

## **ACQUISITION BY ELECTRO RENT CORPORATION OF TEST EQUIPMENT ASSET MANAGEMENT LIMITED**

### **Notice of Making an Interim Order by the Competition and Markets Authority pursuant to section 81 of the Enterprise Act 2002 (the Act)**

On 31 January 2017 Electro Rent Corporation acquired Test Equipment Asset Management Limited (together know as 'the Parties') (the Merger).

The Competition and Markets Authority (CMA) commenced its inquiry into the Merger on 1 February 2017 (phase 1). On 19 October 2017 the Merger was referred by the Competition and Markets Authority (CMA) for a phase 2 investigation pursuant to section 22 of the Act (the Reference) to determine pursuant to section 35 of the Act.

On 7 November 2017 the CMA made an Interim Order pursuant to section 81 of the Act to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which may be justified by the CMA's decisions on the Reference. The Interim Order is annexed to this Notice.

The Reference has not been finally determined in accordance with section 79 of the Act.

This Notice of the making of that Interim Order is published by the CMA in accordance with section 107(2)(o) of the Act.

Signed

Simon Polito  
*Chairman*

7 November 2017

## **ACQUISITION BY ELECTRO RENT CORPORATION OF TEST EQUIPMENT ASSET MANAGEMENT LIMITED**

### **Interim Order made by the Competition and Markets Authority pursuant to section 81 of the Enterprise Act 2002 (the Act)**

Whereas:

- A. On 31 January 2017 Electro Rent Corporation acquired Test Equipment Asset Management Limited (together known as 'the Parties') (the 'Merger').
- B. On 1 February 2017 the CMA made an Interim Enforcement Order ('IEO') for the purpose of preventing pre-emptive action.
- C. On 27 February 2017 granted a derogation exempting certain of the Parties' subsidiaries from the IEO (the 'February derogation'). The February derogation continues to apply.
- D. On 19 October 2017 the Merger was referred by the Competition and Markets Authority (CMA) for a phase 2 investigation pursuant to section 22 of the Act (the 'Reference') to determine, pursuant to section 35 of the Act:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition in any market or markets in the United Kingdom (UK) for goods or services.
- E. The CMA wishes to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the Reference.
- F. The Reference has not been finally determined in accordance with section 79 of the Act.

Now for the purpose of preventing pre-emptive action in accordance with section 81 of the Act, the CMA makes the following order ('Order').

## **Commencement, application and scope**

1. This Order commences on the commencement date.
2. This Order applies to Electro Rent Corporation, Electro Rent Europe (including its UK branch) and Test Equipment Asset Management Limited.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Electro Rent Corporation, Electro Rent Europe (including its UK branch) or Test Equipment Asset Management Limited to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement of the IEO.

## **Management of the Electro Rent Corporation and Microlease businesses until determination of proceedings**

4. Except with the prior written consent of the CMA, Electro Rent Corporation, Electro Rent Europe (including its UK branch) or Test Equipment Asset Management Limited shall not, during the specified period, take any action which might prejudice a reference of the Merger under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
  - (a) lead to the integration of the Microlease business with the Electro Rent Corporation business;
  - (b) transfer the ownership or control of the Electro Rent Corporation business or the Microlease business or any of their subsidiaries; or
  - (c) otherwise impair the ability of the Microlease business or the Electro Rent Corporation business to compete independently in any of the markets affected by the transaction.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, Electro Rent Corporation, Electro Rent Europe (including its UK branch) and Test Equipment Asset Management Limited shall at all times during the specified period procure that, except with the prior written consent of the CMA:
  - (a) the Microlease business is carried on separately from the Electro Rent Corporation business and the Microlease business's separate sales or brand identity is maintained;

- (b) the Microlease business and the Electro Rent Corporation business are maintained as going concerns and sufficient resources are made available for the development of the Microlease business and the Electro Rent Corporation business, on the basis of their respective pre-merger business plans;
- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within the Microlease business or the Electro Rent Corporation business;
- (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Microlease business and the Electro Rent Corporation business are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of the Microlease business or the Electro Rent Corporation business are disposed of; and
  - (iii) no interest in the assets of the Microlease business or the Electro Rent Corporation business is created or disposed of;
- (f) there is no integration of the information technology of the Microlease or Electro Rent Corporation businesses, and the software and hardware platforms of the Microlease business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Microlease business will be carried out by the Microlease business alone and for the avoidance of doubt the Electro Rent Corporation business will not negotiate on behalf of the Microlease business (and vice versa) or enter into any joint agreements with the Microlease business (and vice versa);
- (h) all existing contracts of the Microlease business and the Electro Rent Corporation business continue to be serviced by the business to which they were awarded;

- (i) no changes are made to key staff of the Microlease business or Electro Rent Corporation business;
- (j) no key staff are transferred between the Microlease business and the Electro Rent Corporation business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Microlease business and the Electro Rent Corporation business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Microlease business on the one hand (or any of its employees, directors, agents or affiliates) to the Electro Rent Corporation business on the other hand (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

## **Compliance**

6. Electro Rent Corporation, Electro Rent Europe (including its UK branch) and Test Equipment Asset Management Limited shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
7. Electro Rent Corporation shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Electro Rent Corporation, Electro Rent Europe (including its UK branch) and Test Equipment Asset Management Limited and their subsidiaries with this Order. In particular, on 22 November 2017 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Electro Rent Corporation, or other persons of Electro Rent Corporation as agreed with the CMA shall, on behalf of Electro Rent Corporation, Electro Rent Europe (including its UK branch) and Test Equipment Asset Management Limited, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.

