

**COMPLETED ACQUISITION BY
ELECTRO RENT CORPORATION
OF
MICROLEASE INC.
AND
TEST EQUIPMENT ASSET MANAGEMENT LIMITED**

ME/6676/17

RESPONSE TO PHASE 1 DECISION

2 NOVEMBER 2017

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1. INTRODUCTION

- 1.1 This submission concerns the acquisition by Electro Rent Corporation (“**Electro Rent**”) of the entire issued share capital of Microlease Inc. and Test Equipment Asset Management Limited (“**Microlease**” and together with Electro Rent, the “**Parties**”) (the “**Transaction**”) and sets out the Parties’ response to the Phase 1 decision of the Competition & Markets Authority (the “**CMA**”), dated 14 June 2017 (the “**Decision**”).
- 1.2 According to the Phase I Decision, the Transaction gives rise to a realistic prospect of a substantial lessening of competition (“**SLC**”) as a result of horizontal unilateral effects in relation to a frame of reference for the rental of test and measurement equipment (“**TME**”) in the UK, primarily on the basis that: (i) the Parties are each other’s closest competitor; (ii) there are insufficient alternative, credible TME rental suppliers; (iii) whilst there exists some competitive constraint from purchasing of TME from Original Equipment Manufacturers (“**OEMs**”), such “out of market constraints” are insufficient to neutralise any SLC in relation to TME rental; and (iv) barriers to entry/expansion are high.
- 1.3 The Parties profoundly disagree with the CMA’s Phase 1 conclusions. As explained below, the rationale for the Transaction is to create a TME supplier that can offer customers increased geographic coverage with a more extensive asset base. In this regard, the Transaction brings together two overwhelmingly complementary suppliers of TME, generating estimated synergies of approximately [X]. Electro Rent has a largely U.S. business with an historical focus on supplying customers in the aerospace and defence sector. By contrast, Microlease is a largely European business, with an historical focus on the telecommunications sector. The Parties’ overlapping activities in the UK result in a revenue-increment of only [X] or approximately [X]% of the estimated size of the TME sector in the UK.¹
- 1.4 In relation to specific issues with the Decision, this submission is structured as follows.
- (a) Section 2 provides an overview of the TME sector and describes where the Parties’ activities fit within this wider segment.
 - (b) Section 3 explains the pro-competitive rationale for the Transaction and highlights the complementary nature of the Parties’ offerings.
 - (c) Section 4 sets out why the Parties consider the relevant product frame of reference to be the supply of TME, including rental, leasing and the purchase of equipment, and the relevant geographic frame of reference to be wider than the UK, and probably global.
 - (d) Section 5 sets out the Parties’ views in relation to the CMA’s assessment of the competitive effects of the Transaction. In particular, this section demonstrates that:
 - i. the combined share of supply resulting from the merger does not give cause for concern and the increment the merger gives rise to is negligible;
 - ii. the Parties are not each other’s closest competitors;
 - iii. alternative suppliers constrain the Parties and will constrain the merged entity; alternative forms of supply constrain the Parties and will constrain the merged entity; and
 - iv. barriers to entry and expansion are low.

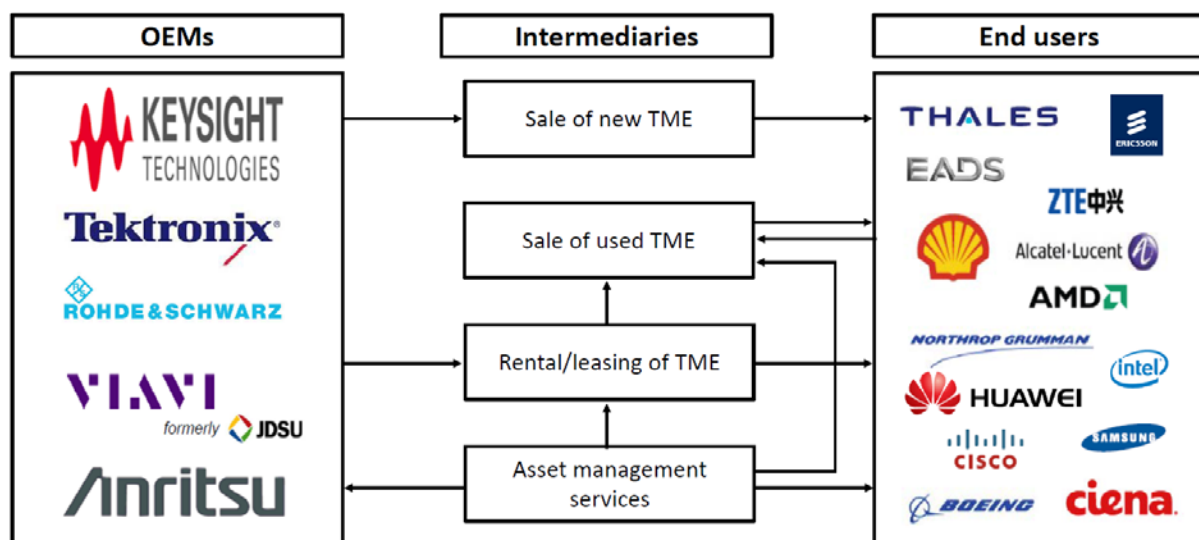
¹ This is based on the Parties’ estimate of the total value of the TME sector in the UK being £329.6 million.

