

Completed acquisition by Electro Rent Corporation of Microlease Inc. and Test Equipment Asset Management Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6676-17

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 14 June 2017. Full text of the decision published on 7 July 2017.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Contents

	<i>Page</i>
SUMMARY	2
ASSESSMENT	4
Parties.....	4
Transaction	4
Jurisdiction	4
Counterfactual.....	5
Industry background	5
Frame of reference	6
Competitive assessment.....	9
Third party views.....	32
Conclusion on substantial lessening of competition.....	33
Exceptions to the duty to refer	33
Decision	33

SUMMARY

1. On 31 January 2017 Electro Rent Corporation (**Electro Rent**) acquired Microlease Inc. and Test Equipment Asset Management Limited (together **Microlease**) (the **Merger**). Electro Rent and Microlease are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties' enterprises have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties both supply testing and measurement equipment (**TME**), which incorporates a wide range of machines used to test and measure electronic devices in order to validate their performance, across sectors such as telecommunications; aerospace and defence; industrial; and information technology. The Parties operate globally in the supply of TME for purchase, leasing and rental, and overlap in respect of supply to customers in the UK.
4. The CMA believes that it is appropriate to assess the impact of the Merger in the supply of TME rental to customers in the UK, based on:
 - (a) the evidence of limited demand-side substitutability between TME rental and alternative forms of TME supply; and
 - (b) suppliers of TME rental having a local presence (eg an office or sales team).

In doing so, the CMA has taken into consideration, in its competitive assessment, those competitors currently serving customers in the UK (regardless of where their TME stock is located) as well as any constraint on TME rental from the purchase or lease of TME.

5. The CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects. Specifically, the CMA found that:
 - (a) the Parties' combined share of supply is high and likely to give rise to *prima facie* concerns. While Electro Rent's increment may be relatively small, this does not accurately reflect the significant competitive constraint it imposes on Microlease, as reflected by the Parties' internal documents;
 - (b) the Parties are each other's closest competitor. The significance of this competitive constraint is evidenced consistently by the Parties' internal

documents and the views of third parties. The Parties are also differentiated from other TME rental competitors operating in the UK by their relationships with original equipment manufacturers (**OEMs**) and their TME portfolios of considerably greater value, scope and depth than those of their competitors;

(c) The evidence shows only a limited constraint from alternative suppliers of TME rental. In particular:

(i) the evidence from customers, competitors and the Parties' internal documents indicates that TME rental competitors are not sufficient to constrain the Parties across all TME rental. Customers are concerned about the Merger and are generally unable to identify credible competitors to the Parties; and

(ii) the evidence the CMA received from third parties suggests that, while the Parties could face a constraint in relation to some TME rental segments,¹ the level of any constraint is unclear and the CMA does not believe that the Parties face a credible constraint across all TME rental segments; and

(d) there is evidence of some competition between TME rental and alternative TME sources (in particular purchase, which accounts for a much larger proportion of total TME supply). However, the extent of this constraint is unclear. Further, the evidence suggests that many customers have some TME requirements for which they much prefer to rent TME and would not see alternatives to rental as viable.²

6. The CMA therefore believes that, overall, the Merger gives rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects. The evidence received by the CMA indicates that the overall value of the UK TME rental market is above the level at which the CMA would consider a market is not of sufficient importance to justify the making of a reference (the ***de minimis* exception**). The CMA does not have evidence to indicate that its concerns relate only to a narrower market segment.

7. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 21 June 2017 to offer an undertaking to the CMA that might be accepted by the

¹ Specifically, the segments of: industrial; radio frequency and microwave; wireless; wireline; and other 'general purpose' TME not included in the aforementioned segments.

² Eg of the nature described in paragraph 27 below.

CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

8. Electro Rent is owned and controlled by funds affiliated with investment firm Platinum Equity LLC. It supplies TME, offering such products for sale (either as new or used equipment), for lease and for rental in the UK and worldwide. Electro Rent's total turnover in FY 2016 was [X] million, of which approximately [X] million was generated in the UK.
9. Microlease supplies TME – offering such products for sale (either as new or used equipment), for lease and for rental – and asset management services, in the UK and worldwide. In 2014, it acquired Livingston Hire, a UK company active in TME rental, lease and sale in the UK through Livingston Limited.³ Microlease's total turnover in FY 2016 was [X] million, of which approximately [X] million was generated in the UK.

Transaction

10. On 31 January 2017 Electro Rent acquired the whole of the issued share capital of Microlease.
11. The CMA opened an own-initiative investigation into the Merger.⁴ On 13 April 2017, the CMA announced the launch of its merger inquiry by notice to the Parties, stating that the initial period would begin on 18 April 2017. The 40 working day deadline for the CMA to announce its decision is therefore 14 June 2017.

Jurisdiction

12. As a result of the Merger, the enterprises of Electro Rent and Microlease have ceased to be distinct.
13. The Parties overlap in the supply of TME rental to customers in the UK, in respect of which Electro Rent submitted that their combined share of supply is

³ The Livingston Limited Annual Report 2016 states that it had turnover of around £22.4 million for the year ended 29 February 2016.

⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

approximately [40-50]%⁵ (increment of [0-5]%) by total revenues.⁶ The CMA therefore believes that the share of supply test in section 23 of the Act is met.

14. The Merger completed on 31 January 2017. The four-month deadline for a decision under section 24 of the Act is 15 June 2017, following extensions under section 25(2) of the Act.
15. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

Counterfactual

16. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁷
17. In this case, the CMA has seen no evidence supporting a different counterfactual, and neither the Parties nor third parties have put forward arguments in this respect. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

Industry background

18. TME incorporates a wide range of machines used to test and measure electronic devices in order to validate their performance (eg with regard to signal strength, frequency of electric systems, reliability and integrity of circuitry, etc.). TME is used by all electronics related industry sectors, but the four main categories of customers are active in: telecommunications; aerospace and defence; industrial; and information technology. Customers of TME include engineers, network operators, contractors, service technicians, etc.

⁵ The Parties' estimates do not sum due to rounding.

⁶ See paragraph 39 below.

⁷ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

19. Both Parties have UK sales teams. A small number of TME rental requests are formally tendered. The majority of customers make enquiries and place orders by phone, email, online, or via a sales representative.
20. Price and availability (including timeliness of delivery) of TME are generally considered to be the most important factors for customers when choosing a rental supplier.
21. Prices for TME rental are usually determined as a rental rate per week or per month. Prices are not published. They are negotiated bilaterally between suppliers and individual customers. Microlease sales agents [X], including to take account of [X].

Frame of reference

22. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁸
23. The Parties overlap in respect of the: (i) sale of new TME; (ii) sale of used TME; (iii) rental of TME; and (iv) leasing of TME, to customers in the UK and worldwide.

Product scope

24. The Parties submitted that the product market should be the supply of TME (irrespective of the form of supply),⁹ but consider that the narrowest plausible candidate product market is the rental of TME in the UK.¹⁰
25. The Parties told the CMA that they each have minimal activities with regard to the sale of TME (both new and used) and TME leasing.¹¹ The Parties have argued that the leasing and sale of TME (as well as self-supply)¹² act as important constraints on TME rental. The CMA considers it appropriate to take

⁸ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁹ Merger Notice submitted on 13 April 2017 (**Merger Notice**), Section IV.A.

¹⁰ Merger Notice, paragraph 99.

¹¹ Specifically, the Parties estimated that they had a combined share of supply of less than [5-10]% in each of these segments in the UK.

¹² That is the use of TME already owned by a customer.

into account any constraint from leasing and sale of TME (as well as self-supply) in its competitive assessment.

