

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

Provisional findings report

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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Glossary

Summary

1. On 19 October 2017, the Competition and Markets Authority (CMA) referred the completed acquisition by Electro Rent Corporation (Electro Rent) of Microlease Inc. and Test Equipment Asset Management Limited (Microlease) (the Merger) for an in-depth (phase 2) merger inquiry. The CMA is required to address the following questions:
 - (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 (SLC) within any market or markets in the UK for goods or services.¹
2. Electro Rent and Microlease (together, the Parties) both supply testing and measurement equipment (TME), which is used to test and measure electronic devices in order to validate their performance. The Parties operate globally in the supply of TME for purchase, leasing and rental across sectors such as telecommunications, aerospace and defence, industrial, and information technology.
3. Electro Rent is based in the US. In the UK, it has premises in Sunbury-on-Thames but it supplies products for purchase, lease and rental to the UK market and support to its UK operations from the Electro Rent European headquarters in Belgium.
4. Microlease is based in the UK in Harrow, supplying TME for sale (either as new or used equipment), for lease and for rental. It also offers services that help customers to manage their TME stocks (known as asset management services).
5. The Parties overlap in the rental supply of TME in the UK. They also overlap in the sale of TME, but not to a significant extent.
6. As part of our phase 2 inquiry, we spoke to 45 third parties (the Parties' main customers, other rental suppliers, and original equipment manufacturers (OEMs)) and received responses to an online questionnaire from an additional 55 (mostly smaller) customers. We also received several submissions and responses to information requests from the Parties, held hearings with each of them, and carried out an extensive review of internal documents of the Parties.

¹ Enterprise Act 2002 (the Act), section [35](#).

Relevant merger situation

7. We have provisionally found that the Merger has created a relevant merger situation within the meaning of the Act because it has resulted in the Parties ceasing to be distinct, and they collectively supply at least one-quarter of the revenue from rental supply of TME in the UK.

Counterfactual

8. The application of the SLC test involves a comparison of the prospects for competition with a merger against the competitive situation in the absence of a merger (the counterfactual).
9. While there is evidence that Electro Rent was looking to grow its presence in the UK, through opening its premises in Sunbury-on-Thames in 2015, the effect of this expansion on competitive conditions is uncertain as the expansion was paused following the change of ownership of Electro Rent, prior to the merger with Microlease. Accordingly, we provisionally conclude that the appropriate counterfactual is the conditions of competition prevailing at the time of the Merger. The potential for the expansion of Electro Rent in the UK to affect competition is assessed in our analysis of the competitive effects of the Merger.

Market definition

10. The purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of the merger.
11. Our provisional view is that the Merger should be investigated with reference to the rental supply of TME in the UK. We considered that TME rental and other forms of TME provision (especially the purchase of new or used equipment) are likely to be close alternatives for some customers and in some circumstances. However, our provisional view is that other forms of TME provision are not sufficiently close alternatives to TME rental to be considered part of the relevant market. We have considered the competitive constraint on TME rental exerted by purchase and other forms of TME provision outside the relevant market as part of our competitive assessment.

Competitive assessment

12. Microlease is the leading supplier of TME rental in the UK and Electro Rent, although smaller in the UK, is its closest competitor. Although there is a low level of awareness of Electro Rent amongst customers of Microlease with low

levels of rental expenditure, and a reluctance on the part of some customers to use Electro Rent, in part due to its less established UK presence, the Parties' internal documents consistently show that Microlease and Electro Rent compete closely to supply a significant proportion of customers in the UK. This is corroborated by the evidence received from third parties.

13. The Parties are the only two UK rental partners of some of the largest OEMs (Keysight, Viavi and EXFO). These partnerships allow the Parties to purchase the equipment of these OEMs at discounts not available to other rental suppliers, and provide other benefits, making it more difficult for other rental suppliers to compete effectively with the Parties.
14. The other rental suppliers put forward as competitors by the Parties either do not supply the same product/customer groups as the Parties or focus on narrow product segments. None of the other suppliers offers rental of TME across all of the sectors supplied by the Parties and none supplies equipment to a material extent in the UK in the segment which is the Parties' largest customer group in the UK. The evidence we have received indicates that in many situations customers would no longer have a choice between rental suppliers following the Merger.
15. In some circumstances, other forms of TME provision (such as purchase) are likely to be a close alternative to rental from the Parties. However, in our view this is not the case in a significant proportion of situations.
16. Consequently, the Merger would lead to the removal of each of the Parties' closest rental competitor in the UK and would lead to a substantial reduction in the alternatives available to a significant proportion of the Parties' rental customers. This is particularly reflected in the evidence we received in our customer calls. Almost half of the customers we spoke to stated that purchase was not a close alternative to rental for them and viewed the Parties as their only rental options. These customers accounted for around half of Electro Rent's and around a quarter of Microlease's UK rental revenue.
17. Since the Parties negotiate prices with customers on a case-by-case basis, they are able to price discriminate across customers. Price discrimination makes an SLC more likely because the merging parties are able to increase prices selectively for those customers whose options are likely to have been significantly reduced as a result of the Merger. The evidence indicates that these customers account for a significant proportion of the Parties' rental revenues.