2. BACKGROUND

A. Overview of the TME Sector

- 2.1 TME is used for testing and measuring electronic devices to validate their performance, including electronic circularity, signal strength and frequency. Testing and measurement forms an essential component of an electronic asset's lifecycle from design and development, through to production, installation and ongoing development and maintenance. Representative equipment includes oscilloscopes, network analysers, spectrum analysers, radio frequency (RF) power meters, and wireless telecom testers.
- 2.2 **TME supply chain.** The TME supply chain consists of OEMs, intermediaries and end users (see Figure 2 below). The TME end markets are served by both OEMs and intermediaries. Historically, intermediaries, such as Microlease, acted purely as a distribution channel for OEMs, supplying TME to end markets. More recently, intermediaries have increasingly played a broader role with the development of TME rental/leasing and asset management services.

Figure 2: The TME Supply Chain



- 2.3 **OEMs.** The TME market is served by a diverse group of OEMs, ranging from global operators to smaller, niche manufacturers. Globally, the top five OEMs of TME are Keysight, Danaher, Rohde & Schwarz, Viavi (formerly JDSU) and Anritsu, which, according to the Parties' estimate, account for over 60% of global TME supply. These OEMs are also the top five in the UK. The remaining supply is accounted for by a large number of smaller OEMs, highlighting the fragmented nature of the sector.
- 2.4 **Intermediaries.** Intermediaries include a wide range of distributors of new and used equipment, rental providers and related service providers. For new equipment, OEMs operate an integrated service model which includes selling their equipment directly to core global clients, selling their high value equipment through distribution agreements often on an exclusive basis, and selling medium to lower value equipment through a network of non-exclusive distributors. For used equipment, intermediaries often sell their own equipment where it approaches the end of its rental lifespan. In relation to rental/leasing, intermediaries purchase TME from OEMs and build up a pool of assets to rent/lease to end-users. Intermediaries active in the UK include Microlease, Seaward, Electro Rent, Test Equipment Solutions, EMC Hire, First Rental, Instruments 4 Hire, Inlec, Interlligent, and many others.

- 2.5 **End-users.** TME is used by all electronics related industry sectors, but there are three main categories of end users: (i) telecommunications (“**telecoms**”); (ii) aerospace and defence (“**A&D**”); and (iii) industrials/information technology (“**infotech**”). The telecoms sector includes equipment manufacturers, installation and commissioning providers. The A&D sector includes commercial aviation, commercial satellites, and various defence sub-sectors. Infotech includes semiconductor technology used in automotive, transportation, oil & gas, broadcast & media and general electronics applications. Globally, the largest end-user sector is A&D with a volume share of approximately 44%, with telecoms and infotech accounting for 34% and 22%, respectively. The Parties consider that the relative size of the end-user sectors is similar in the UK TME market.
- 2.6 **Rental vs leasing of TME.** Rental agreements can run for a flexible period of time and can be for as little as one week and can extend beyond two years. As discussed in more detail below, the Parties’ revenues are predominantly attributable to long term rentals (*i.e.* rentals of more than 1 year). In relation to these agreements, no financing is required and customers typically make payments on a monthly basis. In addition, ownership does not transfer to a customer. There may be consequences to early return of the rented TME. In relation to TME leasing, there are two types of agreement: operating leases and finance leases. Both types of lease are for a fixed period of time and typically for a minimum two-year period. Penalties apply for early termination (usually payment of all the outstanding charges). Financing is typically/always required for leasing due to the costs involved and customers’ desire to spread payments over a period of time. Specifically in relation to operating leases, as with rental agreements, ownership does not transfer at the end of the fixed term. An operating lease has a residual value built into the repayment calculations (this is at least 10% of the original equipment cost or the equivalent value in services, but is often substantially more) and therefore this value and risk is held by the lessor and not discharged through the payments. By contrast, in relation to finance leases, title transfers along with the final payment, as the payments provide for full repayment of the equipment cost and any associated services.
- 2.7 **UK rental segment is a tiny fraction of the global TME sector.** The global TME market has an estimated annual value of \$18 billion.² Of this, only approximately £330 million, or around 2%, is generated in the UK. This includes all transaction forms: purchase, rental and leasing. The vast majority of TME revenues are generated from the sale of new and used equipment, with only approximately 5% being generated from the rental of TME.

