sub-committee paper summarised Cochlear's updated thinking around the valuation of Oticon Medical and the key considerations relating to pursuing the transaction.[42] At this stage, Cochlear [✂]:

    '[✂]'.[43]

31. [✂].[44] [✂].[45] [✂].[46]

32. [✂][47] [✂] (see Figure 7).[48]

Figure 7: [✂]

[✂]

Source: Cochlear response to P1 s109 request dated 21 July 2022, [✂].

33. Figure 7 shows [✂]:

    (a) For the CI business: [✂];[49] and

    (b) For the BCS business: [✂].[50]

Assessment of Cochlear's valuation of Oticon Medical

34. Our provisional assessment of the above is that:

    (a) From an early stage, Cochlear attributed the majority of the value of Oticon Medical to the Passive BCS business. [✂], it saw opportunity in and attributed value to the continued income generated from sales of Passive BCS devices and Passive BCS processor upgrades. [✂].

    (b) Cochlear saw varying degrees of opportunity in acquiring Oticon Medical's Sentio device. [✂]. Cochlear attributed limited value to Oticon Medical's CI business throughout its analysis. It recognised the [✂] difficulties facing the CI business and the challenges of its market, particularly for a 'generalist' hearing aid manufacturer such as Demant. Cochlear however

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[42] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[43] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[44] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[45] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[46] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[47] [✂].
[48] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[49] Cochlear response to P1 s109 request dated 21 July 2022, [✂].
[50] Cochlear response to P1 s109 request dated 21 July 2022, [✂].

ultimately concluded that the acquisition of the CI business of Oticon Medical [✂].

Appendix E: Financial performance

An overview of Demant's financial performance

1. Demant's global revenue in 2022 was DKK 20.2 billion (approximately £2.4 billion). As demonstrated at Figure 4.1 in Chapter 4, the vast majority of Demant's revenue is generated across its other activities, including in its 'Hearing Healthcare' division (which includes Diagnostics, Hearing Aids, Hearing Care and formerly Hearing Implants or Oticon Medical), and its separate 'Communications' division, which focusses on audio and video solutions for business professionals and gamers.[1]

Table 1: Summary of Demant's statement of profit or loss, FY19-FY22

		FY19	*FY20*	*FY21*	*FY22*		*CAGR FY19 – FY22*	*Simple change FY19 to FY22*	*Simple change FY21 to FY22*
	Unit	*Actual*	*Actual*	*Actual*	*Actual*	*Unit*			
Revenue	DKKm	[✂]	[✂]	[✂]	[✂]	*%*	[✂]	[✂]	[✂]
Cost of Sales	DKKm	[✂]	[✂]	[✂]	[✂]	*%*	[✂]	[✂]	[✂]
Gross profit	DKKm	[✂]	[✂]	[✂]	[✂]	*%*	[✂]	[✂]	[✂]
Gross profit margin	*%*	[✂]	[✂]	[✂]	[✂]				
EBIT	DKKm	[✂]	[✂]	[✂]	[✂]	*%*	[✂]	[✂]	[✂]
EBIT margin	*%*	[✂]	[✂]	[✂]	[✂]				

Source: CMA analysis of Demant Annual Report 2021; Demant Annual Report 2022; Demant Internal Document, Annex 5.1 to the Partial Response to Section 109 Notice dated 8 February 2023, [✂].
[1]Demant results for 2022 are presented on the basis of CMA analysis combining Demant's reported results (which exclude Oticon Medical) with data from Annex 5.1 to the Partial Response to Section 109 Notice Dated 8 February 2023, [✂]

2. Table 1 sets out Demant's revenue, gross profit, and operating profit for the period from 2019 to 2022. We observe that, over this period, revenues increased at an average annual rate of [✂] %[2], including an increase of [✂] % (or DKK [✂] billion) in 2022. Costs of sales increased largely in line with revenue each year, allowing Demant to maintain consistent gross margins of around [✂] to [✂] %. Operating costs have fluctuated more significantly, contributing to EBIT margins of between 10 and 19% across the period.

[1] See Demant Annual Report 2022.
[2] Where we refer to 'average annual' growth rates in this annex, we have used the compound annual growth rate (**CAGR**) to measure performance over several periods. CAGR gives an average yearly growth metric which aids comparability across different companies by dampening the effect of volatility in performance over several periods (as compared to a standard arithmetic mean).