18. A high proportion of the customers we spoke to also expressed concerns about the Merger. The customers expressing concerns accounted for around half of the Parties' rental revenue.
19. Furthermore, there is evidence that, absent the merger, Electro Rent's decision to establish a physical UK presence may have led to Electro Rent becoming a stronger competitor in the UK in the future.

Countervailing factors

20. We considered whether new entry into the UK TME rental market, or expansion of existing rental suppliers, would be timely, likely or sufficient to mitigate or prevent an SLC.
21. We consider that to be deemed sufficient to remedy or mitigate an SLC, entry (or expansion) would have to take place in the various sectors serviced by the Parties. This could either take the form of one player, with expertise and capability in these sectors, or possibly a number of players each with expertise and capability in a single market sector.
22. Our review of the recent history of entry into the market indicated that there have been no recent examples of significant entry.
23. Although one supplier had told us it intended to continue to expand in the UK in a limited manner, none of the other TME rental suppliers we spoke to had any plans to enter the UK market or significantly expand their presence there. We also noted the leading position of the Parties and the existence of various barriers to entry, which suggested that there is limited incentive for operators to embark on a programme of sizeable entry or expansion.
24. We found no evidence of any plans for entry or expansion, nor did we consider that such entry or expansion were likely to take place on a sufficient scale to mitigate or prevent an SLC.
25. We received no evidence that buyer power or efficiencies would offset our concerns.

Provisional findings

26. We have provisionally concluded that the Merger has resulted, or may be expected to result, in an SLC for the supply of TME rental in the UK.

Provisional findings

1. The reference

- 1.1 On 19 October 2017, the Competition and Markets Authority (CMA) referred the completed acquisition by Electro Rent Corporation (Electro Rent) of Microlease, Inc. and Test Equipment Asset Management Limited (Microlease) (the Merger) for an in-depth phase 2 inquiry.² In exercise of its duty under [section 22\(1\)](#) of the Enterprise Act 2002 (the Act), the CMA made a reference to its chair for the constitution of a group³ of CMA panel members (the inquiry group) in order to investigate and report on the following questions in accordance with [section 35\(1\)](#) 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 (SLC) within any market or markets in the UK for goods or services.
- 1.2 Our terms of reference, along with information on the conduct of the inquiry, are in Appendix A. We are required to publish our final report by 4 April 2018.
- 1.3 This document, together with its appendices, constitutes our provisional findings, published and notified to Electro Rent and Microlease in line with the CMA's rules of procedure.⁴ Further information relevant to this inquiry, including non-confidential versions of the submissions received from Electro Rent, can be found on the inquiry [case page](#).
- 1.4 Throughout this document, where relevant, we refer to Electro Rent and Microlease collectively as 'the Parties'. Where we refer to Parties' views, we recognise that although the submissions were provided to us by Electro Rent (as the Merger has been completed), they contained data and views from both Electro Rent and Microlease staff (now part of Electro Rent). Where we have received information confidential to Microlease from former Microlease employees, we refer to that as having been provided to us by Microlease. Similarly, where we have received information confidential to Electro Rent from pre-merger Electro Rent employees, we refer to that as having been provided to us by Electro Rent.

² Microlease, Inc. is US based and does not operate in the UK; it was therefore not included in the CMA inquiry.

³ [Section 22\(1\)](#) of the Act provides that the group is to be constituted under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

⁴ [CMA rules of procedure for merger, market and special reference groups \(CMA 17\)](#), Rule 11.

2. The products, the companies and the industry in which they operate

Introduction

- 2.1 The Parties both supply testing and measurement equipment (TME), which incorporates a wide range of machines to test and measure electronic devices and to validate their performance, across sectors such as telecommunications, aerospace and defence, industrial, and information technology. The Parties operate globally in the supply of TME (through new and used sales, leasing and rental), and overlap in respect of supply to customers in the UK.
- 2.2 This chapter provides an overview of the TME products supplied by the Parties and the sectors in which TME is used. It then provides an overview of the Parties and their operations, especially in relation to their UK businesses. Lastly it describes the supply chain, the forms of supply of TME and sets out potential future market developments.