B. The Parties’ Overlapping Activities Within the TME Sector Are Minimal

- 2.8 In the UK, the Parties only overlap in relation to: (i) the sale of new TME; (ii) the sale of used TME; and (iii) the rental/leasing of TME. The Parties do not overlap in relation to TME services, as Microlease only provides asset management services, whilst Electro Rent provides other services, such as TME handling and repairs for rental customers, and does not provide asset management services.
- 2.9 In relation to new and used equipment sales combined, Electro Rent’s UK turnover is only approximately [X] (FY 2016) and, therefore, [X]. Moreover, the Parties estimate that their combined share of supply of each of new equipment and used equipment is well below [X], with the increment from Electro Rent’s activities being less than [X].
- 2.10 Therefore, the only area of overlap between the Parties where their combined share of supply is estimated to be >25% is in relation to TME rental, where Electro Rent has UK turnover of only

² Source: Danaher analyst presentation, 2014. Similarly, Frost & Sullivan estimate the global TME segment to be worth \$12-18 billion annually.

approximately [X] and which represents a narrow channel for the supply of TME, with the vast majority of TME being sold by OEMs.

Table 1: The Parties' UK Turnover by TME Segment 2016 (£ Millions)

	Rental	Leasing	New Equipment	Used Equipment	Services	Total
Electro Rent	[X]	[X]	[X]	[X]	[X]	[X]
Microlease	[X]	[X]	[X]	[X]	[X]	[X]

3. TRANSACTION RATIONALE

A. The Rationale for the Transaction is Pro-Competitive

- 3.1 As set out in the Merger Notice, and evidenced in the Parties' internal documents, the rationale for this Transaction is driven by pro-competitive factors, including: (i) the complementarity of the Parties' offerings/asset base; (ii) the complementarity of their geographic focus; (iii) the Parties' strength in different customer segments within the TME sector; (iv) access to a best-in-class Microlease management team; (v) the Parties' desire to create a global supplier that can supply TME products and services to customers on an international basis and compete against the OEM's that are increasingly active in the rental/leasing of TME; and (vi) the substantial synergies resulting from the Transaction, which are estimated to be approximately [X]. The Parties' internal documents support the fact that there is no UK element to the deal rationale, given the negligible size of Electro Rent's UK business.

B. The Parties' Activities Are Overwhelmingly Complementary

- 3.2 Electro Rent, which is based in Van Nuys, California, United States, is predominantly a U.S. supplier of TME across the aerospace and defence, telecommunications, industrial, automotive and semiconductor sectors. Electro Rent is owned and controlled by funds affiliated with Platinum Equity LLC, a global investment firm, based in Beverly Hills, United States. Of Electro Rent's [X] total worldwide turnover in FY 2016, only approximately [X] or [X] of this amount was generated in the UK. By contrast, over [X] of Electro Rent's turnover was generated from contracts with customers in the United States. Equally, in relation to its UK operations, Electro Rent has only had a physical presence in the UK since 2015, previously supplying UK customers from Belgium, and operates a single-site facility with only 4 employees.
- 3.3 Microlease, on the other hand, is based in Harrow, North London, and has a European focus to its activities, with approximately [X] of Microlease's worldwide turnover being generated in Europe, and approximately [X] being generated from customers located in the UK. In contrast to Electro Rent's minimal activities in the UK, Microlease generates more than [X] as much turnover in the UK as Electro Rent, from a wider range of activities. Whilst nearly [X] of Electro Rent's UK turnover is generated [X], Microlease generates a significant amount of its turnover from [X], and offers a range of asset management services, including registering, tracking and maintaining asset pools to assist customers acquiring TME, optimising its use and maximising returns after use, which Electro Rent does not offer.