The financial performance of Oticon Medical as a whole

3. Table 2 sets out Oticon Medical's total revenue, gross profit and EBIT[3] for the period 2019 to 2022 (including both the BCS and CI business).

Table 2: Summary of Oticon Medical's statement of profit or loss, FY19-FY22

		FY19	*FY20*	*FY21*	*FY22*		CAGR FY19 – FY22	*Simple change FY19 – FY22*	*Simple change FY21 – FY22*
	Unit	*Actual*	*Actual*	*Actual*	*Actual*	*Unit*			
Revenue	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]	[✂]
Cost of Sales	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]	[✂]
Gross profit	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]	[✂]
Gross profit margin	%	[✂]	[✂]	[✂]	[✂]				
Operating costs									
R&D	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]	[✂]
Distribution	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]	[✂]
Administrative	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]	[✂]
EBIT	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]	[✂]
EBIT margin	%	[✂]	[✂]	[✂]	[✂]				

Source: CMA analysis of Annex 5.1 to the Partial Response to Section 109 Notice dated 8 February 2023, [✂].

4. Over this period, Oticon Medical's revenue declined by [✂] % (an average annual rate of [✂]%). In the last financial year, the decline was [✂] ([✂]%). [✂], allowing Oticon Medical to achieve gross margins of between [✂]% and [✂]%, [✂].

5. Regarding Oticon Medical's operating costs:

   (a) R&D costs increased by [✂]% over the period shown (an average annual increase of [✂]%), and by [✂] % in the last financial year.

   (b) Distribution costs (which comprise [✂] proportion of operating expenses in each year) increased in simple terms over the period by [✂]% with a decrease in 2020 and 2021 before increasing in 2022.

   (c) Administrative expenses consistently comprised [✂]% to [✂]% of operating costs, increasing by [✂]% over the period (an annual average rate of [✂]%).

6. Oticon Medical's losses increased at an annual rate of [✂] % over the three-year period (and more than [✂] in each of the last two years). These increased losses can largely be attributed to increasing [✂] costs combined with declining revenues.

[3] EBIT means Earnings Before Interest and Tax and, in Demant and Oticon Medical's presentation, is equivalent to operating profit.

The financial performance of the CI business

7. Table 3 sets out the performance of the CI business from 2019 to 2022.

Table 3: Summary of the CI business's statement of profit or loss, FY19-FY22

		FY19	*FY20*	*FY21*	*FY22*		CAGR FY19 - FY22	*Simple change FY19 to FY22*
	Unit	*Actual*	*Actual*	*Actual*	*Actual*	*Unit*		
Revenue	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
Cost of Sales	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
Gross profit	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
Gross profit margin	%	[✂]	[✂]	[✂]	[✂]			
Operating costs								
R&D	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
Distribution	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
Admin	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
EBIT	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
EBIT margin	%	[✂]	[✂]	[✂]	[✂]			

Source: CMA analysis of Annex 5.1 to the Partial Response to Section 109 Notice Dated 8 February 2023, [✂].

8. Over this period, the CI business's revenue declined by [✂]% (an average annual rate of [✂]%), and by [✂]% in the last financial year. Before 2022, the CI business was achieving gross margins [✂] at around [✂]%, with a notable increase to [✂] in 2021 where an improvement in [✂] compensated for a revenue decline. However, in 2022, CI revenue [✂], with costs of sales exceeding revenue. Commentary in financial due diligence submitted to us by the Parties implies that this was a result of the continued impact on the business in 2022 of the CI product recall in October 2021.[4]

9. Considering operating costs, we observe:

   (a) R&D expenditure increased by [✂]% over the period (an increase of DKK [✂] million), an annual average increase of [✂]% each year. As described further below, the CI business's contribution to total R&D spend also increased significantly relative to the BCS business over the period.

   (b) Distribution costs experienced some fluctuation over the period, with Oticon Medical achieving some savings in 2020 and 2021 before returning to pre-pandemic levels in 2022 with an increase of DKK [✂] million ([✂]%).

[4] Annex 435 to Cochlear's response to P2 s109 request of 8 February 2023, [✂].

(c) Administrative expenses consistently comprised approximately [✂]% of total operating costs over the period shown, with a large increase in 2022 (by DKK [✂] million).

10. During this period the CI business's losses increased [✂]: at an annual average of [✂]% (in total by [✂]%). In 2021, the CI business saw an EBIT loss of DKK [✂] million, largely as a result of increasing R&D expenditure as shown in Figure 1.