The products

TME

- 2.3 TME⁵ is used by engineers, Original Equipment Manufacturers (OEMs), network operators, contractors, maintenance and service technicians and others to test, measure and evaluate the overall performance, signal strength and frequency of electronic systems and devices. TME supports virtually everything that contains electronic components, from mobile phones to satellites to military aircraft avionics, and is used across the lifecycle of products and systems, from research and development (R&D) to production to ongoing service and maintenance. For example:
- Customers within the telecom market use TME routinely to test and evaluate the signals generated by cellular network towers in order to ensure reliable and consistent delivery of voice, data and multimedia to users of mobile devices.
 - Customers in the Aerospace and Defence (A&D) sector use TME to test the integrity and reliability of circuitry in critical weapons systems and

⁵ The Parties also refer to TME as T&M.

satellites to safeguard against development setbacks or operational malfunctions.⁶

2.4 The global market is estimated to be \$12 billion annually, of which equipment services represent around \$600 million.⁷

2.5 TME includes:⁸

- **Oscilloscopes** – Electronic test instruments displaying signal oscillations on a screen. Oscilloscopes are used in a wide range of sectors, such as automotive, telecommunications and engineering, to observe the change of an electrical signal over time (eg changes in amplitude, frequency and distortion).
- **Radio Frequency (RF) Power Meters** – Devices measuring electrical power. RF power meters are used on live systems, such as radio transmitters, as a check of the outgoing power. RF power meters are used in a range of sectors, such as telecommunications, broadcasting, medical and semiconductor.
- **Wireless Communications Testers** – Instruments measuring and testing wireless communications devices (such as mobile phones), wireless communications infrastructure and mobile network performance. Wireless communications testers are primarily used in the telecommunications sector.
- **Network Analysers** – Devices measuring linear characteristics of RF components and devices, such as filters and frequency sensitive networks or transistors, mixers and other RF orientated devices. Network analysers can also be used in more specific applications, such as signal integrity and material measurement. Network analysers are used across a wide range of applications and industries, such as engineering and semiconductor.
- **Spectrum Analysers** – Instruments displaying signal amplitude as it varies by signal frequency. Spectrum analysers are widely used to measure the characteristics of a range of RF circuitry by comparing the input and output spectra. For example, in telecommunications, spectrum analysers can be used to determine whether or not a wireless transmitter is working according to defined standards.

⁶ [X]. The information memorandum was prepared by [X] in relation to syndication of the debt finance used to acquire Microlease.

⁷ [X]

⁸ [X]

Sectors using TME

- 2.6 There are three main categories of end user (see paragraph 2.54 for more detail about end users):
- a) Telecommunications (both wireline and wireless).
 - b) A&D.
 - c) Information technology.
- 2.7 More information about the equipment used by each sector and the typical value and lifecycle of the equipment can be found in Appendix B. The typical value of the equipment ranges from £3,000 to £116,000, and the typical life cycle of the equipment varies from 7 to 15 years.

The Parties and their operations

Electro Rent Corporation

Overview

- 2.8 Based in Van Nuys, California, in the US, Electro Rent is engaged in the provision of TME across the A&D, telecommunications, industrial, automotive and semiconductor sectors.⁹ It offers such products for sale (either as new or used equipment), for lease and for rental.¹⁰ Electro Rent also offers computer products, tablets, servers and related electronics for lease and rental, and provides ancillary services such as outsourced management of employee computers.¹¹

History and key milestones

- 2.9 Electro Rent was incorporated in 1965, and listed on Nasdaq in 1980. As shown in Figure 1, it made several strategic acquisitions during the period 1985 to 2011. During the period from 2005, Electro Rent has increased its geographic footprint from its origins in the US, to include Europe and China in 2005 and Middle East and Africa in 2012. In August 2016, Electro Rent was

⁹ [Merger Notice](#), page 1.

¹⁰ [Merger Notice](#), page 1. There are two types of lease that are relevant to TME: operating leases and finance leases, both of which are for a fixed period of time and typically for a minimum two-year period. Ownership does not transfer at the end of the fixed term operating lease, while in relation to finance lease, title transfers with the final payment. The duration of a rental agreement, on the other hand, is flexible, and typically for a minimum of one week, and ownership of the equipment does not transfer ([Merger Notice](#), page 4).

¹¹ [Merger Notice](#), page 1.

acquired by Platinum Equity, a global investment firm headquartered in Beverly Hills in the US, following which Electro Rent was delisted.

Figure 1: Key milestones up to 2015 – Electro Rent



Source: Electro Rent ([REDACTED]).