4. FRAME OF REFERENCE

A. Introduction

- 4.1 As described above, TME covers a wide range of products across a broad range of industries and sectors. As mentioned above, historically, the three main categories of end-users have been telecommunications, aerospace and defence, and infotech. The TME sector has evolved to follow

and meet the underlying requirements of the electronic devices and their users in each of these three main end-use categories. These requirements have varied by geography and over time. In Europe, the largest TME category has historically been telecommunications, whereas in the United States it has been aerospace and defence. Whilst globally and in the UK, the A&D and infotech sectors have continued to grow and are still the largest end-use categories for TME, the telecommunications sector has been trending down over time.

- 4.2 Not all TME suppliers will supply every piece of TME equipment across all end-uses and industries. Some TME suppliers, such as Electro Rent and Microlease, provide all major pieces of TME equipment across the three main end-use categories and have the ability to source equipment that they do not hold in stock. Others specialise in one end-use or another (e.g., Interlligent is a strong competitor in the supply of TME for the A&D sector but not the telecommunications sector). However, a crucial factor that the Parties feel was not properly understood by the CMA in the Phase 1 investigation, but which is highly relevant to both the consideration of the relevant frame of reference for assessment and the dynamics of competition for the supply of TME, is that no TME customer sources TME across all end-use categories and therefore it is irrelevant whether a TME supplier is active across all end-use segments or not. What is important is that there are multiple suppliers within each TME end-use segment, including the OEMs themselves, which are competing against intermediaries both in terms of the sale of TME but also increasingly in relation to the rental/leasing of TME as well.
- 4.3 Against this background, it is clear that TME designed for the telecommunications sector is not substitutable, from a demand-side perspective, for TME designed for the A&D sector; a spectrum analyser is not substitutable for an SDH Analyser. However, the Parties do not consider that it would be appropriate to consider the TME ‘market’ at the level of each individual piece of equipment (of which there are many tens of thousands and for which supply-side substitution is straightforward). The important competitive dynamics that are relevant to the TME sector apply across all end-use segments, whilst recognising that not all suppliers will provide all pieces of TME in every category.

B. Relevant Product Market

- 4.4 The Parties agree that the narrowest plausible candidate product market is the rental of TME in the UK³ and accept that this is the Parties’ principal area of overlap. However, the Parties do not agree with the CMA’s conclusion that the product frame of reference should be limited only to TME rental and consider that the relevant frame of reference should be the supply of TME, irrespective of the particular form of supply (i.e., rental, leasing or purchase), for the following reasons.
- (a) ***High degree of demand-side substitutability.*** From a customer’s perspective, the most important considerations are to identify the correct piece of TME for the required task at the best price for the appropriate period of time. Whether that piece of TME is supplied on the basis of a rental, lease or sales contract is a secondary concern. The Parties recognise that there are some differences between renting, leasing or purchasing a particular piece of TME and that there are some customers that will have a preference for one method of obtaining TME over another. However, the Parties’ competitive experience has been that many customers do not have a strong preference and that a large number of customers, including some who may initially have a preference for one supply method over another, will consider alternative methods of supply, particularly if the equipment is supplied at an appropriate price. Indeed, the CMA noted in its Decision that 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*”.⁴ At the extremes, a

³ Decision, paras. 24-30.

⁴ Decision, para. 121.

customer with a particular requirement to rent a piece of TME for a short period of time is perhaps unlikely to consider purchasing that piece of equipment, but when Electro Rent's average rental period is [REDACTED] and approximately [REDACTED] of the Parties' rental income is generated from orders that have run for over [REDACTED], leasing and purchasing will be appropriate for many, if not most. This is consistent with the fact that, as discussed in more detail below, the largest share of Microlease's rental losses are to OEMs and not rental alternatives.