Figure 1: Illustration of the movement in the CI business's EBIT performance from FY20 to FY21, based on movements in income and expenditure between the periods

[✂]

Source: CMA analysis of Annex 5.1 to the Partial Response to Section 109 Notice Dated 8 February 2023, [✂].

11. In 2022, the CI business's losses increased further, largely as a result of the revenue decline of DKK [✂] million caused by the impact of the product recall and the increases in operating costs (and especially R&D costs) noted above.[5]

Figure 2: Illustration of the movement in the CI business's EBIT performance from FY21 to FY22, based on movements in income and expenditure between the periods

[✂]

Source: CMA analysis of Annex 5.1 to the Partial Response to Section 109 Notice Dated 8 February 2023, [✂].

The financial performance of the BCS business

12. Table 4 sets out the financial performance of the BCS business from 2019 to 2022.

[5] Annex 435 to Cochlear's response to P2 s109 request of 8 February 2023, [✂].

Table 4: The BCS business's statement of profit or loss summary, FY19-FY22

		FY19	*FY20*	*FY21*	*FY22*		CAGR FY19 – FY22	*Simple change FY19 to FY22*
	Unit	*Actual*	*Actual*	*Actual*	*Actual*	*Unit*		
Revenue	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
Cost of Sales	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
Gross profit	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
Gross profit margin	%	[✂]	[✂]	[✂]	[✂]			
Operating costs								
R&D	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
Distribution	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
Admin	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
EBIT	DKKm	[✂]	[✂]	[✂]	[✂]	%	[✂]	[✂]
EBIT margin	%	[✂]	[✂]	[✂]	[✂]			

Source: CMA analysis of Annex 5.1 to the Partial Response to Section 109 Notice Dated 8 February 2023, [✂].

13. Over this period, the BCS business's revenue increased by [✂]% (an average annual increase of [✂]%) largely driven by a [✂]% increase in revenue (DKK [✂] million) from 2021 to 2022.

14. Cost of sales increased by [✂] over the period, leading to a gross profit margins around [✂]% over the period, with [✂] in 2021.

15. The BCS business's improved revenue performance for 2022 may be due to a number of factors. However, Demant's 2021 annual report partially attributed continued sales growth to the Autumn 2021 launch of the new Ponto 5 Mini, and Demant had strong expectations for the launch of the Ponto 5 Super Power in 2022.[6] These new releases would have likely provided a boost to sales, which we see in the 2022 results, and in 2022's increase in [✂] sales (an increase of c.[✂] units, or [✂]%).[7]

16. Considering operating costs more generally for the BCS business:

    (a) R&D costs comprised [✂]% to [✂]% of total operating costs over the period shown for the BCS business and represented [✂]% of operating costs (and [✂]% of revenue) in 2022.

    (b) Distribution expenses, as is the case for Oticon Medical as a whole, comprise [✂] proportion of all operating expenses, consistently contributing [✂]% to [✂]% of operating costs over the period.

[6] See Demant Annual Report 2021, page 36
[7] CMA analysis of Annex 5.1 to the Partial Response to Section 109 Notice Dated 8 February 2023, [✂].

(c) Administrative expenses comprise a small proportion of total operating costs.

17. The BCS business's EBIT, or operating profit, increased by [✂]% over the period (an annual average rate of [✂]%), with a [✂]% (DKK [✂] million) decline in 2021 which more than recovered in 2022.

18. The performance to FY22, as shown in Figure 3, was largely as a result of a [✂] revenue increase outpacing more marginal increases in overall operating costs.

Figure 3: Illustration of the movement in the BCS segment's EBIT performance from FY21 to FY22, based on movements in income and expenditure between the periods

[✂]

Source: CMA analysis of Annex 5.1 to the Partial Response to Section 109 Notice Dated 8 February 2023, [✂] .

Contribution of the CI and BCS businesses to Oticon Medical's performance

19. Table 5 sets out the proportion of revenue contributed by each of the CI business and the BCS business in the period 2019 to 2022. Table 6 sets out the proportion of R&D spend attributable to the CI and BCS businesses for the same period.