Financial performance

2.10 For the financial year 2016, Electro Rent reported global turnover of \$[REDACTED] million (£[REDACTED] million) and operating profit of \$[REDACTED] million (£[REDACTED] million). The US is the primary market for Electro Rent, which contributed \$[REDACTED] million ([REDACTED]%) of its global revenues. Electro Rent's UK revenues were relatively small at \$[REDACTED] (£[REDACTED]), about [REDACTED]% of global revenues – see Figure 2.¹²

Figure 2: Electro Rent global revenues by geography, financial year 2016

[REDACTED]

Source: Electro Rent.

2.11 Electro Rent has two business divisions:¹³

- (a) Test and Measurement Equipment: rental, lease and sale of new and used electronic TME; and

¹² Merger Notice, page 1 and paragraph 5.

¹³ Electro Rent purchases these products from OEMs and computer manufacturers.

(b) Data Products: sale of personal computers purchased from manufacturers.

- 2.12 Within TME, 'TME rental and leases' was the largest business segment in 2016 and accounted for 60% of Electro Rent's global revenues, while the sale of new and used TME contributed 28%.¹⁴ The Data Products segment accounted for the balance, 12%.¹⁵
- 2.13 In Europe, Electro Rent Europe is focused on short-term rental, leasing and sale of general purpose TME 'helping technology companies to decrease overall costs and increase flexibility on the utilisation of electronic test equipment'.¹⁶
- 2.14 Electro Rent Europe's operation is based in Mechelen, in Belgium. From this Belgian hub, Electro Rent supplies all European markets, reporting to the headquarters in Van Nuys, California. The Belgian hub has limited discretion in terms of [REDACTED], with most decisions being made in the US.¹⁷ There are also frequent transfers of stock from the US to Europe, when the Belgian hub has insufficient stock to meet customer requirements, and vice versa.¹⁸
- 2.15 Electro Rent does not have any exclusive arrangements with any OEM in the UK or any other EU countries, although it does have Preferred Rental Partner (PRP) agreements¹⁹ with some OEMs.²⁰

UK operations

- 2.16 Electro Rent has supplied the UK market since at least 2010. In 2015 it established a UK branch office (located at Sunbury-on-Thames, Middlesex) focusing on the rental of TME in the UK.^{21,22} While the original intention was for [REDACTED], these plans have never been put into practice.²³ Consequently, [REDACTED], and all customers continue to be supplied directly from its hub in Belgium.²⁴

¹⁴ Electro Rent is the authorised dealer/reseller of TME for several larger OEMs.

¹⁵ [Electro Rent Annual Report, 2016](#).

¹⁶ [REDACTED]

¹⁷ [REDACTED]. Electro Rent told us that it maintains a very tight control over the European operation out of the US operations, including [REDACTED].

¹⁸ [REDACTED]

¹⁹ PRP agreements are not exclusive, and indicate an endorsement from the OEM to the rental supplier subject to certain conditions being met by the rental supplier ([REDACTED]).

²⁰ [REDACTED]

²¹ The UK branch is not a separate UK company, but part of Electro Rent NV.

²² Electro Rent told us [REDACTED].

²³ The plans for the UK have not progressed due to the purchase of Electro Rent by Platinum, the Merger, and the CMA investigation ([REDACTED]).

²⁴ Electro Rent supplies its entire European business from its hub in Belgium ([Response to phase 1 decision](#), paragraph 4.6).

- 2.17 Electro Rent told us the UK branch office was established in order to:
- (a) support future growth & expansion;
 - (b) serve UK customers from local premises;
 - (c) serve strategic customers better;
 - (d) offer a true alternative for new customers;
 - (e) have local stock and staff; and
 - (f) improve collaboration with OEMs for local market development.²⁵
- 2.18 Appendix C provides a summary of the actions taken by Electro Rent to increase its customer base in the UK following its establishment of a local branch office in 2015.
- 2.19 An Electro Rent management report dated [REDACTED] noted that '[REDACTED]'.²⁶
- 2.20 The number of Electro Rent product lines available for rent in the UK is approximately [REDACTED]. The total capital cost of these products is approximately £[REDACTED].²⁷ Electro Rent has [REDACTED] TME instruments on rent in the UK and [REDACTED] TME instruments available for rent in Europe (including the UK).²⁸ Electro Rent has [REDACTED] rental customers in the UK, of which the top [REDACTED] accounted for [REDACTED]% of the total sales revenue.^{29,30}
- 2.21 The total turnover for each financial year between 1 January 2010 and 31 December 2016 of Electro Rent's UK operations is shown in Figure 3, which shows [REDACTED].³¹

Figure 3: Electro Rent UK turnover trend*

[REDACTED]

Source: Electro Rent ([Merger Notice](#), Table 4).