8. At all times, Electro Rent Corporation, Electro Rent Europe (including its UK branch) and Test Equipment Asset Management Limited shall actively keep the CMA informed of any material developments relating to the Microlease business or the Electro Rent Corporation business, which includes but is not limited to:
  - (a) details of key staff who leave or join the Microlease business or the Electro Rent Corporation business;
  - (b) any interruption of the Microlease or Electro Rent Corporation businesses (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
  - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Microlease or Electro Rent Corporation businesses including any substantial changes in customers' demand; and
  - (d) substantial changes in the Microlease or Electro Rent Corporation businesses' contractual arrangements or relationships with key suppliers.
9. If Electro Rent Corporation, Electro Rent Europe (including its UK branch) or Test Equipment Asset Management Limited has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Electro Rent Corporation, Electro Rent Europe (including its UK branch) and/or Test Equipment Asset Management Limited may be directed to appoint under paragraph 10.
10. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
11. Electro Rent Corporation, Electro Rent Europe (including its UK branch) and Test Equipment Asset Management Limited shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

## **Interpretation**

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

13. For the purposes of this Order:

**'the Act'** means the Enterprise Act 2002;

**'an affiliate'** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**'business'** has the meaning given by section 129(1) and (3) of the Act;

**'commencement date'** means 7 November 2017;

**'control'** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**'the decisions'** means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

**'Electro Rent Corporation'** means Electro Rent Corporation, a company incorporated in California (State file CO502262) and all its subsidiaries, including Electro Rent Europe.

**'the Electro Rent Corporation business'** means the business of Electro Rent Corporation and its subsidiaries (including Electro Rent Europe) but excluding those subsidiaries the subject of the February derogation and excluding the Microlease business and its subsidiaries carried on as at the commencement date;

**'Electro Rent Europe'** means Electro Rent Europe NV, a company registered in Belgium, (registration number 0480.078.140 and UK company number FC032673) and all its subsidiaries, including Electro Rent Europe UK Branch (Registration number BRO 17750);

**'its UK branch' means'** Electro Rent Europe UK Branch (Registration number BRO 17750);

**'key staff'** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

**'the Microlease business'** means the business of Test Equipment Asset Management Limited and its subsidiaries carried on as at the commencement date but excluding those subsidiaries the subject of the February derogation;

**'the ordinary course of business'** means matters connected to the day-to-day supply of goods and/or services by the Microlease business or Electro Rent Corporation business and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Test Equipment Asset Management Limited and Electro Rent Corporation;

**'specified period'** means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

**'subsidiary'**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**'Test Equipment Asset Management Limited'** means Test Equipment Asset Management Limited (company number 05760974), a company incorporated in England and Wales whose registered office is at Unit 1, Waverley Industrial Estate, Hailsham Drive, Harrow, Middlesex, HA1 4TR;

**'the two businesses'** means the Electro Rent Corporation business and the Microlease business;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Simon Polito  
Group Chairman  
7 November 2017



## Compliance statement for Electro Rent Corporation

I [insert name] confirm on behalf of Electro Rent Corporation that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Electro Rent Corporation has complied with the Order made by the CMA in relation to the transaction on 31 January 2017 (the Order).
  - (b) Electro Rent Corporation's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Electro Rent Corporation or its subsidiaries that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the Microlease business with the Electro Rent Corporation business;
    - (ii) transfer the ownership or control of the Electro Rent Corporation business or the Microlease business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Microlease business or the Electro Rent Corporation business to compete independently in any of the markets affected by the transaction.
  - (b) The Microlease business has been carried on separately from the Electro Rent Corporation business and the Microlease business separate sales or brand identity have been maintained.
  - (c) The Microlease business and the Electro Rent Corporation business have each been maintained as a going concern and sufficient resources have been made available for the development of the Microlease business and the Electro Rent Corporation business, on the basis of their respective pre-merger business plans.

- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Microlease business or the Electro Rent Corporation business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Microlease business and the Electro Rent Corporation business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Microlease business and the Electro Rent Corporation business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Microlease business or the Electro Rent Corporation business have been disposed of; and
  - (iii) no interest in the assets of the Microlease business or the Electro Rent Corporation business has been created or disposed of.
- (g) There has been no integration of the information technology of the Microlease business or Electro Rent Corporation businesses, and the software and hardware platforms of the Microlease business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Microlease business have been carried out by the Microlease business alone and, for the avoidance of doubt, the Electro Rent Corporation business has not negotiated on behalf of the Microlease business (and vice versa) or entered into any joint agreements with the Microlease business (and vice versa).
- (i) All existing contracts of the Microlease business and the Electro Rent Corporation business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Microlease business or the Electro Rent Corporation business.

- (k) No key staff have been transferred between the Microlease business and the Electro Rent Corporation business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Microlease business and the Electro Rent Corporation business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Microlease business on the one hand (or any of its employees, directors, agents or affiliates) to the Electro Rent Corporation business on the other hand (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
  - (i) key staff that have left or joined the Microlease businesses or the Electro Rent Corporation business;
  - (ii) interruptions of the Microlease business or the Electro Rent Corporation business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
  - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Microlease business or the Electro Rent Corporation business; or
  - (iv) substantial changes in the Microlease or Electro Rent Corporation businesses contractual arrangements or relationships with key suppliers.
- (o) list of material developments: [*list material developments here*]

3. Electro Rent Corporation and its subsidiaries remain in full compliance with the Order and will actively continue to keep the CMA informed of any material developments relating to the Electro Rent Corporation business and will procure that Test Equipment Asset Management Limited will actively continue to keep the CMA informed of any material developments relating to the Microlease business in accordance with paragraph 8 of the Order.

**Interpretation**

- 4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF ELECTRO RENT CORPORATION

Signature .....

Name .....

Title .....

Date .....