26. The evidence that the CMA has received, described below, supports this narrower approach to the frame of reference.
27. Microlease's internal documents, [X], refer to its business as it relates to the TME rental market, although they do also assess the competitive constraint from other sources of TME (eg purchase). On the demand side, there is evidence that many customers do not consider the purchase or lease of TME as a close substitute for TME rental. Specifically, the majority of customer respondents to the merger investigation told the CMA that there are specific circumstances when they have a strong preference to rent TME, for the following reasons:
 - (a) they may only require equipment for a short period of time and/or have a specific need for a particular TME item;
 - (b) cash flow or capex limitations preclude purchasing of equipment;
 - (c) fluctuating and uncertain workloads mean it is preferable to have a more flexible rental agreement, rather than underutilised owned stock; and
 - (d) some customers prefer not to own equipment due to the costs of upkeep of the equipment (eg ongoing maintenance, repair and calibration costs).
28. The CMA notes that there are also certain key differences between rental and leasing, in particular that the term for TME rental is flexible and can be as short as one week. By contrast, the term for leasing is typically fixed for a minimum of two years. The CMA notes in this regard that rental is characterised by a high quantity of recurrent short duration orders (the average rental period for Electro Rent is [X] weeks; the average rental period for Microlease is just [X] weeks).¹³
29. The CMA received some evidence to suggest that the Merger may impact customers differently depending on their sector or the nature of their TME requirements.¹⁴ The CMA acknowledges that different customers in different sectors will have different TME rental requirements. However, on the evidence available to the CMA it is not clear that customer segmentation is appropriate in this case. As discussed in the competitive assessment, the

¹³ Merger Notice, paragraph 100 *et seq.*

¹⁴ For example, customers may be more willing to substitute long-term rental with purchase compared to short-term rental.

CMA does not have sufficient evidence to conclude on such customer segmentations.

Conclusion on product scope

30. For the reasons set out above the CMA has considered the impact of the Merger on the supply of TME rental but has also considered out of market constraints in the competitive assessment.

Geographic scope

31. The Parties submitted that a UK market for TME rental is the narrowest candidate geographic frame of reference.¹⁵
32. The CMA notes that evidence supporting a UK frame of reference includes:
- (a) each Party has a dedicated UK sales team (despite Electro Rent supplying all UK customers from its [REDACTED] warehouse). Competitors in TME rental indicated that having a local presence (eg an office or sales team) was a relevant factor in determining the competitive strength of different suppliers;
 - (b) documents provided by the Parties indicate [REDACTED]. The Microlease [REDACTED]¹⁶ [REDACTED].¹⁷ Microlease submitted that this mechanism is primarily designed to [REDACTED],¹⁸ [REDACTED]. The CMA notes that the pricing presentation described above does not support this explanation as it does not mention [REDACTED] as reasons for the [REDACTED]. Instead, the presentation cites the [REDACTED], which rather suggests there are differing competitive dynamics in different countries; and
 - (c) at least some TME rental companies appear to operate principally on a national basis.
33. The CMA notes that there is other evidence to suggest a wider than UK geographic frame of reference, including that, on the supply-side, Microlease serves customers in Europe [REDACTED] from the UK, while Electro Rent serves customers in Europe with TME stock stored in [REDACTED]. This demonstrates that it is not necessary for TME stock to be located exclusively in the UK.¹⁹

¹⁵ Merger Notice, paragraph 99.

¹⁶ [REDACTED], Annex 6.1 to the second section 109 response.

¹⁷ [REDACTED], Annex 6.4 to the second section 109 response. [REDACTED].

¹⁸ For example, the Parties submitted that, in the USA, the return shipping cost is typically charged to the customer as a separate line item, while, in the UK, this cost is not normally separately charged to the customer.

¹⁹ The CMA notes that some customers nevertheless consider proximity of stock to be an important factor when choosing their TME rental supplier (see paragraph 32 above). In this regard, while some customers told the CMA

Conclusion on geographic scope

34. On the basis of the evidence described above, the CMA has considered the impact of the Merger taking into consideration the competitive constraint from all those suppliers currently serving UK-based customers. Where relevant, the CMA has considered the impact of only having TME stock located outside the UK in its competitive assessment.

Conclusion on frame of reference

35. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of TME rental to customers in the UK as the relevant frame of reference.

Competitive assessment

Horizontal unilateral effects

36. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.²⁰ Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition due to unilateral horizontal effects in the supply of TME rental in the UK.
37. The Parties submitted that:²¹
- (a) the Parties have a combined share of supply that is not above the level that would usually give rise to concerns in relation to horizontal unilateral effects;
 - (b) the small increment indicates Electro Rent has only a limited presence in the UK;
 - (c) the Parties are not close competitors;

that they prefer Microlease to Electro Rent for this reason, the CMA also notes that Electro Rent has a warehouse in the UK from which it could potentially serve UK customers in the future and that some customers consider this to make Electro Rent a more appealing alternative.

²⁰ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

²¹ Merger Notice, Section IV.C.

- (d) the Parties compete with a range of alternative suppliers offering TME rental; and
 - (e) the Parties compete with alternatives to TME rental, including TME purchase, leasing and self-supply.
38. To assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered evidence regarding:
- (a) shares of supply for TME rental;
 - (b) the closeness of competition between the Parties;
 - (c) competitive constraints from alternative suppliers of TME rental;
 - (d) the extent of any competitive constraint from TME purchase, leasing and self-supply.

Shares of supply

39. The Parties submitted share of supply estimates for TME rental in the UK in 2016. Microlease's share was [40-50]%, while Electro Rent's share was [0-5]%. The Parties would therefore have a combined share of the supply of [40-50]%.²² The Parties argue that these shares of supply are not above the level that would usually give rise to concerns in relation to horizontal unilateral effects.²³
40. The Parties noted that, as there are no published reports indicating the size of the TME rental market in the UK, the share of supply estimates provided to the CMA are good faith estimates.²⁴ The CMA notes the practical challenges the Parties faced to produce these best estimates and checked them with a representative sample of the competitors listed in the Merger Notice. This verification indicated that the Parties' estimates were likely to be substantially flawed. In particular, third party feedback indicates that the Parties' figures significantly overestimate the TME rental revenues of at least some rivals such that the CMA considers that the total size of the TME rental market in the UK by revenue is smaller than indicated by the Parties.

²² The Parties' estimates do not sum due to rounding.

²³ Merger Notice, paragraph 145, first bullet.

²⁴ The Parties have estimated the total market size by revenue for UK TME rental by summing estimated UK TME rental revenue of each competitor. TME rental revenues of competitors are an estimation by the Parties of the rental revenues likely to be generated from the scope of each competitor's TME rental activities, as identified from desktop research.

41. On the basis of this verification, the CMA believes that the Parties' combined share of supply is likely to be sufficiently high to raise competition concerns. The CMA also notes that [REDACTED]²⁵ and, given Electro Rent has material operations in Europe, the CMA would likely also have concerns if the market were considered on a Europe-wide basis.
42. Moreover, the CMA considers that the share of supply figures alone may not represent the true loss of competition that will result from the Merger. The following section assesses whether the Parties are each other's closest competitor and whether the impact on competition resulting from the Merger may be materially more significant than that expected just by looking at the estimated increment.

Closeness of competition

43. In this section the CMA has assessed the closeness of competition between the Parties as compared to other TME rental firms.
44. The CMA examined the closeness of competition between the Parties with regard to:
 - (a) their characteristics and their service propositions;
 - (b) evidence of lost opportunities;
 - (c) evidence from internal documents relating to lost key deals;
 - (d) other evidence from internal documents; and
 - (e) customer and competitor feedback.

