

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

Response to CMA Notice of possible remedies

4 May 2023

1. This submission is made by Cochlear Limited ("**Cochlear**" or the "**Acquirer**") in response to the CMA's notice of possible remedies sent to the Parties on 20 April 2023 (the "**Remedies Notice**") in relation to the anticipated acquisition by Cochlear of Oticon Medical, the hearing implant division of Demant A/S ("**Demant**" or the "**Seller**").
2. The ambiguity surrounding the timing and nature of Demant's announced exit, and the expressions of interest in Oticon Medical from two industry players have meant that the CMA's Provisional Findings have focused on a static analysis of the loss of competition between two close competitors and on the counterfactual.
3. We have previously explained in detail the challenges that Demant and other large players in the past have faced and failed to overcome given the constellation of competitive dynamics that make the hearing implants sector unique and that ultimately have led Demant to conclude that it will exit.¹ Those dynamics have not changed. Cochlear expects that the responses to the Remedies Notice will likely confirm that potential buyers will need material resources and both technical and commercial support to try to sustain Oticon Medical as a profitable business and a competitive constraint in the market going forward.
4. Cochlear therefore continues to harbour grave doubts as to the sustainability of the Oticon Medical business in the medium term, not least since Demant has reaffirmed to the financial markets and its customers, its decision to exit the hearing implants business in response to the CMA's Provisional Findings.² In the interests of patients, Cochlear maintains that the behavioural remedy submitted by the Parties and described at paragraph 15 of the Remedies Notice remains a valid fall-back in the eventuality of Demant exiting the BCS business as publicly stated.
5. Cochlear has made it clear from the outset that the key driver of its decision to embark on this process was first and foremost its concern for Oticon Medical's installed patient base, and secondarily because of the negative impact of them being left stranded on the reputation of the industry, and the broader impact on future customers' willingness to transition from doing nothing or using hearing aids to opting for a lifelong implant. Its concerns in this respect have not changed and are more acute than ever.
6. Whilst the CMA's Provisional Findings are based on traditional theories of potential consumer harm, the CMA has thus far not given any consideration to those 20,000 people in the world with legacy Oticon Medical cochlear implants who [🔗]. Those patients urgently need reassurance that their interests will be protected.
7. Cochlear has committed to rapidly investing in the complex engineering of developing future sound processors that are compatible with Oticon Medical's installed cochlear implants to keep those patients

¹ See, Final Merger Notice, 7 October 2022, paras. 9, 10, 26; Parties' response to Issues Statement, 3 February 2023, para. 1.5; Parties' response to Annotated Issues Statement, 23 March 2023, paragraphs 2.5 and 3.39.

² "Irrespective of the outcome of the ongoing investigations by competition authorities, we remain committed to our decision to discontinue our Hearing Implants business, as there is no change to our conclusion that the prospect of becoming a global leader in hearing implants is not achievable within a reasonable timeframe without disproportionate levels of investments and significant dilution of the Group's profitability."

hearing and contributing members of society. It has estimated the cost of that effort at approximately [X] recognising that that cost estimate may substantially increase if the engineering proves more complex than anticipated.³

8. Demant will not make that investment. Envoy Medical does not have the technology, capability or incentive to make that investment. There must be a serious question mark as to whether any other company has the ability and the willingness to provide continuous support to the existing installed Oticon Medical patient base over the course of their lifetime. Cochlear has an unmatched track record of uninterrupted support for patients with prior generations of implants.
9. In the interests of these patients, and assuming that the CI business can effectively be separated with the necessary tangible and intangible assets transferring, Cochlear urges the CMA to approve as quickly as possible the bone conduction carve-out remedy (its partial prohibition option).
10. The legacy Oticon Medical CI patients do not need theoretical reassurances that Oticon Medical will thrive in some hypothetical long-term future (particularly as Demant has decided to exit the hearing implants business). They need guarantees that their needs will be met in the very short term. Failing that, they will have [X]. That is a prospect that will negatively affect an already strained healthcare budget, the well-being of the patients in question, the overall reputation of the hearing implants sector and its ability to grow demand to ensure that more patients benefit from the solution best suited to their needs.

³ Final Merger Notice, paragraph 18; Parties' response to Issues Statement, 3 February 2023, para. 7.3(a).