Table 5: BCS and CI contributions to Oticon Medical's total revenue, FY19-FY22

		FY19	*FY20*	*FY21*	*FY22*
	Unit	*Actual*	*Actual*	*Actual*	*Actual*
Revenue from BCS	DKKm	[✂]	[✂]	[✂]	[✂]
Expressed as a percentage	*%*	[✂]	[✂]	[✂]	[✂]
Revenue from CI	DKKm	[✂]	[✂]	[✂]	[✂]
Expressed as a percentage	*%*	[✂]	[✂]	[✂]	[✂]
Total revenue	DKKm	[✂]	[✂]	[✂]	[✂]
Expressed as a percentage	***%***	***100***	***100***	***100***	***100***

Source: CMA analysis of Annex 5.1 to the Partial Response to Section 109 Notice Dated 8 February 2023, [✂].

Table 6: BCS and CI contributions to Oticon Medical's R&D spend, FY19-FY22

		FY19	*FY20*	*FY21*	*FY22*
	Unit	*Actual*	*Actual*	*Actual*	*Actual*
R&D costs for BCS	DKKm	[✂]	[✂]	[✂]	[✂]
Expressed as a percentage	*%*	[✂]	[✂]	[✂]	[✂]
R&D costs for CI	DKKm	[✂]	[✂]	[✂]	[✂]
Expressed as a percentage	*%*	[✂]	[✂]	[✂]	[✂]
Total R&D costs	DKKm	[✂]	[✂]	[✂]	[✂]
Expressed as a percentage	***%***	***100***	***100***	***100***	***100***

Source: CMA analysis of Annex 5.1 to the Partial Response to Section 109 Notice Dated 8 February 2023, '[✂].

20. Over the period 2019 to 2022, the BCS business's revenues increased and the CI business's revenues fell [✂] so that the BCS business's contribution to Oticon Medical's total revenue rose from [✂]% to [✂]%.

21. Conversely, we note that the proportion of Oticon Medical's R&D expenditure arising from the BCS business only increased [✂] (despite continued investment in the BCS Sentio product) and the CI business's [✂], so that the proportion of Oticon Medical's R&D expenditure arising from the BCS business decreased from [✂]% in 2019 to [✂]% in 2022.

22. By 2022 the BCS business was generating almost [✂]% of Oticon Medical's revenue, while the CI business was generating the majority of certain operating costs (in particular, in [✂] spend).

Appendix F: Further analysis of Demant's additional submissions in relation to the performance of a 'standalone' BCS business

Demant's further evidence presenting the BCS business on a standalone basis from the perspective of a 'hypothetical private investor'

1. Demant produced analysis in the course of our investigation which assessed the potential profitability of the BCS business on a standalone basis from the perspective of a hypothetical private investor, including expectations for the potential release of Sentio. In our assessment of this analysis, it should be noted that:

   (a) As noted in the Chapter 4, when considering any exiting firm argument, the CMA will usually attach greater weight to evidence that has not been prepared in contemplation of the merger.[1] This analysis, in particular, was produced specifically for the purposes of our investigation, almost one year following the announcement of the Merger and decision to exit, and aims to respond to points raised during our investigation. Therefore, we cannot assess it as having influenced a decision to exit activity in hearing implants, including in BCS products, in late 2021.

   (b) As noted in our discussions in relation to Limb 2, the Parties submitted to us that a sale to a financial acquirer was not a viable option, [✂].[2] We recognise that, given the BCS business's current dependence on the Demant group, a financial acquirer may have been less likely to have the relevant group infrastructure or know-how to operate the BCS business successfully. We do not provisionally conclude on the most suitable alternative category of purchaser. However, we observe that broader hearing aid manufacturers have historically entered the market inorganically, ie through acquisitions, and as such this may be viewed as a more likely alternative scenario. This alternative was not tested during the Parties' limited sales process,[3] in which they approached only [✂] players in the specialist hearing implants segment. An industry acquirer may have been more interested in the profitable and growing BCS

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[1] Merger Assessment Guidelines (CMA129), paragraph 3.24.
[2] Parties' response to Issues Statement – paragraph 1.19(c); Note of a call with a third party, [✂].
[3] As noted in Chapter 4, the CMA in its phase 1 investigation sent brief high-level questions to some broader hearing technology firms assessing their interest in the Oticon Medical business as a whole, and none expressed interest. However, we do not consider this to have significant evidentiary value given that in this context these firms did not have access to financial or operational data regarding Oticon Medical (and would not therefore have been in a position to assess a potential acquisition).

business on a standalone basis (over Oticon Medical as a whole, which was loss making) and may be better able to replicate the group benefits Oticon Medical currently gains as part of Demant. We have assessed Demant's presentation of the standalone BCS business in this context.