* Electro Rent's financial year runs from 1 June to 31 May.

²⁵ [REDACTED]

²⁶ [REDACTED]

²⁷ Products from Electro Rent's worldwide inventory are available for rental to UK customers, and these are reflected in the figures provided ([Merger Notice](#), paragraph 9).

²⁸ [Merger Notice](#), paragraph 10.

²⁹ CMA analysis of customer sales data provided by the Parties for 2016.

³⁰ [Merger Notice](#), paragraph 130.

³¹ [Merger Notice](#), paragraph 24.

2.22 Approximately [X]% (£[X]) of Electro Rent's 2016 UK turnover was generated from the rental and leasing of TME. The balance [X]% (£[X]) was generated from the sale of new/used equipment and services – see Table 1.³²

Table 1: Electro Rent UK revenues by segment (financial year 2016)

<i>Segment</i>	<i>Turnover (£m)</i>	<i>Share (%)</i>
Rental	[X]	[X]
Leasing	[X]	[X]
Sale – New equipment	[X]	[X]
Sale – Used equipment	[X]	[X]
Services	[X]	[X]
Total	[X]	100

Source: Electro Rent ([Merger Notice](#), Table 1).

2.23 Telecoms was the largest industry sector for Electro Rent, contributing [X]% of its 2016 UK revenues, followed by Infotech and A&D at [X]% and [X]% respectively. Electro Rent's revenues by sector are set out in Table 2 below.

Table 2: Electro Rent UK revenues by sector (financial year)

	<i>£m</i>		
<i>Sector</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>
Aerospace & Defence	[X]	[X]	[X]
Telecoms	[X]	[X]	[X]
Infotech	[X]	[X]	[X]
Total	[X]	[X]	[X]

Source: Electro Rent ([X]).

2.24 Electro Rent's UK organisation employs [X] individuals, with [X] each in Operations Management, Sales, Test and Measurement Service Group and Credit and Collections.³³

2.25 Sales activities in the UK cover three main sectors and geographic areas:³⁴

- (a) Installation and maintenance of the optical communications networks in England and Wales (approximately [X]% of revenues in 2016);
- (b) RF and Microwave in England and Wales (approximately [X]% of revenues in 2016); and
- (c) All three main sectors (A&D, Telecoms and Infotech) in the North of England (approximately [X]% of revenues in 2016).

³² [Merger Notice](#), page 3.

³³ [Merger Notice](#), paragraph 7.

³⁴ [Merger Notice](#), paragraph 8.

Microlease

Overview

- 2.26 Based in the UK, Microlease is a global supplier of TME and offers such products for sale (either as new or used equipment), for lease and for rental (including sub-rental of TME owned by OEMs or asset management customers). It also provides asset management services registering, tracking and maintaining asset pools to assist customers in managing TME.³⁵
- 2.27 Microlease describes itself as a ‘total solutions provider’ for TME, ‘helping users deploy equipment when and where needed in the most cost-effective way’.³⁶ It serves customers in a variety of industries including Aerospace, Automotive, Defence, Semiconductors, Telecommunications, Wireless and Wired systems.³⁷ Microlease has offices in 11 countries serving customers in over 100 countries. It is largely a European business, with a historical focus on the telecommunications sector.³⁸
- 2.28 Microlease works in close partnerships with TME OEMs through a number of sales channels to meet user needs. It has global annual revenues of around £120 million.
- 2.29 Microlease has a multi-segment business model with several sources of revenue:³⁹
- (a) Equipment rental: rental of TME.
 - (b) Used sales: sale of used TME out of the rental stock.
 - (c) Authorised Technology Partner (ATP)⁴⁰ & Distribution (New sales): sales of new TME effectively as a dealer.
 - (d) Asset management: broad suite of services, including purchase/rental planning, disposals, sub-rentals, etc, to assist customers in managing their TME needs. This generates income from software licensing/admin fees and profit sharing on disposals, and also helps drive business across other segments.

³⁵ [Merger Notice](#), page 1.

³⁶ See [Microlease website](#).

³⁷ See [Microlease website](#).

³⁸ [Response to phase 1 decision](#), paragraph 1.3.

³⁹ [§]

⁴⁰ An ATP is a territory exclusive contract to sell bespoke equipment from an OEM to end users ([§]).

2.30 Figure 4 provides an overview of Microlease's global operations and geographical footprint.

Figure 4: Microlease global operations

[✂]

Source: Microlease ([✂]).

2.31 Figure 5 presents Microlease's strategy for its global operations.

Figure 5: Microlease global strategy []

[✂]

Source: Microlease ([✂]).

