

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

## Decision to refer

**ME/6676-17**

The CMA's decision to refer under section 22(1) of the Enterprise Act 2002, and the CMA's notice under paragraph 3(1) of Schedule 10 to the Enterprise Act 2002 (**the Act**) of the CMA's decision not to accept undertakings in lieu of reference, both given on 19 October 2017.

### 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 is owned and controlled by funds affiliated with the investment firm Platinum Equity LLC. 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**).<sup>1</sup>
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. The SLC

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<sup>1</sup> The text of the SLC Decision is available on the [CMA website](#).

Decision stated that if no undertakings for the purposes of section 73(2) of the Act were offered to the CMA by the end of this period, i.e. by 21 June 2017, or if the Parties indicated before this date that they did not wish to offer such undertakings, then the CMA would refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

5. On 21 June 2017, Electro Rent offered undertakings to the CMA for the purposes of section 73(2) of the Act (**the Proposed Undertakings**). Under the Proposed Undertakings, Electro Rent 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**).
6. On 28 June 2017, the CMA decided under section 73A(2)(a) of the Act that there were 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 (the **Decision That Undertakings Might Be Accepted**).<sup>2</sup>
7. In making this decision, the CMA considered that an Upfront Buyer Condition was necessary because the CMA needed to be satisfied that the prospective purchaser was committed to the UK rental market of testing and measurement equipment (**TME**) and had the capability and intention to be an effective competitor in the market.<sup>3</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 considered that the Parties are uniquely placed as suppliers of TME rental in the UK.<sup>4</sup> Consequently, the CMA needed to approve any prospective purchaser against those criteria<sup>5</sup> as explained in its decision.
8. The final date for a decision whether or not to accept the undertakings and so whether or not to refer the Merger is 23 October 2017. This date was reached as a result of two extensions. The first extension was under section 73A(3) of the Act, published on 8 August 2017, for the period for consideration of the undertakings for a further 40 working days, as the undertaking involved an upfront buyer. The subsequent further extension was under section 73A(7) of the Act, published on 28 September 2017, because Electro Rent had failed (with or without a reasonable excuse) to comply with a requirement of a notice under section 109 of the Act.

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<sup>2</sup> The text of the Decision That Undertakings Might Be Accepted is available on the [CMA website](#).

<sup>3</sup> See paragraph 14 of the Decision that Undertakings Might be Accepted, [OFT1122](#), paragraphs 5.31–5.37, and [CMA2](#), paragraph 8.34.

<sup>4</sup> See detailed reasoning in the SLC decision. Paragraphs 47 *ff*.

<sup>5</sup> See [CC8](#), paragraph 3.15.

## The Proposed purchaser

9. Electro Rent proposed Interlligent (UK) Limited (**Interlligent**) as the proposed purchaser on 19 July 2017.
10. On 8 September 2017, the CMA gave notice pursuant to paragraph 2(1) of Schedule 10 of the Act that it proposed to accept the Proposed Undertakings in lieu of reference (the **Notice of Consultation**). It considered that, subject to the responses to that consultation, the Proposed Undertakings would resolve the SLC identified in the SLC decision, and that the Proposed Purchaser had the expertise and infrastructure to maintain the business.<sup>6</sup>
11. On the evening of 17 October 2017, Electro Rent informed the CMA that Interlligent had formally withdrawn from the UIL process. Accordingly there is no remaining purchaser proposed by the Parties

## Suitability of the Proposed Undertakings

12. In view of the fact that the CMA considers that an Upfront Buyer Condition is necessary, but that no proposed purchaser remains on offer as a result of the formal withdrawal of Interlligent, the CMA considers that the Proposed Undertakings are no longer appropriate and that it is not appropriate to exercise its discretion to accept them.

## Decision

13. For the reasons set out above, after examination of the Proposed Undertakings, the CMA does not believe that they would achieve as comprehensive a solution as is reasonable and practicable to the SLC identified in the SLC Decision and the adverse effects resulting from that SLC.
14. Accordingly, the CMA has decided not to exercise its discretion under section 73(2) of the Act to accept undertakings in lieu of reference.
15. Therefore, pursuant to sections 22(1) and 34ZA(2) of the Act, the CMA has decided to refer the Merger to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to conduct a phase 2 investigation.
16. Accordingly, the CMA hereby also gives notice under paragraph 3(1) of Schedule 10 of the Enterprise Act 2002 that it has decided not to exercise its

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<sup>6</sup> The texts of the Notice of Consultation Proposed Undertakings are available on the [CMA website](#).

discretion under section 73(2) of the Act to accept the proposed undertakings in lieu of reference.

**Competition and Markets Authority**  
**19 October 2017**