- (b) ***High degree of supply-side substitutability.*** Many TME intermediaries that offer TME to rent also offer TME to lease. Many TME intermediaries will also offer new and used TME to purchase in direct competition with OEMs, some of which offer TME to rent rather than purchase. OEMs also have the ability to loan TME to customers from their "demo pools" to meet their short term needs – a service that is direct competition with rental. A significant competitive driver in relation to the sale of TME by OEMs is that OEMs are able to offer significant discounts to, particularly large scale, end-users, which can often make a purchase economical, particularly for repeat users of equipment. In relation to TME intermediaries, there are essentially no barriers to offering TME for rental and leasing, and whether and to what extent TME suppliers offer TME for rental and leasing is driven by customer choice. For example, the Parties offer all of their TME to rent and to lease, although historically their customers have tended to rent significantly more than they have leased. Nevertheless, the leasing alternative remains open to customers and constitutes a significant proportion of the total TME sector in the UK (the Parties estimate total leasing of TME to be worth approximately £33 million annually in the UK as compared to approximately £24 million annually for TME rental).

C. Relevant Geographic Market

- 4.5 The Parties agree that a UK market for TME rental is the narrowest candidate geographic frame of reference⁵ and is the natural focus for the CMA's investigation. However, it is important to acknowledge that UK customers are supplied from all over the world at competitive prices. A large majority of TME can be packaged in a relatively small box and shipped to any location in the world without significant delay or cost. There are also no regulatory requirements preventing shipments between countries.
- 4.6 Whilst there are several other UK-based TME suppliers, including MCS Test Equipment, Test Equipment Solutions, EMC Hire and others, UK customers are also supplied by Interlligent based in Israel and TRS RenTelco based in the United States – neither of which have any physical presence in the UK. In addition, Electro Rent supplies its entire European business from its hub in Belgium and Microlease supplies all of its European customers from Harrow. Furthermore, as the Decision acknowledges, Electro Rent's revenues [REDACTED]. It is clear that local presence in the UK is not decisive for local competitiveness.⁶
- 4.7 In the Decision, the CMA relied on [REDACTED] as evidence that "*there are different competitive dynamics in different countries*" and so the geographic frame of reference should be limited to the UK.⁷ However, as submitted to the CMA, the purpose of [REDACTED] is precisely to ensure consistent pricing across countries⁸, which indicates that the geographic market is wider than the UK and probably global.

⁵ Decision, paras. 31-34.

⁶ Cf. Decision, para. 4(b).

⁷ Decision, paras. 32(b) and 33.

⁸ Decision, para. 32(b).

- 4.8 On the basis of these factors, the Parties consider that the relevant geographic frame of reference should be wider than the UK and probably global.

5. COMPETITIVE ASSESSMENT

The CMA failed to estimate share of supply

- 5.1 The Decision concludes that the Parties' estimates of the shares of supply in the TME market were "*likely to be substantially flawed*".⁹ However, the Decision does not identify what the CMA believes the Parties or their competitors' shares are. In particular, the Decision does not include any amendments or even mention of the rental shares of supply of the Parties' competitors submitted in the Merger Notice,¹⁰ which the CMA were in a position to verify in the Phase 1 process. It is therefore impossible for the Parties to respond to this finding in any way but to resubmit their good faith estimates.
- 5.2 The Parties estimated that their combined share of supply of (i) UK TME rental is approximately [%] with a [%] increment and (ii) UK TME supply (all transaction forms: purchase, rental and leasing) is approximately [%] with a [%] increment. The CMA itself notes that the increment is low, even on the narrowest plausible frame of reference: "*While Electro Rent's increment may be relatively small, this does not accurately reflect the significant competitive constraint it imposes on Microlease*".¹¹ As will be demonstrated below, the Decision does not establish that that the Transaction would remove a particular significant or important competitor from the market: Electro Rent is simply one of a number of smaller rental players in the market. As there will remain a number of similarly sized competitors as Electro Rent post-merger, the structure of competition in the market will not face meaningful change due to the combination of Electro Rent's negligible share of supply with that of Microlease.

The Parties are not each other's closest competitor

- 5.3 The Decision places significant emphasis on the claim that Electro Rent is a particularly important source of competition as a basis for its SLC finding. However, the evidence that the CMA relies on for its finding on closeness of competition is not compelling:

The Parties are not as differentiated from other competitors as the Decision claims

- 5.4 The Decision does not explain how the Parties' "*preferential*" relationships with OEMs¹² would offer them a distinct competitive advantage in relation to their competitors. The Parties do not have any exclusive preferred rental relationship with any OEM: for example, MCS Test Equipment has a similar relationship with Rohde and Schwarz. In fact, Electro Rent does not have any exclusive arrangements with any OEM in the UK or any other EU countries and Microlease has no exclusive arrangements with any OEM other than two exclusive agreements with Keysight relating solely to the sale of new TME (one covering the UK and Ireland and the other covering Italy).
- 5.5 Due to redactions, the Decision does not allow the Parties to understand the alleged difference between the scopes of their stock pools in comparison with that of their competitors.¹³ In any event, the fact that the Parties have existing stock is irrelevant as it is hard to predict exactly what needs customers will have at any given point, and purchasing stock upon receiving orders is a

⁹ Decision, para. 40.

