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Our ref: IM-71886
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4 August 2022

Dear Interested Party

Request for submissions: Cochlear's proposed acquisition of Oticon Medical

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on Cochlear Limited's (**Cochlear**) proposed acquisition of Oticon Medical A/S (**Oticon Medical**) from Demant A/S (**Demant**) (the **proposed acquisition**).

Cochlear is a global manufacturer and supplier of implantable hearing solutions, including cochlear implants and bone conduction solutions in Australia.

Oticon Medical is a subsidiary of Demant, which is a global manufacturer and supplier of various hearing solutions. Oticon Medical is a manufacturer and supplier of cochlear implants and bone conduction solutions. Further details are provided at **Attachment A**.

The ACCC's investigation is focused on the impact on competition. In particular, we are seeking your views on:

- the impact of the proposed acquisition on price, quality, service levels, and innovation in the supply of cochlear implants and bone conduction solutions
- whether Oticon Medical is uniquely placed to provide significant future competition in the supply of cochlear implants and/or bone conduction solutions, and
- whether customers would have access to alternative suppliers (actual and/or potential) of cochlear implants and/or bone conduction solutions after the proposed acquisition.

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010* (Cth). Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

Please provide your response by **23 August 2022** via email with the title: *Submission re: Cochlear/Oticon Medical - attention Marisa Kuhlewein / Andy Gallagher*. If you require more time to respond, please let us know.

If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Marisa Kuhlewein on 07 3835 4668 or Andy Gallagher on 02 9230 9129.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

Confidentiality of submissions

The ACCC treats sensitive information it receives during a merger review as confidential, and will not publish your submission. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the Competition and Consumer Act 2010. Where the ACCC is required to disclose confidential information, we will notify you in advance where possible so that you have an opportunity to be heard. Therefore please clearly indicate if any information you provide is confidential. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Bruce Mikkelsen
General Manager (a/g)
Merger Investigations

Attachment A

The proposed acquisition

On 27 April 2022, Cochlear announced its intention to acquire Demant's hearing implant division, Oticon Medical.

Cochlear

Cochlear is a public company listed on the ASX (ASX:COH) with global headquarters at Macquarie University, Sydney. It is a global manufacturer and supplier of implantable hearing solutions.

In Australia, Cochlear manufactures and/or supplies:

- Cochlear implants – under the 'Nucleus Profile' and 'Nucleus Profile Plus' brands.
- Bone conduction solutions – under the 'Baha' brand and 'Osia' brands:
 - 'Baha Attract' is a *passive transcutaneous* product
 - 'Baha Connect' is a *passive percutaneous* product
 - products under the 'Osia' brand are *active transcutaneous* products, and
 - non-surgical bone conduction solutions involving a Baha sound processor being connected with a Baha Softband or SoundArc.

Oticon Medical

Oticon Medical is a subsidiary of Demant, a global manufacturer and supplier of various hearing solutions, including hearing aids, hearing care solutions, hearing implants, hearing diagnostic products and audio solutions for enterprise, gaming and air traffic control. Demant is listed on the Copenhagen Stock Exchange. On 27 April 2022 it announced its decision to discontinue its hearing implants business and sell it to Cochlear.

Oticon Medical manufactures and supplies Demant's hearing implants, including:

- Cochlear implants – under the 'Zti' brand with the accompanying sound processor being supplied under the 'Neuro' brand. The Neuro Zti cochlear implant was subject to a product recall in October 2021 and implants to new patients are currently suspended.
- Bone conduction solutions – under the 'Ponto' brand:
 - a *passive percutaneous* system with three different sound processors, and
 - non-surgical bone conduction solutions (Ponto Softband).

Industry background

Cochlear implants bypass the middle and inner ear structures to stimulate the auditory nerve directly. Cochlear implants are primarily used for patients with severe or total hearing loss. The implant consists of an external sound processor that sits behind or off the ear and an implant that is surgically placed under the skin.

Bone conduction solutions bypass a damaged outer or middle ear using a sound processor that converts sounds into vibrations that are then sent directly to the inner ear. Bone conduction solutions are suitable for those with mild, moderate or severe hearing loss. Bone conduction systems can be:

- *transcutaneous* – typically features magnets rather than a skin-penetrating

abutment. These solutions may be 'passive' (where a transducer is held outside the body) or 'active' (where a transducer is under the skin).

- *percutaneous* – abutment penetrates the skin. These solutions are 'passive' – where a transducer is held outside the body.
- *non-surgical* – involve an external sound processor being attached to an adjustable band around the head. These solutions are primarily used for children who are not old enough for a surgical solution, or adults or children who may have fluctuating degrees of hearing loss.

Attachment B

1. Provide a brief description of your business or organisation and the reasons for your interest in the proposed acquisition, including any commercial relationship(s) with Cochlear, Oticon Medical or Demant.
2. Outline whether you or any other organisation you are aware of would be interested in acquiring all or part of the Oticon Medical business if the proposed acquisition does not proceed. Please provide details, including whether you have been involved in any sales process, conducted due diligence, and/or submitted a bid for the business.
3. Describe how closely Cochlear and Oticon Medical compete in the supply of:
 - a. cochlear implants, and
 - b. bone conduction solutions, including each of percutaneous, transcutaneous, and non-surgical bone conduction solutions.

Consider factors such as price, quality, service levels, functionality, innovation, research and development, participating in tenders, and/or winning or losing customers. Provide specific examples where possible.

4. Identify and describe how closely Cochlear and Oticon Medical compete with alternative suppliers of:
 - a. cochlear implants, and
 - b. bone conduction solutions, including each of percutaneous, transcutaneous, and non-surgical bone conduction solutions.

Consider factors as above for question 2.

5. Describe the extent to which:
 - a. other hearing solutions, such as hearing aids, can be used instead of cochlear implants and/or bone conduction solutions, and
 - b. different types of bone conduction solutions, such as percutaneous, transcutaneous, and non-surgical bone conduction solutions, can be used in place of each other.
6. Describe how prices for (i) cochlear implants, and (ii) bone conduction solutions are set in Australia, including whether manufacturers can influence prices, and whether customers can negotiate prices.
7. Describe how customers procure (i) cochlear implants, and (ii) bone conduction solutions in Australia (for example, through tenders or other methods). Identify whether cochlear implants and bone conduction solutions are procured together, whether arrangements are exclusive, and the typical contract duration.
8. Describe the relationship, and any supply arrangements, between manufacturers, funding providers (for example state-funded or private providers), distributors, and private and public hospitals for the supply of (i) cochlear implants, and (ii) bone conduction solutions, in Australia.

9. Describe the importance of innovation and research and development in competition for the supply of (i) cochlear implants, and (ii) bone conduction solutions in Australia. Identify the main innovators for these products.
10. Describe the likelihood of a new firm entering, or an existing competitor expanding into, the supply of (i) cochlear implants, and (ii) bone conduction solutions in Australia. Provide details about the likely costs and lead times, and any requirements for entry or expansion (for example, intellectual property, access to technology, access to distribution networks, regulatory requirements, or establishing reputation). Provide examples of recent entry or expansion where possible.
11. Provide any additional information or comments relevant to the ACCC's consideration of the proposed acquisition, including any concerns with the proposed acquisition.