2.32 Microlease's strategy in Europe has focused on 'building on the strong presence and rental market share to provide choice to more customers' – see Figure 6.

Figure 6: Microlease Europe strategy

[✂]

Source: Microlease ([✂]).

2.33 Microlease has a diversified customer base with its top ten customers representing around [✂]% of total billings.⁴¹

History and key milestones

2.34 Microlease was founded in 1979, and focused on providing TME on a rental basis to the telecoms sector. The business was originally established in the UK, but over time expanded into Europe, most notably France, Italy and Spain.⁴²

2.35 In 2006, Lloyds Development Capital (LDC) backed the Microlease management team to buy the business from the founding shareholders. Thereafter, Microlease pursued a long-term strategy to broaden sector coverage (to include a better balance across Telecoms, A&D and Infotech), diversify the client base and expand the geographical reach (with operations in Europe, the US and South-East Asia). This strategy was aimed at growing

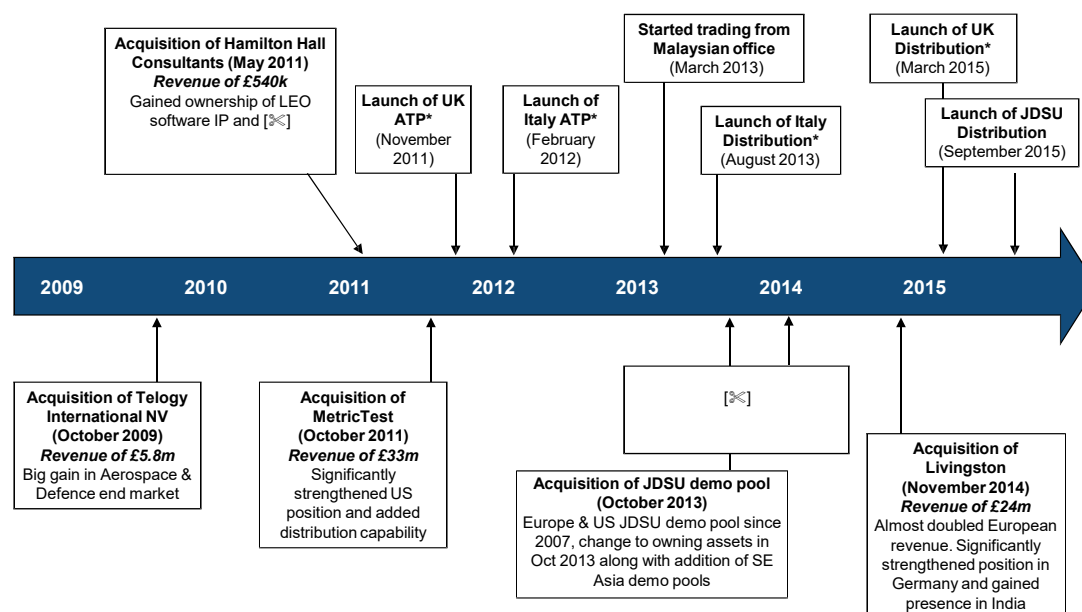
⁴¹ [✂]

⁴² [✂]

the business both through mergers and acquisitions and organic investments.⁴³

2.36 Figure 7 provides a summary of Microlease's key activities and acquisitions during 2009-2015.

Figure 7: Microlease's key activities and acquisitions



Source: Microlease ([redacted]).

2.37 In 2014, Microlease acquired Livingston, a UK-based TME rental provider. This increased Microlease's rental inventory of telecommunications TME.⁴⁴ The company also became a preferred rental partner for Keysight Technologies, one of the main OEMs, for the supply of TME in all three major regions of the world.^{45,46} Microlease also has preferred rental partner status with other key OEMs for the supply of TME, including Rohde & Schwarz, Viavi Solutions (formerly JDSU) and Tektronix (part of Danaher).⁴⁷

Financial performance

2.38 Table 3 sets out financial performance metrics for Microlease between 2012/13 and 2015/16. This shows that [redacted].

⁴³ [redacted]

⁴⁴ [redacted]

⁴⁵ [redacted]

⁴⁶ Microlease's ATP agreements with Keysight in the UK, Ireland and Italy are the only exclusive agreements that Microlease has with any OEM. Whilst these agreements are stated to be non-exclusive, in practice Keysight does not appoint more than one ATP in a given territory.

⁴⁷ [redacted]

Table 3: Microlease summary financial information (Group)

Group consolidated £'000	2012/13	2013/14	2014/15	2015/16**
Turnover	[X]	[X]	[X]	[X]
Gross profit	[X]	[X]	[X]	[X]
Gross margin	[X]	[X]	[X]	[X]
Operating profit	[X]	[X]	[X]	[X]
Operating margin	[X]	[X]	[X]	[X]

Source: Microlease.

