

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

## Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6676-17

### 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<sup>1</sup> 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**). The text of the SLC Decision is available on the CMA webpages.<sup>2</sup>
3. On 21 June 2017, Electro Rent offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. Section 73(2) of the Act provides the CMA with the ability to accept undertakings in lieu ‘for the purpose of remedying, mitigating or preventing’ the SLC concerned or any adverse effect which has or may be expected to result from it. In so doing, the Act requires the CMA to ‘have regard to the need to achieve as

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<sup>1</sup> Pursuant to section 25(4) of the Act the four-month period mentioned in section 24 of the Act is extended while the CMA is seeking undertakings in lieu of reference.

<sup>2</sup> See <https://www.gov.uk/cma-cases/electro-rent-corporation-test-equipment-asset-management-and-microlease-merger-inquiry>.

comprehensive a solution as is reasonable and practicable' (Section 73(3) of the Act).

4. On 28 June 2017, the CMA gave notice to Electro Rent, pursuant to section 73A(2)(b) of the Act, 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 Electro Rent's offer (the **UIL Provisional Acceptance Decision**).

## The undertakings offered

5. As set out in the SLC Decision, the CMA found 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.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA Electro Rent has offered undertakings to divest the entirety of its UK business (the **Divestment Business**). This includes 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; a transfer of all of Electro Rent's existing TME rental contracts with UK customers, including a transfer of the underlying TME inventory. In addition, Electro Rent has also offered to give an approved purchaser contractual access to its European inventory (**European Inventory**) on the same basis as Electro Rent subsidiaries for a period of 12 months.
7. The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).<sup>3</sup>

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<sup>3</sup> See <https://www.gov.uk/cma-cases/electro-rent-corporation-test-equipment-asset-management-and-microlease-merger-inquiry>.

8. Electro Rent proposes to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer, Interlligent (UK) Limited (**Interlligent**), before the CMA finally accepts the Proposed Undertakings. This agreement will be conditional on acceptance by the CMA of the Proposed Undertakings, including approval of Interlligent as the buyer of the Divestment Business.

## **CMA assessment**

9. The CMA has assessed the expected effectiveness of the Proposed Undertakings against the features of the relevant market, that is the supply of TME rental in the UK.
10. During the assessment of this case, the CMA found that this market is characterised by the presence of a large supplier, Microlease, with its closest competitor being Electro Rent (despite having a relatively small market share). The CMA concluded that there was some constraint from alternative options (in particular the purchase of TME)<sup>4</sup>, and acknowledged the presence of very few TME rental competitors exerting some (albeit insufficient) competitive constraints on the Parties. Interlligent was one of those smaller competitors.
11. The SLC decision also stated that the Parties' submissions about the level of constraint imposed on the Parties and the likelihood of a timely and effective entry of expansion of other global competitors currently not present in the UK, was not supported by the evidence available to the CMA.<sup>5</sup>
12. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision.
13. The CMA believes that the Proposed Undertakings are capable of restoring competition in relation to the supply of TME rental services in the UK to the level that would have prevailed absent the Merger.
14. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because:

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<sup>4</sup> See [https://assets.publishing.service.gov.uk/media/595f9d85ed915d0baa000171/electro\\_rent\\_microlease\\_decision.pdf](https://assets.publishing.service.gov.uk/media/595f9d85ed915d0baa000171/electro_rent_microlease_decision.pdf), paragraph 125.

<sup>5</sup> See [https://assets.publishing.service.gov.uk/media/595f9d85ed915d0baa000171/electro\\_rent\\_microlease\\_decision.pdf](https://assets.publishing.service.gov.uk/media/595f9d85ed915d0baa000171/electro_rent_microlease_decision.pdf), paragraphs 97 and 132 ff.