(c) We make the general observation that, as part of its standalone assessment, Demant submitted several reasons for why the BCS business was unlikely to be commercially successful without access to the synergies and benefits of its hearing aid business. The Parties have also submitted that there is not a more suitable purchaser for the BCS business than Cochlear, a company which itself does not have hearing aid manufacturing capability and profitably operates its own BCS business through its commercial partnership with GN Resound. It is, therefore, possible that an alternative purchaser, with either (i) hearing aid manufacturing capability, or (ii) the ability to develop a partnership with a hearing aid manufacturer, could replicate these group benefits over time and following integration.

2. We have assessed the assumptions and outputs of the additional evidence provided, summarised at Tables 1, 2 and 3.

Table 1: Summary of Demant's projections for the BCS business, presented to potential acquirers during the sale of Oticon Medical

		FY21	*FY22*	*FY23*	*FY24*	*FY25*
	Unit	*Actual*	*Budget*	*Forecast*	*Forecast*	*Forecast*
Revenue	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
Year on year growth	*%*	[✂]	[✂]	[✂]	[✂]	[✂]
Cost of Sales	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
Gross profit	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
Gross profit margin	*%*	[✂]	[✂]	[✂]	[✂]	[✂]
Operating costs						
R&D	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
Distribution	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
Admin	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
EBIT	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
EBIT margin	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]

Source: Annex 023 to the Final Merger Notice – [✂].

Table 2: Demant's updated estimated P&L of a standalone BCS business

		FY21	*FY22*	*FY23*	*FY24*	*FY25*
	Unit	*Actual*	*Actual*	*Budget*	*Forecast*	*Forecast*
Revenue	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
Year on year growth	*%*	[✂]	[✂]	[✂]	[✂]	[✂]
Cost of Sales	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
Gross profit	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
Gross profit margin	*%*	[✂]	[✂]	[✂]	[✂]	[✂]
Operating costs						
R&D costs (additional R&D cost for 2023)	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
Distribution costs	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
Administrative expenditure	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
R&D, Distribution, Admin costs budgeted for 2023	DKKm					
Additional personnel costs	DKKm					
New D&A	DKKm					
EBIT (DKK)	DKKm	[✂]	[✂]	[✂]	[✂]	[✂]
EBIT (GBP)	GBPm	[✂]	[✂]	[✂]	[✂]	[✂]
EBIT margin	*%*	[✂]	[✂]	[✂]	[✂]	[✂]

Source: Annex 432 to the Parties' response to the CMA's Annotated Issues Statement and Working Papers – '[✂]'.
'P&L' means Statement of Profit or Loss, and is a measure of a business's performance, assessing its achieved or expected income and expenditure over a period of time.
We note small reconciling differences in the actual performance for FY21 between Tables 1 and 2.

Table 3: Demant's expected yearly costs required to establish a Class III facility

		2023	*2024*	*2025*
	Unit	*Forecast*	*Forecast*	*Forecast*
Depreciation and amortisation of facility and equipment	DKKm	[✂]	[✂]	[✂]
Cost of additional employees needed	DKKm	[✂]	[✂]	[✂]
Total yearly cost of a Class III facility	DKKm	[✂]	[✂]	[✂]

Source: Table 2, Parties' response to the AIS and WPs, 23 March 2023.
Demant assumes staff costs increase each year in line with European Commission inflation predictions for Denmark (4.4% in 2023, 2.5% in 2024, held at 2.5% thereafter).
While capital expenditure (ie upfront investment) is represented by depreciation, it appears that these are also assumed to be a 'proxy' for ongoing capital expenditure, as these are assumed to increase in line with European Commission inflation predictions similarly with staff costs.

3. Considering the outputs (and underpinning assumptions) of Table 1 and Table 2, which demonstrate Demant's expectations for the BCS business at the time of the sale process (Table 1) and in the course of our investigation (Table 2) , we observe the following, as set out below.