[X]

** [X]

- 2.39 In 2016, Microlease reported global turnover of £[X] million,^{48,49} and operating profit of £[X] million.
- 2.40 The UK and the rest of the European Economic Area accounted for £[X] ([X]%) and £[X] ([X]%) of Microlease's 2016 global revenues respectively, with rest of the world contributing the balance £[X] ([X]%).⁵⁰
- 2.41 Microlease holds inventory in four main locations around the world to serve each continent. Europe-based customers are served primarily from Harrow, UK. There are also a number of smaller facilities across Europe that hold small inventories, but the majority of TME for Europe-based customers is held in the UK. Therefore, the vast majority of TME rental shipments across Europe are shipped from the UK.⁵¹ All of Microlease's UK customers are supplied from the UK.

UK operations

- 2.42 In the UK, Microlease provides the following services via its operational hub located in Harrow, Middlesex, which also services customers in Europe:
- (a) lease and rental of TME;
 - (b) sale of TME (new and used); and
 - (c) asset management services.
- 2.43 Microlease's sales activities in the UK are organised around the following teams:⁵²
- (a) UK Rental (non-exclusive rental contracts with UK customers): [X] external sales staff organised regionally plus [X] internal sales staff. This

⁴⁸ [Merger Notice](#), page 1 and paragraph 21.

⁴⁹ Microlease's fiscal year ended on 28 February 2016.

⁵⁰ [Merger Notice](#), Table 10.

⁵¹ [Merger Notice](#), paragraph 110.

⁵² [X]

team works closely with a team of [REDACTED] in the Customer Support department.

- (b) Keysight ATP (exclusive sales agreement in the UK to smaller customers):⁵³ [REDACTED] direct sales staff organised regionally plus access to [REDACTED] support staff.
- (c) Keysight Distribution (non-exclusive sales agreement in the UK to all customers): [REDACTED] direct sales staff organised regionally plus access to [REDACTED] support staff.
- (d) Viavi Distribution (non-exclusive sales agreement in the UK to all customers): [REDACTED] direct sales staff organised regionally plus access to [REDACTED] support staff.

2.44 The number of Microlease product lines available for rent in the UK as at 31 January 2017 was [REDACTED]. Microlease has over [REDACTED] TME instruments available for rent in the UK.⁵⁴

2.45 Figure 8 shows that Microlease's UK turnover has increased during the period 2010 to 2016.

Figure 8: Microlease UK turnover (2010-2016)

[REDACTED]

Source: Microlease ([REDACTED]).

2.46 TME rental is Microlease's largest business segment, which accounted for [REDACTED]% of its 2016 turnover – see Table 4.

Table 4: Microlease UK FY to February 2016 turnover by segment

	£m		
Segment	FY to February 2014	FY to February 2015	FY to February 2016
Rental	[REDACTED]	[REDACTED]	[REDACTED]
Leasing	[REDACTED]	[REDACTED]	[REDACTED]
Sale – New equipment	[REDACTED]	[REDACTED]	[REDACTED]
Sale – Used equipment	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]

Source: Microlease ([REDACTED]).

⁵³ [REDACTED]

⁵⁴ [Merger Notice](#), paragraphs 41&42.

- 2.47 Microlease has [X] rental customers in the UK.⁵⁵ During 2016, Microlease made sales to [X] customers in the UK, of which the top 10 accounted for [X]% of the total sales revenue.⁵⁶
- 2.48 Telecoms was the largest single industry sector for Microlease, contributing [X]% of its 2016 revenues, with A&D contributing [X]%. Other and Uncategorized contributed the balance, with [X]% and [X]% respectively – see Table 5.

Table 5: Microlease UK revenues by sector (financial year)

	£m		
Sector	FY to February 2014	FY to February 2015	FY to February 2016
A&D	[X]	[X]	[X]
Telecoms	[X]	[X]	[X]
Other	[X]	[X]	[X]
Uncategorised	[X]	[X]	[X]
Total	[X]	[X]	[X]

Source: Microlease ([X]).

- 2.49 Telecoms contributed [X]% of Microlease's 2016 rental revenues – see Table 6.

Table 6: Microlease UK rental revenues by sector (financial year)

	£m		
Sector	FY to February 2014	FY to February 2015	FY to February 2016
A&D	[X]	[X]	[X]
Telecoms	[X]	[X]	[X]
Other	[X]	[X]	[X]
Uncategorised	[X]	[X]	[X]
Total	[X]	[X]	[X]

Source: Microlease ([X]).

