

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

## Decision that undertakings might be accepted

ME/6676-17

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.

### Introduction

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. On 14 June 2017, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation and that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to Electro Rent of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision to allow Electro Rent the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 21 June 2017, Electro Rent offered undertakings to the CMA for the purposes of section 73(2) of the Act.

5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Electro Rent that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

## The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects. Specifically, the CMA found that the Parties' combined share of supply is high and likely to give rise to *prima facie* concerns. Electro Rent's increment may be relatively small but the CMA believes that it does not accurately reflect the significant competitive constraint it imposes on Microlease. The Parties are each other's closest competitor and the evidence shows only a limited constraint from alternative suppliers of testing and measurement equipment (**TME**) rental. The Parties are differentiated from other TME rental competitors operating in the UK by, among different things, their relationships with original equipment manufacturers and their TME portfolios are of considerably greater value, scope and depth than those of their competitors.
8. To address this SLC, Electro Rent has offered to give undertakings in lieu of a reference to divest the entirety of its UK business including:
  - (a) a transfer of Electro Rent's lease over its registered place of business in the UK; a transfer of Electro Rent's staff in the UK under the Transfer of Undertakings (Protection of Employment) Regulations; and a transfer of all of Electro Rent's existing TME rental contracts with UK customers, including a transfer of the underlying TME inventory<sup>1</sup>. In addition, Electro Rent has also offered to give an approved purchaser contractual access to its European inventory on the same basis as Electro Rent subsidiaries for a period of 12 months<sup>2</sup>. (**Proposal A**).

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<sup>1</sup> With a value of approximately [§] at original equipment cost.

<sup>2</sup> Electro Rent's European pool of inventory is valued by the Parties at [§].

(b) Alternatively, in addition to a transfer of Electro Rent's lease over its registered place of business in the UK, a transfer of Electro Rent's staff in the UK and a transfer of all of Electro Rent's existing TME rental contracts with UK customers, Electro Rent is prepared to sell to an approved purchaser as much of its European pool of inventory as they would like to purchase for the purpose of competing in the UK market. (**Proposal B**).

9. Proposal A and Proposal B form together the **Proposed Undertakings**. Under the Proposed Undertakings, Electro Rent has also offered to enter into a purchase agreement with a buyer approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).

## The CMA's provisional views

10. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.<sup>3</sup>
11. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA. A suitable buyer with the necessary scope and depth in its stock portfolio and the commercial knowledge and incentives should be expected to restore the competitive position held by the UK business of Electro Rent pre-Merger.
12. The CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation, in particular as the Proposed Undertakings include the entirety of Electro Rent's TME business in the UK. That is fixed assets, staff, revenue-generating customer contracts representing all of Electro Rent's current customer demand in the UK, and the possibility to transfer the ownership of the physical assets underlying these customer contracts. In addition, the offered contractual access to Electro Rent's European inventory for 12 months or a sale of as much of Electro Rent's European pool of inventory as an up-front buyer would require to replicate Electro Rent's position in the UK TME market (for which it uses its

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<sup>3</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

wider European portfolio) to enable the purchaser to retain and win new customers and compete effectively in the immediate future.

13. The Proposed Undertakings offer sufficient flexibility for a suitable purchaser to acquire, partially or fully, and/or have access to the stock portfolio currently available to the UK TME business of Electro Rent. As such, the Proposed Undertakings may result in replacing the competitive constraint applied on Microlease that would otherwise be lost following the Merger.
14. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after Electro Rent has entered into an agreement with a nominated buyer that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer, as well as other aspects of the Proposed Undertakings. The CMA considers that an Upfront Buyer Condition is necessary because the CMA will need to be satisfied that the prospective purchaser is committed to the UK TME market and has the capability and intention to be an effective competitor in the market.<sup>4</sup> In particular, the Parties are large companies with a significant pan-European and global presence. While Microlease's UK business is larger than that of Electro Rent, the CMA considers that the Parties are uniquely placed as suppliers of TME rental in the UK.<sup>5</sup> Consequently, the CMA will need to approve any prospective purchaser against those criteria<sup>6</sup> as explained in this decision.
15. Overall, the CMA currently believes that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
16. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA. In particular, before ultimately accepting the Proposed Undertakings, the CMA must be confident that the nominated buyer is effective and credible such that the competitive conditions absent the Merger are restored.

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<sup>4</sup> See [OFT1122](#), paragraphs 5.31–5.37, and [CMA2](#), paragraph 8.34.

<sup>5</sup> See detailed reasoning in the SLC decision. Paragraphs 47 *ff.*

<sup>6</sup> See [CC8](#), paragraph 3.15.

## **Consultation process**

17. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.<sup>7</sup>

## **Decision**

18. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by Electro Rent, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 23 August 2017 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 19 October 2017 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

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**28 June 2017**

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<sup>7</sup> [CMA2](#), paragraph 8.29.