Characteristics of the Parties and their service propositions

45. In this section, the CMA has considered the competitive offering of the Parties by reference to the scope and depth of their TME stock (and where this stock is located), as well as the extent to which the Parties have preferential relationships with OEMs that supply TME.
46. The CMA notes that both of the Parties are large companies with a significant pan-European and global presence. While Microlease's UK business is larger

²⁵ [REDACTED] 10 March 2016, page 25. The CMA notes page 3 of the same document states [REDACTED].

than that of Electro Rent,²⁶ the CMA considers that, for the reasons described below, the Parties are uniquely placed as suppliers of TME rental in the UK.

47. Information provided to the CMA by the Parties and by competitors²⁷ (as further described in paragraph 78 *et seq.* below) indicates that, in general:
- (a) the Parties have a significantly larger pool of TME items located in Europe than any other competitors, with which they can supply UK customers;
 - (b) the value of each Party's TME stock in Europe is also considerably greater than that of other competitors;
 - (c) the Parties are able to provide customers with the full range of rental TME, whereas many competitors appear to stock a more limited range of TME; and
 - (d) both of the Parties have even greater resources worldwide,²⁸ and so would be well placed to respond to changing market conditions by relocating global stock.
48. In this regard, the CMA notes that both the Parties have the ability to leverage deep resources in order to support their UK TME rental business. In particular, both Parties have a considerable pool of TME rental stock from which they can draw on to supply customers in the UK. In Europe, Microlease has around [X] TME units (of which, around [X] are located in the UK), while Electro Rent has around [X] TME units (of which over [X] are in the UK).²⁹ Moreover, both of the Parties are able to supply a full range of TME to meet customer requirements across all TME rental sectors.³⁰
49. As noted in paragraph 33 above, Microlease supplies all of Europe [X] from the UK, while Electro Rent supplies all of Europe with TME stock stored in [X]. Three large customers told the CMA that they prefer Microlease to Electro Rent due to concerns over the speed of service when TME is located abroad. The Parties submitted that Electro Rent also has a warehouse in the UK [X]. The CMA believes this will remove a point of differentiation between the Parties and make their service propositions even more similar.

²⁶ As indicated by the Parties' UK TME rental revenues ([X]million for Microlease in 2016, compared to [X] million for Electro Rent).

²⁷ Specifically, competitors that the Parties submitted are of a similar size to Electro Rent in the UK.

²⁸ Microlease has over [X]TME rental items worldwide, while Electro Rent has over [X].

²⁹ The CMA understands that while these items are currently in use in the UK, they would be stored in Electro Rent's warehouse in [X] in the ordinary course of business.

³⁰ Specifically, TME which the Parties identified as falling within the following TME rental segments: industrial, radio frequency and microwave, wireless, wireline, and other general purpose TME not included in the aforementioned segments.

50. The CMA also notes that both of the Parties have entered into preferential deals with OEMs for the supply of TME, in particular Microlease has preferred rental partner status with a number of key OEMs, including [REDACTED], [REDACTED], [REDACTED] and [REDACTED],³¹ while in the UK Electro Rent is a preferred rental partner to Anritsu.
51. The CMA believes that the above-mentioned factors concerning the Parties' service propositions, in particular the value, scope and depth of their pool of TME rental items, make them close competitors.
52. Moreover, the CMA believes that it is possible that Electro Rent may be positioned particularly well to become a greater constraint on Microlease in the future, given it has a global presence, commercial arrangements with suppliers and warehouse facilities in the UK with which to serve UK TME rental customers from a closer proximity.

Evidence of lost opportunities

53. The Parties submitted an analysis of lost opportunities (the Lost Opportunities Analysis).³² The analysis focussed primarily on internal Microlease³³ records of enquiries that did not result in the rental of TME to that customer in response to the enquiry (ie a 'lost opportunity').³⁴
54. The Parties argued that the Lost Opportunities Analysis demonstrates that there are a number of constraints on the Parties' TME rental businesses, including competing rental providers, new and used purchases of TME, and self-supply. In particular:
 - (a) overall, Microlease did not lose a large number of opportunities to Electro Rent relative to other competitive options;
 - (b) a significant number of opportunities were lost to the purchase of TME and self-supply, indicating that these are important constraints in addition to other TME rental firms; and
 - (c) Microlease lost opportunities to a wide variety of competitors (including other TME rental firms and TME manufacturers).

³¹ [REDACTED], August 2015, Annex 9.3 to the Merger Notice.

³² [REDACTED], RBB Economics, 3 March 2017.

³³ The Lost Opportunities analysis notes that [REDACTED]. For the same reason, the CMA does not believe it is possible to draw meaningful conclusions from the Electro Rent data.

³⁴ The CMA understands that in the ordinary course of business Microlease sales agents would record customer rental enquiries received by various means (eg described at paragraph 19 above) and the outcome of these enquiries.

55. The CMA expressed concerns that the lost opportunities may not represent the actions of current rental customers who are considering their competitive options. In particular, the CMA had doubts as to the extent that meaningful inferences as to behaviour of rental customers can be drawn from the instances of lost opportunities. To address these concerns, the Parties applied a sensitivity test to the Lost Opportunities Analysis by including in the data set only those lost opportunities that relate to customers that had also actually rented TME from Microlease.³⁵ The CMA gives greater weight to the Lost Opportunities Analysis, following the sensitivity test, for addressing this concern.
56. The CMA notes that the data set on which the Lost Opportunities Analysis relies is incomplete.³⁶ The Parties submitted that there was good coverage of the opportunities (about a third of instances) for which one might expect a competitor to be cited; also, that there was no reason to believe that the instances of competitors recorded was likely to be systematically biased. While the data is incomplete, the CMA has not found reason to believe it is subject to systematic biases.³⁷
57. The analysis shows that, in terms of value, [40-50]% of Microlease's lost opportunities were to OEMs, where the customer appeared to choose to purchase the equipment instead of renting, and [20-30]% to self-supply, where customers chose to use equipment that they already had. The CMA considers the Lost Opportunities Analysis as it relates to the significance of alternatives outside of the frame of reference for TME rental (ie purchase and self-supply) at paragraph 108 *et seq.* This is not addressed further in this section. Here an assessment is made of the opportunities Microlease lost to other suppliers of rental equipment and specifically Electro Rent.
58. The Lost Opportunities Analysis, following the sensitivity test, showed a significant difference in the value and number of opportunities lost to Electro Rent and the next closest TME rental intermediary, Test Equipment Solutions. In particular, it indicated that Microlease lost [10-20]% ([10-20]% by value) of all opportunities to Electro Rent, compared with [0-5]% ([5-10]% by value) to

³⁵ The Parties considered that these were "demonstrably genuine rental customers".

³⁶ The data only records a reason for loss in respect of [x] out of a total [x] lost opportunities (c.[30-40]%). 'Annex: Analysis of Microlease Loss Data' (the Sensitivity Analysis), RBB Economics, 19 May 2017.

³⁷ In respect of [80-90]% of the total [x] lost opportunities, the reason for loss is not one where a competitor would be cited (e.g. internal supply, cancelled requirement, client did not have budget). Therefore, competitor information may be available for the remaining [10-20]% of the total data (ie [x] out of [x] lost opportunities). In fact, the data records a competitor as the reason for loss in about [x] of those instances where competitor information might be available (ie in respect of [x] lost opportunities, which is c.[20-30]% of those for which competitor information might have been available). 'Annex: Analysis of Microlease Loss Data' (the Sensitivity Analysis), RBB Economics, 19 May 2017.

the next closest TME rental intermediary, Test Equipment Solutions.³⁸ The CMA believes that this suggests Electro Rent is the closest competitor to Microlease (when excluding purchasing and self-supply), and is supported by the evidence from other sources, including third party views and the Parties' contemporaneous internal documents, described below.