- (a) The Divestment Business is a viable business, comprising key staff with expert knowledge of the UK TME rental market and all relevant assets in the UK, namely fixed assets, any property leases, revenue-generating customer contracts representing all of Electro Rent's current customer demand in the UK, and the transfer of the ownership of the TME assets underlying these customer contracts.
- (b) In addition, the Proposed Undertakings include contractual access to Electro Rent's European inventory for 12 months (and beyond that period for assets subject to uninterrupted longer contracts) to replicate Electro Rent's position in the UK TME market (including its use of its wider European portfolio) to enable the purchaser to retain and win new customers and compete effectively in the immediate future.
- (c) As discussed in further detail below, the CMA believes that the Proposed Purchaser has the expertise and infrastructure to maintain the business.

### ***Suitability of the proposed purchaser***

15. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:
- (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it;
  - (b) the proposed purchaser is independent of and unconnected to the merging parties;
  - (c) the proposed purchaser has the necessary financial resources, expertise, incentive and intention to maintain and operate the divested business as an effective competitor in the marketplace;
  - (d) the proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
  - (e) the acquisition by the proposed purchaser does not itself create an SLC within any market or markets in the UK.<sup>6</sup>

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<sup>6</sup> [OFT1122](#), paragraphs 5.25–5.30.

16. Interlligent<sup>7</sup> is a private limited company which entered the UK market in 2014. It provides TME rental services to UK customers particularly in the RF and microwave TME segments. The SLC Decision stated that Interlligent has a 'relatively modest - albeit expanding - presence in the UK.'<sup>8</sup>
17. The CMA believes that the acquisition by Interlligent of the Divestment Businesses would remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it as required by section 73(2) of the Act.
18. Interlligent has the necessary incentive and commitment to operate the Divestment Business as an effective competitor. It has significant experience in different RF, microwave and wireless communications TME segments. Interlligent will address its limited experience in other areas of TME rental with the expertise of key staff transferred with the Divestment Business.
19. In terms of independence, Interlligent told the CMA that it does not have any material influence over the Parties and that no entity or individual within Interlligent holds or benefits from any current commercial arrangement or has any significant structural link with either of the Parties.
20. In terms of financial resources, the evidence available to the CMA indicates that Interlligent has available funds to acquire and operate the Divestment Business as a viable competitor. The price for the Divestment Business is nominal. Operational costs, including the acquisition of new equipment are to be covered by cashflow and reasonable financial backing of Interlligent in Israel and/or its own shareholders.
21. There are no regulatory or other consents and approvals which Interlligent is required to obtain.
22. The CMA is confident that Interlligent's acquisition of any of the Divestment Businesses would not, in itself, create a realistic prospect of an SLC within any market or markets in the UK. The evidence available to the CMA indicates that Interlligent is not a substantial constraint on the Divestment Business.<sup>9</sup>

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<sup>7</sup> Interlligent (company number 08835011) in the UK is affiliated, with substantially similar shareholders, to Interlligent in Israel. A company established in 2000 and which has previously invested in start-up companies.

<sup>8</sup> See

[https://assets.publishing.service.gov.uk/media/595f9d85ed915d0baa000171/electro\\_rent\\_microlease\\_decision.pdf](https://assets.publishing.service.gov.uk/media/595f9d85ed915d0baa000171/electro_rent_microlease_decision.pdf), paragraph 131.

<sup>9</sup> See further paragraph 16 above.

23. Therefore, subject to responses to this consultation, the CMA currently considers Interlligent to be a suitable purchaser of the Divestment Business.

## **Proposed decision and next steps**

24. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by Interlligent are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
25. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web pages.<sup>10</sup>
26. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>11</sup>
27. Representations should be made in writing to the CMA and be addressed to:

Mark Steenson  
Mergers Group  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London  
WC1B 4AD

Email: [Mark.Steenson@cma.gsi.gov.uk](mailto:Mark.Steenson@cma.gsi.gov.uk)  
Telephone: 020 3738 6474

**Deadline for comments: 5pm on 22 September 2017**

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<sup>10</sup> See <https://www.gov.uk/cma-cases/electro-rent-corporation-test-equipment-asset-management-and-microlease-merger-inquiry>.

<sup>11</sup> Under paragraph 2(4) of Schedule 10 to the Act.