¹⁰ Merger Notice, table 17.

¹¹ Decision, para. 50.

¹² Decision, para. 50.

¹³ Decision, paras. 47–48.

completely comparable alternative. TME equipment is light and can be shipped quickly. It does not offer any particular competitive advantage to keep TME equipment on stock prior to receiving a customer order. The Parties' mystery shopping exercise demonstrated that a number of other competitors were able to offer and deliver the required equipment within the requested times.

- 5.6 Similarly, due to redactions, the Decision does not allow the Parties to understand the way in which the Parties' range of equipment is superior to that of their competitors.¹⁴ Even if it did, a broad range of equipment does not give the Parties a competitive advantage. In practice, individual customers are unlikely to require a wide range of equipment at any point in time and there is a fairly small subset of rental equipment that account for the large majority of tenders/revenues. A rival with a more narrowly focussed stock of products can therefore compete effectively with the Parties for the types of customers, which they are focussed on serving.

The Lost Opportunities - and Lost Key Deals analyses do not support a finding of closeness of competition

- 5.7 The Lost Opportunities analysis shows that Microlease loses approximately [REDACTED] of opportunities to Electro Rent and that a considerably larger share of opportunities were lost to non-rental alternatives. This is in itself not a number that would usually cause concern and, considering the size of Microlease, a certain amount of diversion can be expected. The analysis shows that Microlease lost tenders to a significant number of different intermediaries and that the aggregate constraint from these intermediaries is material: Microlease lost more tenders in aggregate to other rental providers ([REDACTED]) than to Electro Rent ([REDACTED]). The Decision furthermore errs in not assigning a more significant weight to the fact that a significant amount of opportunities are lost to OEM's ([REDACTED]) and self-supply ([REDACTED]).
- 5.8 The value of the "Lost Key Deals" the Decision relies on as evidence for Microlease's closeness with Electro Rent relates to a very small sample ([REDACTED]). Furthermore, the value of sales that appear to have switched to Electro Rent is insignificant [REDACTED] both as a percentage of the total value of lost key deals [REDACTED],¹⁵ and in relation to the annual rental turnover of Microlease (*i.e.* it amounts to only [REDACTED] of the [REDACTED] million annual rental turnover of Microlease).

Internal documents do not support a finding of closeness of competition

- 5.9 [REDACTED]
- 5.10 The internal documents referred to in the Decision are quoted out of context and do not support any particular closeness of competition. [REDACTED] For example, the CMA considers the following quote as direct evidence that Electro Rent acts as a constraint on the pricing of Microlease: [REDACTED].

Third Party comments do not support a finding of closeness of competition

- 5.11 According to the Decision, third parties commented that "*customers had either used both of the Parties for their TME rental requirements or switched (or threatened to switch) between them*" and had achieved lower prices due to the competition between the Parties.¹⁶ The Decision does not recite any specific instances of where this would have occurred.
- 5.12 The Decision infers from "a majority of responses [...] from customers in the telecommunications sector" that the Parties' are each other's closest competitor in rental TME in general.¹⁷ For the

¹⁴ Decision, para. 48.

¹⁵ Decision, para. 59.

¹⁶ Decision, para. 72(b).

¹⁷ Decision, paras. 70-71.

avoidance of doubt, the Parties face sufficient competition in the telecommunications sector as well as from purchased TME, self-supply and rental competitors. In addition, it is notable that only 29 of the 129 customers contacted by the CMA (22%) responded to its questionnaire. As customer responses are likely to be biased towards those more concerned about the transaction, a more reasonable interpretation of customer reactions is that most customers were not sufficiently concerned to justify responding to the CMA. For the same reasons, the responses that the CMA did receive are likely to be biased towards customers with an adverse view of the transaction. For these reasons the Parties do not consider that this evidence is likely to provide an accurate view of the closeness of competition between the Parties.