Evidence from internal documents relating to key deals

59. The CMA also considers that Microlease's monthly sales reports provide evidence that the Parties are close competitors. These reports were prepared by senior management and contain information on "key deals" won or lost that month. The reports contain information on [REDACTED] lost key deals worth [REDACTED] over the period [REDACTED].³⁹ The CMA notes that Microlease:
- (a) lost [REDACTED] key deals to Electro Rent.⁴⁰ This represents [30-40]% of the total number of lost key deals and [40-50]% of the total number of lost key deals where a competitor (or a competitor category) was identified;
 - (b) lost [REDACTED] key deals to other known rental firms.⁴¹ This represents [10-20]% of the total number of lost key deals and [20-30]% of the total number of lost key deals where a competitor (or a competitor category) was identified; and
 - (c) lost [REDACTED] key deals to sales of new TME. This represents [10-20]% of the total number of lost key deals and [20-30]% of the total number of lost key deals where a competitor (or a competitor category) was identified.

Internal documents

60. The internal documents submitted by the Parties suggest that Microlease views Electro Rent as its closest competitor. In particular, the business plans of Microlease consistently identify Electro Rent more than any other competitor and describe Electro Rent in terms of its main competitive threat.

³⁸ This appears to indicate that the equipment which Electro Rent supplied during the period was at a lower price to the equipment supplied by [REDACTED].

³⁹ The CMA notes these do not represent a comprehensive or representative record of deals won or lost, but rather each is identified as a "key deal", which indicates that these are deals Microlease considered particularly important. The CMA notes that this information relates to a set of deals that is potentially broader than just UK TME rental. The CMA sought, but did not receive, clarification on this point. The CMA also notes that in three instances the loss was to an unknown rental firm and in 12 instances the competitor (and competitor category) was not identified.

⁴⁰ One of these was noted as being lost to [REDACTED].

⁴¹ One of these was lost to [REDACTED].

61. The [redacted] refers to Electro Rent as both a current and future competitive threat to its business.⁴² Specific references include:
- (a) a critical success factor describes the need to [redacted]. No other competitors are specifically mentioned;⁴³
 - (b) a competitor landscape table describes Electro Rent as [redacted]. The description of Electro Rent's strategy is supported by the evidence of Electro Rent's marketing campaign described at paragraph 66 below. The CMA notes that no other TME rental competitors are mentioned; and
 - (c) a key significant risk cites [redacted]. This is considered to have a [redacted] probability [redacted]. It also states that this would have a [redacted] impact on the business and comments, [redacted]. The CMA considers this direct evidence that Electro Rent acts as a constraint on the pricing of Microlease.
62. Microlease submitted to the CMA that the [redacted], dated 10 March 2016, [redacted].
63. The CMA has not been provided with any contemporaneous evidence to support that such a strategy was being pursued. In the absence of such evidence, the CMA believes that the above-mentioned references are consistent with Microlease considering Electro Rent to be its main competitor.
64. This is also suggested by statements in the [redacted] (dated March 2015 and therefore prepared well before [redacted],⁴⁴ which indicate that Microlease considered Electro Rent to be its key competitor. Specifically:
- (a) [redacted];
 - (b) a critical success factor describes the need to [redacted]. The CMA notes that this statement was subsequently repeated almost verbatim in the [redacted] (see paragraph 61(a) above). Again, no other competitors are specifically mentioned;
 - (c) Microlease identifies [redacted] as a threat to its business; and
 - (d) a stated goal is to [redacted]. The CMA again notes that this statement was copied verbatim as a key objective in the [redacted].

⁴² The CMA understands that [redacted]. The CMA has not received evidence of that Electro Rent is a greater competitive threat in continental Europe than in the UK.

⁴³ [redacted] 10 March 2016, page 4.

⁴⁴ The earliest evidence of [redacted] submitted to the CMA is dated August 2016.

65. The CMA notes that other internal documents of the Parties also evidence strong competition between them, particularly with regard to pricing. For example, a Microlease document advising sales agents on how to [REDACTED].⁴⁵
66. Furthermore, the evidence submitted by the Parties also shows that Electro Rent has specifically targeted Microlease UK customers. For example:
- (a) an Electro Rent marketing email dated 3 December 2015 has the headline, “*Monopoly is No Game When It Affects Your T&M Strategy*”.⁴⁶ The CMA notes the context for this statement is that Microlease completed the acquisition of its competitor Livingston Hire the previous year. The email states, “*When your Test & Measurement (T&M) choices are narrowed down to one, that's not only bad for business, it's risky business. Now that Electro Rent has established a strong UK presence, you've got choices. And the status quo is on alert.*” This email was part of a wider project ([REDACTED]), which involved a mailshot and telephone campaign that targeted [REDACTED] companies in the UK; and
 - (b) a press release from Electro Rent dated January 2015 notes, “*Over the past few months we have also seen some significant changes in the UK test equipment rental market. With the fusion of our two largest competitors, customers do no longer have the true opportunity to compare competitive offers*”.
67. Microlease submitted that, as the largest supplier of TME rental in the UK, it is an obvious target for advertising campaigns. Therefore, it is to be expected that one of its competitors would launch a marketing campaign of this kind and Microlease would expect all of its competitors to be advertising as aggressively as possible. However, despite this assertion, the CMA has not been provided with any evidence that other competitors have proactively targeted Microlease or otherwise advertised as aggressively as Electro Rent.
68. The CMA notes that these Electro Rent marketing materials are consistent with the responses from a high proportion of third parties (described at paragraph 89 *et seq.* below) who did not consider there to be any credible alternatives to the Parties.
69. The Microlease Information Memorandum,⁴⁷ which was prepared in the context of the sale of the business, also indicates that Electro Rent is the

⁴⁵ [REDACTED], Annex 6.4 to the second section 109 response.

⁴⁶ Annex 31.1 to RF11.

⁴⁷ [REDACTED], October 2015, Annex 9.1 to the Merger Notice.

biggest rental competitor and is targeting the European market, which is consistent with the body of evidence described above.

Third party comments

70. In total, the CMA contacted 129 rental customers of the Parties and received responses from 29. The majority of responses were from customers in the telecommunications sector.
71. Customer responses indicated that Microlease and Electro Rent are each other's closest competitor and often the only credible suppliers of rental TME for their UK business.
72. In particular, customers expressed views indicating that the Parties are the most important alternatives for TME rental, including:
 - (a) Microlease and Electro Rent are not only close alternative suppliers but the only credible suppliers of rental TME for their UK business requirements;
 - (b) customers had either used both of the Parties for their TME rental requirements or switched (or threatened to switch) between them;
 - (c) several customers had achieved lower prices as a result of competition between the Parties; and
 - (d) where customers identify other suppliers as credible alternatives, Microlease and Electro Rent are most often identified as the two preferred suppliers.

Conclusion

73. On the basis of the evidence, in particular the characteristics of the Parties and their service offerings, the internal documents and the customer feedback, the CMA believes that the Parties are each other's closest competitor (both in the UK and Europe) for the supply of TME rental.

Competitive constraint from alternative suppliers of TME rental

74. The CMA assessed the constraint from the remaining TME rental alternatives by taking into consideration:
 - (a) characteristics of the competitors and their service propositions;
 - (b) information on lost opportunities;

- (c) evidence from internal documents;
- (d) third party views on alternatives; and
- (e) results of a mystery shopper exercise.