Revenue

4. Forward looking revenue expectations for the BCS business have declined [✂] in Demant's updated assumptions, despite the BCS business's [✂] revenue increase to FY22 (which Demant explain was as a result of new product releases and a post-COVID release of pent-up demand for surgeries).[4] Demant told us that revenues for FY22 were '[✂]' due to the impact of these two '[✂]',[5] and that a standalone purchaser would not have

[4] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 1.
[5] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 1.

been able to replicate the revenue benefits (such as from Demant's brand name and plans for product releases) which arise as a result of the BCS business being part of the Demant group.[6] Demant's updated analysis therefore expects a [✂] in FY23, followed by a long-term yearly growth rate of [✂]% (this is the average of Oticon Medical and Cochlear's recent historic average yearly growth rate between FY17 and FY22 – where Oticon Medical achieved average yearly growth of [✂]% compared with Cochlear's [✂]%).[7] With respect to these assumptions:

(a) The BCS business's FY22 revenue performance [✂] exceeded expectations presented to alternative purchasers during the sale process. At the time of the signing of the transaction, it was budgeted to achieve revenues of DKK [✂] million (see Table 1), and it achieved an actual performance of DKK [✂] million (see Table 2). While this represents a [✂] increase on the previous year (of [✂]% or DKK [✂] million), this is an increase of [✂]% on budgeted revenue, or DKK [✂] million. Therefore, it is difficult to conclude that this was unexpected or abnormal. Further, it is difficult to conclude that the drivers of this revenue increase (which Demant explains are partially as a result of Oticon Medical releasing the new Ponto 5 sound processor) resulted from a 'shock' to Demant or the Oticon Medical business.[8] The subsequent expected revenue decline, therefore, and reduced expected forward-looking growth rate (in which the 'average' is reduced by Cochlear's significantly lower historic revenue growth performance),[9] could be seen to be pessimistic in comparison with Demant's assumptions at the time the Merger was agreed.

(b) As shown at Table 3, Demant has presented further thinking on the potential costs associated with the release of Sentio, as it submitted that releasing Active BCS products is 'crucial' for the BCS business to remain a 'credible competitor'.[10] However, its updated revenue assumptions do not appear to take account of a release of the Sentio product given 'the uncertainties surrounding the outcome of any potential effort by a standalone BCS business to launch a product in this space'.[11] Demant's updated revenue assumptions are driven by continued activity in Demant's Passive BCS business (in which unit sales of Passive BCS

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[6] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 1.
[7] Oticon Medical's BCS business achieved a compound annual growth rate (CAGR) in revenue of [✂]% between FY17 and FY22; Cochlear's BCS business achieved a CAGR over this period of [✂]%.
[8] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 1.
[9] Annex 432 to the Parties' response to the CMA's Annotated Issues Statement and Working Papers, dated 23 March 2023, tab [✂].
[10] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 3.
[11] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 2.

implants and sound processors increase at the same rate as overall revenue throughout the forecast period).[12] These assumptions, on the face of it, appear somewhat contradictory in ascribing costs of the project (implying Sentio's release is expected over the forecast period) without associated revenues (implying Sentio's release is not expected over the forecast period).

(c) In instances where a business expects future revenues or economic benefit from a specified development project, but is uncertain as to the timing of this future benefit, International Financial Reporting Standards (**IFRS**) allow for the recognition of an intangible development asset.[13] Demant's assumptions, relating to the cost of establishment of a Class III facility and certain associated employee costs, should therefore, logically, be presented alongside assumptions around the Sentio product's revenue generating capability.

(d) Demant provided detail in its updated projections covering expected costs for ongoing R&D, which allow for 'new product releases', having a 'platform lifecycle' of five to seven years.[14] However, its [✂] revenue projections are partially attributed to lost benefits of product releases.[15] We note again some inconsistency in approach, ascribing ongoing cost investment to the P&L without necessarily giving credit to associated revenue which is expected to result from that investment. However, we note the short three-year timeframe for Demant's updated forecasts which may impact this outlook.

Cost of sales and R&D costs

5. In Oticon Medical's updated forecasts, Demant notes that its hearing aid division currently produces the BCS business's [✂].[16] Currently, [✂], the BCS business pays c.DKK [✂] (EUR [✂]) per unit.[17] Demant expects that the

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[12] Annex 432 to the Parties' response to the CMA's Annotated Issues Statement and Working Papers, dated 23 March 2023, tab '[✂].
[13] This enables a business to recognise the majority of expenditure associated with a project on its Statement of Financial Position (Balance Sheet), releasing this expenditure to the Statement of Profit or Loss (P&L) at a later date once the product is ready for commercial release (ie expected to generate revenue). International Accounting Standard 38 – Intangible Assets (IAS 38) provides examples of instances where a reporting entity might begin to recognise a development asset in the course of an R&D project, such as (i) when it is designing, constructing or testing a pre-use prototype of a product, or (ii) when it is designing or constructing a pilot production facility which is not yet of a scale to be economically feasible for commercial production (IAS 38, paragraph 59). IAS 38 also allows for the costs of employees who are directly related to the generation of the intangible asset (ie to the development of the project) to be recognised as part of the Development asset. (IAS 38, paragraph 66). For more information, please see IFRS – IAS 38 Intangible Assets (free registration required to view).
[14] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 3.
[15] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 1.
[16] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 2.
[17] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 2.