6. ALTERNATIVE SUPPLIERS CONSTRAIN THE PARTIES AND WILL CONSTRAIN THE MERGED ENTITY

- 6.1 There are multiple other suppliers of TME rental in the UK, including MCS Test Equipment, Test Equipment Solutions, EMC Hire, Interlligent, First Rental, Instruments 4 Hire, Inlec and Seaward.¹⁸ In addition, OEMs Rohde and Schwarz and Keysight also supply TME rental, and US based competitor TRS RenTelco is making efforts to enter the market. The Decision does not contest this, nor does the Decision contest that these competitors are easy to find and that switching costs are low.
- 6.2 The Decision notes that customers did not recognise competitors to the merging parties or did not find them credible.¹⁹ As noted above, there are reasons to consider that the small sample of responses obtained by the CMA may be biased in favour of customers that viewed the Parties as close competitors and/or that were not aware of other competing suppliers. Leaving this point aside, the fact that customers do not identify competitive alternatives or that they do not necessarily identify options that they have not used as credible does not preclude that competitive alternatives exist. The Parties' mystery shopping exercise demonstrated that a number of other competitors were able to offer and deliver the required equipment within the requested times. In the Decision, the CMA stated that it "*was not in a position to assess how representative the samples were of a broad range of common customer requirements*".²⁰ The mystery shopping exercise was designed to emulate customer requirements, which are driven by industry segments and projects, and the samples used in the mystery shopping exercise were therefore representative of common customer requirements. In the event that the CMA engages its own mystery shopper exercise the Parties are confident that it will find similar results: namely that there are numerous rental suppliers of a wide range of equipment.
- 6.3 The Decision also seeks to suggest that the results of the mystery shopper exercise were "mixed" and did not necessarily support the view that other rivals competed effectively with the merging Parties. This is an unfair reflection of the data, which clearly highlighted that for the products analysed there existed at least three alternative rental suppliers that could deliver the specified equipment with a lead time of a week or more and that six rental operators contacted in a wider mystery shopper exercise were able to quote for a wide range of rental equipment. The Parties ask the CMA to revisit its assessment of this evidence against the balance of probabilities standard it must apply at Phase II.
- 6.4 Internal documents do mention other competitors and in particular constraint from OEM.²¹

¹⁸ Merger Notice, table 17.

¹⁹ Decision, paras. 89 and 93.

²⁰ Decision, para. 104.

²¹ Decision, paras. 87 and 113–114.

- 6.5 According to the Decision, “*TME rental competitors are not sufficient to constrain the Parties across all TME rental*”.²² As noted above, the Parties’ service proposition is not as differentiated from their competitors as the Decision suggests. Offering a broad range of equipment does not give the Parties a competitive advantage, as most customers’ TME needs are dictated by the specific industry segment and projects for which they will use the TME. As an individual customer will require only a limited amount of equipment there will typically exist numerous competitors that can supply that customers particular needs using a narrower range of stock. Although all competitors do not constrain the Parties in all segments, collectively, the competitors present in the market therefore offer a sufficient constraint to the merged entity not to raise its prices or deteriorate the quality of its service. This is supported *e.g.* by the fact that in the CMA’s market evidence, two of the unidentified competitors had higher revenues than either of the Parties in a particular segment.²³ In order to properly understand whether there would be a competitive issue in any of the specific segments, the CMA should have considered the segmentation of the market alongside the general competition in TME rental. Instead the Decision admits that its data is incomplete on this point.²⁴
- 6.6 Customers that did identify credible alternatives expressed concern that in the future their alternative would be to source their requirements from a larger number of smaller competitors, which are more expensive.²⁵ This concern was expressed by three large customers only.²⁶ While multi-sourcing may be inconvenient, the conclusion must be that as the smaller suppliers are able in the round to constrain the merged entity from raising prices independently of their competitors, this is not a unilateral effect.
- 6.7 Post-merger, customers will have a range of alternative suppliers to turn to in order to discipline the merged entity should it seek to raise prices. The Decision has not proven the contrary, and incomplete data, anecdotal evidence from only 29 customers of the 129 customers contacted by the CMA²⁷ and comments from competitors certainly cannot be sufficient to meet the “balance of probabilities” threshold of Phase 2.