Characteristics of the competitors and their service propositions

75. In the Merger Notice, the Parties named the following significant competitors to the Parties in UK TME rental: Seaward,⁴⁸ MCS Test Equipment, Test Equipment Solutions, EMC Hire, First Rental, Instruments 4 Hire,⁴⁹ Inlec, and Interlligent.⁵⁰ At the Issues Meeting, the Parties told the CMA that the OEMs Rhode & Schwartz and Keysight also provide direct TME rental. Further, the Parties argued that TRS RenTelco (a USA-based TME rental firm) is also responding to the Merger by strengthening its efforts in Europe and therefore becoming one of Electro Rent's closest competitors. The CMA notes that the Parties did not identify any of these additional alternatives as close UK TME rental competitors in the Merger Notice.
76. At the Issues Meeting the Parties provided evidence to show that several rivals offer TME rental in the UK across a range of TME rental segments. The Parties submitted that these alternatives are easy to find and that switching costs are low. This evidence would suggest that, even if not all competitors are active across the full range of TME product sectors, collectively these competitors nevertheless provide sufficient alternative options to the Parties in each product sector. In this regard the Parties provided the preliminary results of a "web trawl" exercise, which identified competitors present in a TME rental segment based on searching the names of certain product sub-segments and the top manufacturers (based on Microlease TME rental revenue data) and identifying competitors listed on the first two pages of the Google results. The Parties grouped the results into the following TME rental segments: general purpose,⁵¹ industrial, radio frequency and microwave, wireless and wireline.
77. The CMA does not believe the results of this exercise can be used to draw any meaningful conclusions about competition in the TME rental market. In

⁴⁸ The CMA notes that Seaward is not a TME rental company but an OEM. Seaward told the CMA that it designs, builds and sells electrical testing equipment but does not itself rent the equipment.

⁴⁹ Registered as Hire Station Limited.

⁵⁰ These competitors were identified as being of comparable size to Electro Rent. Other, smaller, competitors (ie with an estimated share of supply of [0-5]% or less) identified were Caltest Instruments, Leasametric, Instrumex, eTest Equipment, National Instrument Hire, Testwall, TICS International, Norwich Instrument Services and UK Test Limited.

⁵¹ Ie all products, except all of the following: industrial, radio frequency and microwave, wireless, and wireline.

particular, the CMA received information from the Parties as well as directly from five competitors⁵² regarding the extent of their rental activities across the TME rental segments identified above.

78. This information indicated that:

(a) the Parties each have an extensive range of TME stock covering all the above-mentioned TME rental segments.⁵³

(i) In Europe, Microlease said it has TME rental stock worth over [REDACTED] million, which it identified as falling within the above-mentioned segments as follows: general purpose ([REDACTED] million); industrial ([REDACTED] million); radio frequency and microwave ([REDACTED] million); wireless ([REDACTED] million); and wireline ([REDACTED] million). The majority of its stock in each segment is located in the UK.

(ii) In Europe, Electro Rent said it has TME rental stock worth over [REDACTED] million, with TME rental stock worth over [REDACTED] million in the UK.⁵⁴ Electro Rent identified its stock as falling within the above-mentioned segments as follows: general purpose ([REDACTED] million); industrial ([REDACTED] million); radio frequency and microwave ([REDACTED] million); wireless ([REDACTED] million); and wireline ([REDACTED] million).

(b) Test Equipment Solutions indicated that it had total TME rental stock worth under [REDACTED] (none of which is included in the [REDACTED] segments). Further, Test Equipment Solutions has only around [REDACTED] in UK rental revenues – around [REDACTED] of that of Electro Rent. Test Equipment Solutions therefore appears to be a much smaller competitor that has only limited stock.

(c) MSC Test Equipment indicated that it had around [REDACTED] items of rental TME in total (over [REDACTED] of these items MCS Test Equipment considers falls into the [REDACTED], with a combined value of under [REDACTED]). By contrast, Electro Rent and Microlease told the CMA that, in the [REDACTED] segment, they have [REDACTED] and [REDACTED] items of rental TME in the UK, respectively (and a total of [REDACTED] and [REDACTED] rental TME items in Europe, respectively). The CMA also notes that over [REDACTED] of MCS Test Equipment's rental revenue from [REDACTED] TME is generated outside of the UK, which suggests it is not a strong constraint in the UK in this segment.¹

⁵² The five competitors (Test Equipment Solutions, MCS Test Equipment, Hire Station Limited (Instruments 4 Hire), Inlec and Interlligent) were selected from those identified in the share of supply table in the Merger Notice as being of a comparable size to Electro Rent in the UK (by rental revenue).

⁵³ Estimates from the Parties of the number and value of TME rental items in different locations reflect a representative estimate of current inventory.

⁵⁴ Although it is stored in Electro Rent's warehouse in [REDACTED] in the ordinary course of business.

- (d) Hire Station Limited (Instruments 4 Hire) indicated that it is only active in the [REDACTED] segment. Hire Station Limited told the CMA its rental TME stock has a value of over [REDACTED]. The CMA notes this is greater than value of each of Microlease's and Electro Rent's rental TME stock in Europe in this segment, although Electro Rent has greater resources globally.
- (e) Inlec indicated that it is only active in the [REDACTED] segments. Inlec told the CMA that it had around [REDACTED] in rental revenue from UK customers, and that around [REDACTED] of this related to the [REDACTED] segment. The CMA notes that [REDACTED].
- (f) Interlligent indicated that it is active only in the [REDACTED]⁵⁵ [REDACTED]. Interlligent estimates that the total value of its stock worldwide is around [REDACTED]. The CMA notes that the information received from the Parties indicates that each has a significantly greater value of TME stock in each of these TME rental segments in Europe alone.

79. The information above indicates that, in general, the Parties have greater resources in terms of the number and value of TME items across a broader range of TME rental segments. In some TME rental segments (in particular radio frequency and microwave, wireless, and wireline) the Parties' TME stock is significantly greater than each of their rivals'. In this context, the information above indicates that the Parties are much better placed than any of their rivals to provide rental TME.
80. However, the data available to the CMA is incomplete and while it appears possible that in some TME rental segments (eg industrial) there are more credible alternatives than in other TME rental segments (eg general purpose, radio frequency and microwave, wireless, and wireline), the CMA does not have sufficient information to determine whether there are credible and sufficient alternatives for customers in any or all TME rental segments.

Evidence of lost opportunities

81. The results of the Lost Opportunities Analysis, following the sensitivity test, showed a significant difference in the value and number of opportunities lost to Electro Rent and other TME rental companies. As noted at paragraph 58 above, it indicated that Microlease lost [10-20]% ([10-20]% by value) of

⁵⁵ Interlligent noted that some of its equipment in this segment could be described as [REDACTED], but that this is distinguished from [REDACTED], which Interlligent would identify as being [REDACTED], but in which [REDACTED]. The CMA has therefore included all such TME in the [REDACTED] segment.ⁱⁱ

opportunities to Electro Rent, compared with [0-5]% ([0-5]% by value) to the next closest TME rental intermediary, [REDACTED].⁵⁶

82. Other rental competitors noted in the Lost Opportunities Analysis data include [REDACTED], [REDACTED],⁵⁷ [REDACTED], [REDACTED], and [REDACTED]. However, together these rental companies account for only [0-10]% ([10-20]% by value) of lost opportunities, meaning Microlease lost more opportunities to Electro Rent than all of these competitors combined.
83. The CMA notes that [REDACTED] does not feature specifically in the loss data, indicating that, on this basis, it has not historically been a close competitor or an important constraint on the Parties.
84. The CMA therefore considers that the Lost Opportunities Analysis, following the sensitivity test, demonstrates that Microlease lost a larger number (and value) of opportunities to Electro Rent relative to other TME rental firms.