BCS business would need to pay DKK [✂] per unit externally (EUR [✂]), increasing costs by DKK [✂] (EUR [✂]) per unit.[18] Demant further submitted that this was a conservative estimate, given costs of other components would likely also increase, and as such unit costs would more likely increase by around EUR [✂] to [✂].[19]

6. In relation to expected R&D costs, Demant provided assumptions which consider the ongoing R&D cost which is required to 'to ensure compatibility on an ongoing basis with a hearing aid platform', 'reflect ongoing licencing / maintenance requirements', and allow for 'new product releases and cycles'.[20] Its estimates focus on current pricing of existing agreements with third parties which assist in these R&D activities, adjusted for the impacts of the Oticon Medical business no longer accessing Demant's broader Oticon hearing aid capability.

7. We are not in a position to independently verify or assess the validity of these estimates. However, we note that the Parties have submitted that Cochlear is the only suitable purchaser for the BCS business. Cochlear, itself a hearing implant specialist without activity in hearing aids, currently has a relationship with GN Resound which develops [✂]. As part of this, Cochlear told us it is [✂] which will improve both Cochlear's hearing implant technology and GN Resound's hearing aid technology.[21] Another market participant, Envoy Medical, noted that, if it were to acquire all or part of the BCS business, it would consider partnering, if necessary, with another company to assist in manufacturing and development of BCS products.[22]

8. We therefore consider the above estimates in the following context:

   (a) Alternative purchasers, such as hearing technology specialists or players active in hearing implants, may over time be able to partially replicate the Demant group benefits the BCS business currently enjoys as a result of its relationship with Demant's hearing aid business.

   (b) A hearing implant or hearing technology specialist who does not have current capability in hearing aids may be able to develop a partnership with a hearing aid manufacturer to allow a more favourable cost structure, such as that utilised by Cochlear [✂].

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[18] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 2.
[19] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 2.
[20] Annex 433 to the Parties' response to the AIS and WPs, dated 23 March 2023, page 2.
[21] Cochlear Main Party Hearing Transcript – page 19 (lines 24 and 25) and page 20 (lines 1-4).
[22] Note of a call with a third party - Envoy Medical - March 2023 – paragraph 26.

Our assessment of the Parties' submitted analysis

9. As noted in its guidance, the CMA may be likely to attach more evidentiary weight to documents generated prior to the period in which a merger was in contemplation.[23] The corollary of that is that it may be likely to attach relatively less weight on evidence produced for the purposes of its investigation. Nonetheless, assessing the analysis presented, we observe:

   (a) Revenue projections appear to have been significantly downgraded from those presented (to potential purchasers) at the time the sale of Oticon Medical was in contemplation, despite the BCS business meeting the revenue expectations outlined in those earlier projections. Cochlear's lower historic growth rate for its BCS business is used to downgrade the Oticon Medical BCS business's expected forward looking growth rate (giving it a lower expected performance compared to its historic trajectory).

   (b) The forward-looking P&L includes costs, such as for the release of Sentio and other new product releases, without any associated revenue assumptions. Accounting standards allow for a deferral of costs associated with a development project (such as Sentio) until it is expected to generate revenue. Any plan to invest in a new product release might be expected not to be cash generative in the short term, however any such plan might also be expected to show expected revenues associated with the new product release.

   (c) The analysis presented implies that the BCS business relies significantly on benefits of being associated with Demant's hearing aid division, and that it wouldn't be commercially successful without such benefits. While we are not in a position to independently verify or assess the assumptions presented, we note that other market players without hearing aid manufacturing capability (such as Cochlear) are able to achieve profitability through commercial agreements with hearing aid manufacturers. Under the Merger, the BCS business would lose its access to the benefits of Demant's hearing aid business in its transfer to Cochlear. We are therefore not in a position to conclude that such benefits would not be able to be replicated by an alternative purchaser who either (i) has hearing aid manufacturing capability or (ii) has the ability to form a commercial arrangement similar to that of Cochlear.