7. ALTERNATIVE FORMS OF SUPPLY CONSTRAIN RENTAL SUPPLY AND WILL CONSTRAIN THE MERGED ENTITY

- 7.1 The Decision accepts that alternative forms of supply (such as purchase, lease and self-supply) constrain the pricing of rental services to some degree but was unable to determine conclusively at Phase 1 whether the strength of that constraint was sufficient to render any SLC finding unlikely. Against the standard applied by the CMA at Phase 2 the Parties submit that there is clear evidence that such a sufficient constraint exists in practice.
- (a) Equipment sales make up the majority of customers equipment requirements – this is the “standard” channel of equipment acquisition that rental operators must contend with and compete against to capture sales. The CMA Decision does not dispute this.
- (b) Nor does the Decision dispute that the large majority of the requirements of rental customers are satisfied by the purchase of equipment.²⁸ This in turn strongly suggests that

²² Decision, para. 5(c)(ii).

²³ Decision, paras. 78(d) and (e).

²⁴ Decision, para. 80.

²⁵ Decision, para. 95

²⁶ Decision, para. 95

²⁷ Decision, para. 70.

²⁸ Decision, para. 120 in particular does not dispute this view.

rental customers view purchasing equipment as a viable option that they frequently use to satisfy their requirements.

- (c) As noted above, the Decision accepts that the majority of customers accepted that “*a combination of purchase, lease or self-supply could be an alternative to rental*”²⁹
- (d) The Lost Opportunities analysis shows that Microlease loses the largest share of its rentals to OEMs [§] and self-supply [§]. These percentages are larger than the share of sales lost to Electro Rent.
- (e) Internal documents and other forms of evidence support the constraint from non-rental alternatives. For example, the Lost Opportunities analysis submitted by RBB sets out a number of instances where Microlease’s [§].³⁰ Moreover, evidence from Microlease’s [§]. This evidence is inaccurately reported in the Decision which focusses only on the number of deals lost.³¹
- (f) The CMA Decision accepts that TME purchase is an effective competitive alternative for long-term rental but fails to acknowledge that long-term rentals constitute the bulk of the Parties’ rental revenues – over [§] of Microlease’s income is generated from contracts that run for [§] (this is Microlease’s definition of long-term contracts.) This is in addition to customers that rent particular pieces of equipment frequently (meaning their total period of rental of the lifetime of an asset is significant even if each individual rental period is short). For these long term contracts and frequent renters TME purchase is likely to be a clear competitive alternative.
- (g) Finally, it bears emphasis that Microlease’s strategy has been (and will continue to be) to [§]. The only way in which significant increases in its revenues can be obtained is by persuading customers to switching away from TME purchases which account for the vast majority of the overall market. This in turn means that Microlease must continue to offer prices and service levels which are competitive with (and indeed better than) those that customers currently obtain by purchasing from OEMs. This strategy therefore places Microlease in direct competition with TME purchasing.

7.2 Internal documents mention constraint from OEM.³² In particular, the Parties submitted an internal Microlease email, circulated by the [§], which states [§]. The reasons cited for this are as follows: [§] The Decision notes that “*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.*” The CMA further notes that the evidence is not conclusive on the strength of the constraint posed by OEM’s.³³ This evidence does not allow for a finding of an SLC under a “balance of probabilities” analysis.

²⁹ Decision, para. 121.

³⁰ RBB Economics, Analysis of the Parties’ lost tenders for T&M Equipment, 3 March 2017.

³¹ Decision para. 59.

³² Decision, paras. 87 and 113–114.

³³ Decision, paras. 123–124.

8. BARRIERS TO ENTRY AND EXPANSION ARE LOW

- 8.1 The Parties disagree that barriers to entry are high. The Decision focuses on impediments to complete market entry (cost of capital, building up expertise)³⁴ while disregarding potential expansion from, *e.g.* the US, by entities such as TRS RenTelco.
- 8.2 Electro Rent's entry demonstrates that barriers to entry and expansion are low. The Decision acknowledges that Electro Rent serves the UK from Belgium, that Microlease serves Europe from the UK, and that Electro Rent's revenues [REDACTED].³⁵ As explained in paragraph 4.6, it is not necessary to have stock or a physical presence in the UK to start competing in the market. In fact, the Decision acknowledges that suppliers with considerable resources worldwide "*can be well placed to respond to changing market conditions by relocating global stock*".³⁶ In the Decision, this statement refers to the Parties but it clearly applies to any supplier with a global presence, such as TRS RenTelco. In addition, it is possible to run a competitive operation with very few staff, as [REDACTED] shows.

³⁴ Decision, para. 135.

³⁵ Decision, para. 103.

³⁶ Decision, para. 47(d).