Internal documents

85. The CMA has assessed certain evidence from the Parties' internal documents in detail at paragraph 60 *et seq.* In particular, the CMA notes that the [REDACTED] does not mention any TME rental competitor other than Electro Rent.
86. The Parties submitted that the [REDACTED]⁵⁸ states that [REDACTED], and that [REDACTED]. However, the strategy notes that accompany these references indicate that Microlease does not see these competitors as a significant threat, as they suggest [REDACTED]. This strategy is in contrast to the description of Electro Rent as [REDACTED] that is [REDACTED] and which must be countered by Microlease being [REDACTED], therefore demonstrating how Electro Rent (in contrast to other TME rental providers) is able to constrain Microlease on price.
87. In addition, [REDACTED]⁵⁹ mentions several other competitors in addition to Electro Rent. These other competitors are: [REDACTED], [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. The CMA does not believe that these references alone amount to credible evidence of alternative competitive constraints or demonstrate that Electro Rent and Microlease are not each other's closest competitor.

⁵⁶ This appears to indicate that the equipment which Electro Rent supplied during the period was at a lower price to the equipment supplied by [REDACTED].

⁵⁷ [REDACTED].

⁵⁸ [REDACTED], March 2015.

⁵⁹ [REDACTED], December 2013.

88. The CMA believes that the internal documents indicate that Microlease does not consider other TME rental options to be a significant competitive constraint.

Third party views

89. The feedback from the CMA's merger investigation indicates that customer awareness of competitors to Microlease (other than Electro Rent) was generally very limited and that most UK customers do not perceive other providers of TME rental as credible alternatives to either of the Parties.
90. The CMA asked customers about each of the alternative suppliers of TME rental identified by the Parties in the share of supply table in the Merger Notice. Specifically, the CMA asked customers: (i) whether they were aware of each of the alternative TME rental suppliers; and (ii) if so, whether they considered each of these suppliers to be a credible alternative to the Parties. The results showed that prompted awareness of other competitors was generally very limited and the large majority of customers either had not heard of or did not know whether each of the rivals was a credible supplier.
91. Specifically, the majority of customers that responded had not heard of Interlligent, Inlec, Instruments 4 Hire, or First Rental. Significant minorities of customers had not heard of EMC Hire, Test Equipment Solutions, MCS Test Equipment and Seaward.
92. At the Issues Meeting the Parties submitted that a very quick search on Google highlights the ease with which TME rental suppliers in the UK can be found. Therefore, the Parties submitted that just because customers are unaware of alternative sources of supply does not mean that such alternative sources do not exist or cannot be found very quickly and easily should customers be so motivated. However, the CMA notes that the appearance of alternative suppliers on a Google search does not say anything about the effectiveness of those alternatives. Rather, the CMA considers that the lack of awareness of those stated alternative suppliers as evidence that they are not, or at least are not considered to be, realistic alternatives for the majority of rental customers in the UK.
93. The CMA acknowledges that customer lack of awareness might be alleviated post-merger if customers are motivated to research their options. However, the CMA notes that, even for those respondents that had knowledge of the service proposition of these rivals, most commented that they were not credible rental suppliers. Although a small proportion of customers did identify some of the rivals as credible, most of these customers were nevertheless concerned by the Merger.

94. Customers gave a range of reasons why they did not consider the alternatives to be credible. These include that the competitor:
- (a) does not rent the necessary equipment or can only partially accommodate the customer's rental requirements (and is unwilling to purchase new rental equipment); or
 - (b) is more expensive than the Parties.
95. While five customers considered there to be alternative credible suppliers for their TME rental needs, the three largest of these customers (in terms of TME rental spend) still expressed concerns with the Merger, including:
- (a) the Merger would significantly reduce the choice of TME rental suppliers when submitting enquiries for a wide range of instrument requirements; and
 - (b) to source their full TME requirements, the alternative would be to deal with a greater number of suppliers. Not only would this increase transaction costs, but it would increase prices for them as the smaller competitors are generally more expensive.
96. The CMA also contacted competitors to the Parties and was told that:
- (a) Microlease and Electro Rent are the biggest players in the UK. Not all competitors are able to offer the same range of products as the Parties; and
 - (b) customers may find it difficult to switch to an alternative supplier as they do not have the same depth in product portfolios. In this regard, while it is possible to purchase equipment to satisfy rental demand, this cannot always be done quickly and may not always be financially viable.
97. The Parties highlighted the importance of TRS RenTelco as a new competitive constraint during the Issues Meeting. TRS RenTelco is based in the USA and the CMA has not seen any evidence that it has a material UK TME rental presence or is acting as a constraint on the Parties' UK TME rental businesses. TRS RenTelco told the CMA that in the last year its revenue from UK customers was around [REDACTED]. These orders are the result of [REDACTED]. [REDACTED]. It sees the additional burden and costs for customers of importing TME from the USA as reasons why its offering would be less attractive to UK-based customers. Furthermore, [REDACTED]. As a result, and on the basis of all the considerations described above, the CMA believes that TRS RenTelco does not currently act as a significant constraint to the Parties with regard to TME

rental in the UK (or indeed Europe) and is not likely to act as a constraint in the near future.

98. At the Issues Meeting, the Parties told the CMA that the OEMs Rhode & Schwartz and Keysight also provide direct TME rental. However, the CMA did not receive evidence to suggest that OEMs are active in TME rental to any significant degree, or that the competitive constraint would increase in the future. As noted at paragraph 87 above, Rhode & Schwartz told the CMA that while it does rent TME occasionally, its activities in this regard are ad hoc and it does not consider itself a TME rental competitor. Similarly, Keysight told the CMA that it does not rent equipment in the ordinary course of business and while it has on occasion rented TME to major strategic customers, these exceptions are very limited. In addition, Keysight told the CMA it has [REDACTED]. Therefore, the CMA does not believe that OEMs such as Rhode & Schwartz and Keysight are credible TME rental competitors.

Mystery shopper exercise

99. The Parties conducted two mystery shopper exercises to evaluate the depth and breadth of the TME rental market in the UK.
100. The first, conducted by [REDACTED],⁶⁰ sought to source TME from six suppliers⁶¹ for a one month period with a very short lead time to supply. The aim of the exercise was to make an enquiry for a rental, request a quotation, place an order and take delivery of equipment within a week period. The TME selected was designed to represent a broad range of equipment utilised across various industries. Microlease chose the six competitors from which to source and chose different products to be ordered from the competitors, based on their understanding of the areas in which these competitors were likely to have products available.
101. The results from the mystery shopping exercise were mixed. Two competitors delivered the specified products within one week, while another was able to deliver alternative products within a week.⁶² A fourth competitor was able to deliver alternative products to those specified later than a week.⁶³ A fifth competitor also indicated that it had alternative equipment available, but did

⁶⁰ Submitted at the Issues Meeting, 19 May 2017.

⁶¹ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

⁶² The [REDACTED] report noted that, although these deliveries were made within a week, two of these competitors made their deliveries later than had been indicated when the order was made.

⁶³ The [REDACTED] report noted further problems with the order in that the end customer would need to clear customs and pay duties and that the order placement and payment took relatively long and with a lot of email communication.

not deliver the equipment.⁶⁴ The sixth competitor did not even provide a response to a request for a quote.