[23] Merger Assessment Guidelines (CMA129), paragraph 2.29(a).

Glossary

Term	Definition
Active BCS	These products use an internal implant or transducer to create the necessary vibrations to stimulate bones in the inner ear to produce sound and do not require an abutment, leaving the skin intact
AIS	Annotated Issues Statement
ASPA	Asset and Share Purchase Agreement
AUD	Australian Dollar
BCS	Bone Conduction Solutions
CAGR	Compound Annual Growth Rate. Where we refer to 'average annual growth' in the counterfactual chapter and appendices D, E and F, we have used compound annual growth rate (CAGR) to measure performance over several periods. CAGR gives an average yearly growth metric which aids comparability across different companies by dampening the effect of volatility in performance over several periods (as compared to a standard arithmetic mean).
CI	Cochlear Implants
CMA	The Competition and Markets Authority
Class II and Class III medical devices	These categories represent classifications of medical devices as understood under UK, US and EU medical device regulations. Class II devices are considered to be moderate to high risk to patients (eg ventilators, standard hearing aids, contact lenses), whereas class III devices are the highest risk to patients (e.g. pacemakers, total hip joint replacement systems, contraceptive IUDs).
Cochlear	Cochlear Limited
CROS	Contralateral routing of signal
Demant	Demant A/S

DKK	Danish Krone
EBIT	Earnings Before Interest and Tax (usually equivalent to **operating profit**)
ENT	Ear, nose, and throat.
Envoy Medical	A hearing implants technology company based in the USA.
EV	Enterprise Value – this means the value of a business to all of its funders (including its debt holders and its shareholders) regardless of the 'mix' of that funding, ie whether predominantly from debt or equity. Adjustments are subsequently made to this 'headline' value to account for the debt of the target business, its cash, and its 'ordinary' working capital position, producing an Equity Value valuation. Equity Value is the value of the business to shareholders, and represents the amount paid for the acquisition of the target business's shares.
EY	Ernst & Young (a global professional services firm)
FDD	Financial due diligence
FY22	Financial year ending in 2022 (similarly FY21 means the financial year ending in FY21, and so on). Different companies have different financial year ends: for example, Demant's financial year aligns with the calendar year (ie ends in December) whereas Cochlear's financial year ends in June.
FMN	Final Merger Notice, submitted by the Parties to the CMA on 7 October 2022
GBP	Great British Pound
GN Resound	A global hearing technology company
HCP	Healthcare professional
Hearing Implants	CI, BCS's and any other similar implantable hearing solutions such as middle ear devices (ie Cochlear Limited's discontinued Carina product)

Inquiry group	A group of CMA panel members appointed to further investigate and report on the phase 2 merger inquiry of the anticipated acquisition by Cochlear of Oticon Medical
IS	Issues Statement
MED-EL	MED−EL Elektromedizinische Geräte GMBH (a hearing implants company)
Medtronic	A medical device company which has had activities in hearing implants
MEI	Middle ear implant
MW&L	MW&L Capital Partners Limited
NICE	National Institute for Health and Care Excellence
Non-Surgical BCS	These are typically used for children, patients who cannot have surgery or patients who want to sample BCS before adopting a surgical solution. They typically use a headband to hold an external sound processor in place which generates vibrations through the skin to the skull without an implant
Oticon Medical	Hearing implant division of Demant
Oticon	Hearing aid division of Demant
Passive BCS	These products use vibrations created by an external transducer which are transmitted to an internal implant before travelling to the inner ear. An abutment which penetrates the skin is used to hold the sound processor in place
Phase 1 Decision	The CMA's phase 1 decision, dated 20 January 2023 and found here.
P&L	Statement of Profit or Loss – this is a measure of a business's performance which assesses its income and expenditure over a period of time.
R&D	Research and development
RFI	Request for information

Sentio	Oticon Medical's active BCS product which has been in development for commercial release over recent years.
SLC	Substantial Lessening of Competition
Sonova	A global hearing technology company
SSD	Single-sided deafness
The Act	Enterprise Act 2002
The Merged Entity	Cochlear and Oticon Medical together post-Merger
The Merger	The anticipated acquisition by Cochlear of Oticon Medical
The Parties	Cochlear and Demant collectively
UK	United Kingdom