

4 April 2024

ACCC will not oppose revised Cochlear, Oticon Medical transaction

The ACCC will not oppose Cochlear Limited's (ASX:COH) proposed acquisition of the cochlear implants business of Oticon Medical A/S from its parent company, Demant A/S.

Initially, in 2022, Cochlear notified the ACCC it proposed to acquire Oticon Medical's bone conduction solutions business and cochlear implants business. The ACCC had significant competition concerns in relation to Cochlear's proposed acquisition of Oticon Medical's bone conduction solutions business.

"The transaction has now been changed to remove the bone conduction solutions business, which addresses the significant concerns the ACCC had in relation to bone conduction solutions," ACCC Commissioner Stephen Ridgeway said.

In relation to the revised transaction, Oticon Medical has small market share and does not provide strong competition in the supply of cochlear implants in Australia, including with respect to research and development.

The ACCC also considers it unlikely that Oticon Medical would have become a stronger competitor in the supply of cochlear implants in the foreseeable future.

"We concluded that Cochlear's proposed acquisition of Oticon's cochlear implants business was unlikely to substantially lessen competition in Australia," Mr Ridgeway said.

"We were concerned that the original proposed acquisition would lead to higher prices, lower quality or service levels and less innovation in the supply of surgical and non-surgical bone conduction solutions."

After the ACCC and other countries' competition regulators identified competition concerns with Cochlear's proposed global acquisition of the bone conduction solutions business, the parties revised the transaction. Now Demant will retain Oticon's bone conduction solutions business, selling only its cochlear implants business.

"The ACCC is satisfied that its competition concerns with respect to bone conduction solutions are addressed," Mr Ridgeway said.

During its review, the ACCC liaised closely with the other competition authorities, including the UK Competition and Markets Authority and the European Commission.

Background

Cochlear (ASX:COH) is a public company listed on the ASX, and headquartered in Sydney, Australia. It 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. Demant is a manufacturer and supplier of various hearing solutions and headquartered in Denmark.

Oticon Medical is a global manufacturer and supplier of cochlear implants and bone conduction solutions that supplies to many countries, including Australia.

Cochlear implants are small electronic devices which bypass the middle and inner ear structures to stimulate the auditory nerve directly. Cochlear implants are primarily used for patients with severe or total sensorineural 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.

Surgical bone-anchored devices 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. Surgical bone-anchored devices are suitable for those with mild, moderate or severe conductive hearing loss.

Non-surgical bone conduction devices use similar technology to surgical bone-anchored devices but rather than attaching to a surgical implant, the sound processor is attached to an adjustable band worn around the head, or held to the head by an adhesive sticker. These solutions are primarily used for children with conductive hearing loss who are not old enough for a surgical solution, or adults or children for whom a surgical solution may not be suitable.

The ACCC commenced an informal review of Cochlear's original proposed acquisition of the whole of Oticon Medical's hearing solutions business on 4 August 2022.

The ACCC published a [Statement of Issues](#) on 1 December 2022, outlining preliminary competition concerns with the proposed acquisition, particularly in respect of the supply of surgical bone-anchored devices and non-surgical bone conduction devices, collectively referred to as bone conduction solutions. The ACCC sought further information from the parties in January 2023, and suspended its review timeline.

On 22 June 2023, the CMA found that the merger may result in a substantial lessening of competition in the supply of bone conduction solutions in the UK. Therefore, the CMA partially prohibited the merger, preventing the sale of Oticon Medical's bone conduction solutions business to Cochlear. The transfer of Oticon Medical's cochlear implants business to Cochlear requires the CMA's approval of the terms in the revised transaction documents and will be subject to several safeguards.

On the same day, Cochlear announced publicly that it would revise its original proposed acquisition to only acquire Oticon Medical's cochlear implants business. Since this time, the merger parties have been working to revise the transaction documents and provide information to regulators globally about how Oticon Medical's cochlear implants business will be separated so as to maintain competition from Oticon Medical in the supply of bone conduction solutions.

On 9 October 2023, the European Commission reviewed the proposed acquisition of Oticon Medical's cochlear implants business by Cochlear and approved the acquisition under the EU Merger Regulation, concluding that the acquisition would not raise competition concerns in the relevant market.

On 28 February 2024, Cochlear sought informal merger clearance from the ACCC in relation to its proposed acquisition of only Oticon Medical's cochlear implants business.

On 15 March 2024, the ACCC recommenced its review to consider the revised transaction.

The CMA has not yet made a decision on the execution of the proposed revised transaction.

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