102. The second, conducted by [REDACTED],⁶⁵ sought to source equipment from the same six suppliers for either a three or six month rental period. In this exercise, the equipment was not paid for, nor did the Fraser Dove Project seek for the equipment to be delivered. On the other hand, the Fraser Dove Project explored the availability of a wider range of equipment which, the Parties submitted, may typically be used on larger projects. Again, Microlease chose the types of equipment for which to seek quotes and different equipment was chosen for each competitor. About five to seven items of equipment were requested from each competitor.
103. The results showed that all six companies were able to give quotes for the requested products. Half of the contacted companies provided quotes on the same day, while the others took between one and four working days to respond to the request. In some cases, alternative equipment was offered in place of the specific equipment requested.
104. The CMA considers that there are some limitations with the evidence provided through the mystery shopping exercises. In particular, both the [REDACTED] and the [REDACTED] concern only a very small sample of products. In addition, the products in the samples were chosen by the Parties and the CMA was not in a position to assess how representative the samples were of a broad range of common customer requirements. The exercises showed that customers were frequently offered alternative products to those which they had requested. However, the CMA understands that, while some customers may accept alternatives in some circumstances, others will often wish to be supplied with the equipment specified. Finally, as explained in relation to the [REDACTED], despite providing quotes and indicating an ability to deliver within a specified period, some competitors were either late in delivering or did not deliver at all. This also raises concerns about whether the quotations provided in response to the [REDACTED] would ultimately have been delivered upon.

Conclusion

105. On the evidence above (in particular third party views and the Parties' contemporaneous internal documents), the CMA believes that, while there is evidence of some constraint on the Parties from other TME rental

⁶⁴ The [REDACTED] report noted further problems. It was difficult to convince the competitor to provide a quote in the first place. The competitor was then described as having a very confusing and inefficient approach with a lot of phone and email communication involved: "At the end it appeared that there are no products or alternatives available and it would take extra 1 week to get them".

⁶⁵ Submitted at the Issues Meeting, 19 May 2017.

competitors, these competitors do not exert a significant constraint on the Parties and are not considered credible alternatives for many customers.

Competitive constraint from purchasing, leasing and self-supply of TME

106. The Parties told the CMA that TME rental is constrained by other options available to customers. These are purchase, lease, and self-supply. The Parties submitted that sales by OEMs, which can be made at discounted rates and with flexible financing terms, are a significant constraint on the Parties.⁶⁶ In this context, the Parties submitted that industry sources estimate that, globally, the TME rental market accounts for only around 5% of total TME supply.⁶⁷
107. The CMA has considered self-supply within the context of any constraint imposed by the purchase of TME. The Parties explained that customers will always consider whether they can utilise TME from their own stock to satisfy their requirements. In the Parties' view, the customer's decision would depend on the relative costs (such as recalibration and transport, if necessary) and time required. The CMA also notes that it would depend on the availability of the required TME. This has already involved an earlier decision to purchase that piece of TME.⁶⁸
108. The CMA assessed the constraint from alternatives to TME rental by taking into consideration:
- (a) evidence of lost opportunities;
 - (b) evidence from internal documents; and
 - (c) third party views on alternatives.

Evidence of lost opportunities

109. The CMA assessed the Lost Opportunities Analysis, following the sensitivity test, as it relates to the constraint of purchase and self-supply of TME on TME rental.

⁶⁶ In addition, OEMs have large 'demo pools' (ie TME stock that can be borrowed by customers short term for free). The CMA does not believe this represents a credible constraint on the Parties' TME rental businesses as this option is only available in limited circumstances (eg to select important customers who want to use a new item of TME on a short-term trial basis).

⁶⁷ Issues Meeting presentation, 19 May 2017, page 11.

⁶⁸ The CMA notes in this regard that responses from customers to the merger investigation indicated that TME rental and TME purchase may often be considered as a contingency used only when they cannot utilise in-house equipment (ie suggesting that they are complementary rather than genuinely competing alternatives).

110. The Lost Opportunities Analysis shows that a significant number (and value) of opportunities were lost to the purchase of TME and self-supply and, in the Parties' view, this indicates that these are important constraints in addition to other TME rental firms. In particular, opportunities lost to OEMs accounted for [40-50]% of losses by value ([20-30]% by volume), while opportunities lost to self-supply accounted for [20-30]% by value ([30-40]% by volume), both of which are greater than the proportion lost to Electro Rent as described in paragraph 58 above.
111. In this regard, the Parties submitted, by reference to the loss data, that Microlease has lost TME rental opportunities to the purchase of TME in respect of [REDACTED].
112. The CMA believes that this evidence shows that the purchase of TME (and subsequent self-supply) will be a credible alternative and therefore impose a constraint on TME rental in some situations (eg for a long-term rental).

Internal documents

113. The Parties submitted an internal Microlease email, [REDACTED],⁶⁹ [REDACTED]:
- [REDACTED].
 - [REDACTED].
114. The CMA understands that Microlease is communicating that the best strategy to improve overall rental results is [REDACTED]⁷⁰ (second bullet above) and that, in pursuit of this objective, [REDACTED].
115. The Parties told the CMA that the above statements demonstrate the competitive constraint imposed on TME rental by the sale of equipment by OEMs. The CMA recognises that this evidences a relationship between TME rental prices and OEM pricing. However, the strength of the constraint from purchase is unclear; in particular, whether OEM pricing also exerts a downward pressure on TME rental prices.
116. The CMA notes that other internal Microlease documents also acknowledge a competitive constraint from alternatives to TME rental. For example, [REDACTED]

⁶⁹ Annex A4 to the 'Analysis of the Parties' lost tenders for T&M equipment', RBB Economics.

⁷⁰ I.e. win customers that would otherwise purchase TME.

states [REDACTED]⁷¹ Other statements in this document suggest that OEMs may not compete very strongly against Microlease, including a reference that [REDACTED]⁷²

117. In addition, a case note of [REDACTED], dated April 2017, describes how it is likely that the TME rental market will grow due to [REDACTED] and [REDACTED].⁷³
118. Electro Rent's internal documents focus on [REDACTED], suggesting a lack of significant rivalry between Electro Rent and OEMs to win customers by [REDACTED]. For example, [REDACTED].⁷⁴ The CMA notes that this is consistent with the responses from customers to the CMA's merger investigation, described at paragraph 27 above, and in particular suggests that [REDACTED]. The CMA notes that Microlease similarly considered that the main strategy to combat this threat was [REDACTED].⁷⁵
119. The evidence above indicates that alternative forms of supply of TME do impose some constraint on the TME rental businesses of the Parties. This is evident in the context of the Parties' commercial strategy to increase TME rental penetration. However, the CMA does not believe the evidence is conclusive on the issue of the strength of that constraint.

Third party views

120. The responses from customers to the CMA's merger investigation were relatively mixed. The CMA notes the third party views at paragraph 27 above, which describe situations where for many customers the alternatives to TME rental are not considered viable substitutes.
121. A majority of customers indicated that a combination of purchase, lease or self-supply could be an alternative to rental for at least some of their TME requirements. However, a high proportion of customers also told the CMA that they would not have changed their rental purchases last year if rental had been 5% more expensive, which indicates that the alternatives to TME rental are not considered to be sufficiently attractive to change their behaviour in the event of a price rise. The CMA further asked a subset of 17 customers to break down their TME spend in 2016 in terms of rental, leasing and purchase. Only two of these customers indicated that they leased equipment to a material extent (ie greater than 5% of total TME spend), suggesting that, in practice, leasing is often not used to fulfil TME requirements. The CMA notes this is consistent with the description of the differences between rental

⁷¹ [REDACTED], 10 March 2016.

⁷² [REDACTED], 10 March 2016, page 9.

⁷³ [REDACTED], 5 April 2017, Annex 15.24 to the second section 109 response.

⁷⁴ [REDACTED], January 2017, Annex 9.5 to the Merger Notice.

⁷⁵ [REDACTED], 10 March 2016, page 9.

and leasing in paragraph 28 above, which indicates that for many customers leasing would not be an attractive alternative to rental.

122. The CMA therefore considers that third party views, while mixed, indicate that for many customers the alternatives to TME rental are not always viable and/or the customer's preferred option.

Conclusion

123. The CMA considers that the evidence on the credibility of alternative sources of TME is mixed. In particular, while there is evidence of some competitive interaction between TME rental and alternative sources of TME (in particular the purchase of TME), the evidence suggests that for some customers (and for some of their TME requirements) rental is strongly preferable.
124. Overall, the CMA does not believe the evidence (and, in particular, the internal documents and views of third parties) allow the CMA to conclude that the strength of the constraint from procurement forms other than rental would impose sufficient competitive constraint on the Parties' TME rental businesses.

Conclusion on horizontal unilateral effects

125. As set out above, the CMA believes that, for customers of TME rental, there is a realistic prospect that the Merger will give rise to an SLC. Specifically, the CMA considers that the internal documents of the Parties, together with third party comments, suggest that Microlease and Electro Rent are each other's closest competitors, despite Electro Rent having a relatively small market share. The CMA believes, based on the available evidence, that there is some constraint from alternative options (in particular the purchase of TME), but that the extent of that constraint is unclear.
126. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of TME rental to customers in the UK.⁷⁶

Barriers to entry and expansion

127. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial

⁷⁶ As noted at paragraph 41 above, the CMA notes that [X]. In this regard, and given Electro Rent has material operations in Europe, the CMA would likely also have concerns if it were a Europe-wide market.

lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.^{77 78}

128. The Parties have argued that barriers to entry are low. In particular, they highlight two examples of recent entry into the UK market.
129. First, Electro Rent, which the Parties submitted formally entered the UK TME rental market in 2015.⁷⁹ It did this by, inter alia, opening a UK office, hiring a UK Business manager and increasing the sales team, embarking on a marketing campaign, setting up a UK website, etc.⁸⁰ The Parties submitted that Electro Rent now has a [0-5]% market share and revenues in FY2016 of over [X] million.
130. However, the CMA considers that Electro Rent is in fact an established player in the UK market. In this regard, the CMA notes that Electro Rent has earned a similar level of revenue in the UK for many years now; in particular, total revenues in FY2015 (when Electro Rent formally entered the market) were lower than in FY2014 and in FY2013 (when its revenues were similar to FY2016). The CMA does not consider the Electro Rent example to be one of meaningful recent entry or expansion into the UK market.
131. Second, Interlligent, which entered the market in 2014 and now has a claimed 4.5% market share. However, the CMA notes that the consistent body of evidence described above, particularly in respect of the Parties' internal documents and third party feedback, indicates that Interlligent is not viewed as a strong alternative to the Parties. In particular, Interlligent is active primarily in respect of [X] and does not have a very significant presence in any other [X]. It also has a relatively modest – albeit expanding – presence in the UK.
132. At the Issues Meeting, the Parties argued that they are constrained in the UK by the threat of entry by TRS RenTelco, a US-based company [X]. The CMA has assessed the credibility of the competitive constraint from TRS RenTelco in more detail in paragraph 97 above but notes that evidence from third

⁷⁷ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

⁷⁸ Also, the CMA notes that a report prepared by KPMG on entry and expansion in UK merger cases noted that important predictors of sufficient and timely entry or expansion included specific evidence on factors such as costs of entry being relatively low, consumer preferences supporting such entry, plans for entry being particularly well-progressed, and that existing competitors are already actively monitoring the threat from suppliers in closely related markets. ("Entry and expansion in UK merger cases – An ex-post evaluation", April 2017, paragraph 11.2.6., KPMG LLP.)

⁷⁹ Paragraph 174, Merger Notice.

⁸⁰ Paragraph 16, Merger Notice.

parties, specifically TRS RenTelco did not support that TRS RenTelco would enter or expand in the UK market in an effective and timely manner.

133. The Parties' assertion that barriers to entry are low is also contradicted by the Parties' own internal documents. In particular, a Microlease Management presentation states that there are [REDACTED], including [REDACTED], [REDACTED], [REDACTED].⁸¹ Moreover, an Electro Rent investor presentation notes, in the context of the acquisition of Microlease, that the transaction provides [REDACTED].⁸²
134. The CMA notes that some of the factors identified above are consistent with some evidence from third parties. For example, the CMA has been told that not all competitors have the financial resources to purchase and maintain the upkeep of the required TME. Indeed, the acquisition of stock to satisfy rental demand may only be economical where a company can guarantee a minimum rental period (in order to ensure the TME is sufficiently utilised). These issues will likely be more acute in respect of the most capital intensive equipment or where technological developments mean that TME must be updated more frequently.
135. The CMA received evidence to suggest that, while it may be possible for some competitors to expand their business operations within a TME rental segment in which they are already well established, it is however, more difficult to expand into a new TME rental segment. This is due to the significant cost of capital investment and the need to build up expertise in a new area (both to be able to properly advise customers regarding their requirements but also to ensure the correct TME is purchased in order to properly manage stock utilisation levels). In this regard, the evidence available to the CMA suggests that Microlease and Electro Rent would be better placed than their competitors to satisfy rental demand across the range of TME rental segments.
136. For the reasons set out above, the CMA believes that entry or expansion would not be sufficiently likely to mitigate or prevent a realistic prospect of a substantial lessening of competition as a result of the Merger.

Third party views

137. The CMA contacted customers, competitors and suppliers of the Parties. The CMA received a mix of responses from customers, but a majority of customers expressed some concern with the Merger, with a large number noting that the merger would significantly reduce their choice of TME rental

⁸¹ Annex 9.2 to the Merger Notice, slide 12.

⁸² [REDACTED], January 2017, Annex 9.5 to the Merger Notice.

supplier and that other alternatives would not be sufficient to mitigate the loss of competition resulting from the Merger.

138. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

139. Based on the evidence set out above, the CMA believes that the Merger gives rise to the realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the supply of TME rental to customers in the UK.

Exceptions to the duty to refer

140. The evidence received by the CMA indicates that the overall value of the UK TME rental market is above the level at which the CMA would consider the *de minimis* exception. The Parties did not make any submissions as to whether it would be appropriate to apply the *de minimis* exception to the present case.

Decision

141. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (iii) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom.
142. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised⁸³ whilst the CMA is considering whether to accept undertakings⁸⁴ instead of making such a reference. Electro Rent has until 21 June 2017⁸⁵ to offer an undertaking to the CMA.⁸⁶ The CMA will refer the Merger for a phase 2 investigation⁸⁷ if Electro Rent does not offer an undertaking by this date; if Electro Rent indicates before this date that it does not wish to offer an undertaking; or if the CMA decides⁸⁸ by 28 June 2017 that there are no reasonable grounds for believing that it might accept the undertaking offered by Electro Rent, or a modified version of it.

⁸³ Section 22(3)(b) of the Act.

⁸⁴ Section 73 of the Act.

⁸⁵ Section 73A(1) of the Act.

⁸⁶ Section 73(2) of the Act.

⁸⁷ Sections 22(1) and 34ZA(2) of the Act.

⁸⁸ Section 73A(2) of the Act.

143. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 15 June 2017. For the avoidance of doubt, the CMA hereby gives Electro Rent notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by Electro Rent and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from Electro Rent stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

Kate Collyer
Deputy Chief Economic Advisor
Competition and Markets Authority
14 June 2017

ⁱ The CMA was subsequently informed that over [§] of MCS Test Equipment's rental revenue from [§] TME is generated inside of the UK. While this does not suggest that MCS Test Equipment is not a strong constraint in the UK in this segment, the CMA does not believe this correction alters its overall reasoning or the substance of its decision.

ⁱⁱ The CMA was subsequently informed that some of Interlligent's equipment in the [§] segment could have applications in the [§] segment, as it can also take measurements relating to [§]. However, as the equipment measures [§], Interlligent considers it is appropriate to include it in the [§] segment. The CMA has therefore included all such TME in the [§] segment. The CMA does not believe this correction alters its overall reasoning or the substance of its decision.