The industry in which the Parties operate

- 2.50 This section describes the TME supply chain, the forms of TME provision, and trends in the end customer markets.

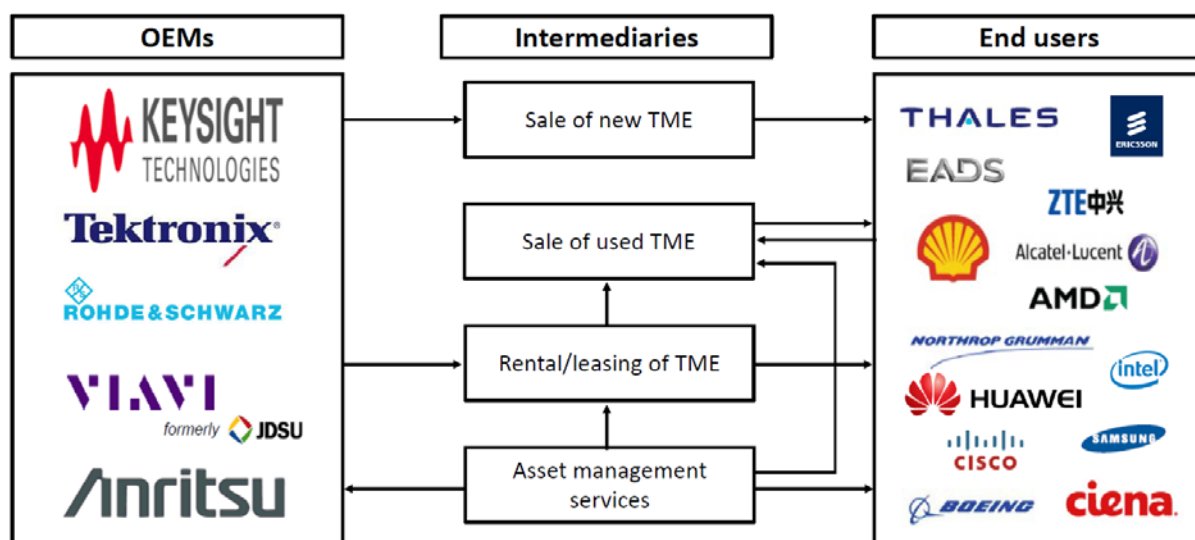
The supply chain

- 2.51 The TME supply chain consists of OEMs, intermediaries and end users – see Figure 9.

⁵⁵ Merger Notice, paragraph 134.

⁵⁶ CMA analysis of customer sales data provided by the Parties for 2016 (calendar year).

Figure 9: TME supply chain



Source: Merger Notice, Figure 2.

2.52 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 (Tektronix), Rohde & Schwarz, Viavi (formerly JDSU) and Anritsu, which, according to the Parties' estimate, account for over [X]% of global TME supply, and are also the top five TME OEMs in the UK.⁵⁷

2.53 Intermediaries include distributors of new and used equipment, rental providers and related service providers. For new equipment, OEMs sell equipment directly to core global clients, sell their high value equipment through distribution agreements (often on an exclusive basis) and sell medium to lower value equipment through a network of non-exclusive distributors. For used equipment, intermediaries often sell their own equipment when 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.⁵⁸

2.54 TME is used by all electronics related industry sectors, but the Parties submitted there are three main categories of end users:⁵⁹

- Telecommunications (Telecoms), which includes equipment manufacturers, installation and commissioning providers.

⁵⁷ Merger Notice, page 2.

⁵⁸ Merger Notice, pages 2-3.

⁵⁹ Merger Notice, page 3.

- A&D, which includes commercial aviation, commercial satellites, and various defence sub-sectors.
- Industrials/information technology (Infotech) includes semiconductor technology used in automotive, transportation, oil & gas, broadcast & media and general electronics applications.

2.55 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 relative size of the end-user sectors is similar in the UK TME market.⁶⁰

Forms of TME provision

2.56 A customer requiring TME can obtain it in a number of different ways. The main alternatives are TME purchase (either new or used), leasing (either operating or finance) or rental. Table 7 summarises the differences between these forms of TME provision.⁶¹

Table 7: Main TME provision options

<i>TME provision</i>	<i>Flexible/Fixed term</i>	<i>Minimum term</i>	<i>Ownership transfer</i>	<i>Finance</i>
Rental	Flexible	1 week	✗	✗
Operating lease	Fixed term	2 years	✗	✓
Finance lease	Fixed term	2 years	✓	✓
Purchase	N/A	N/A	✓	N/A

Source: The Parties and CMA analysis.

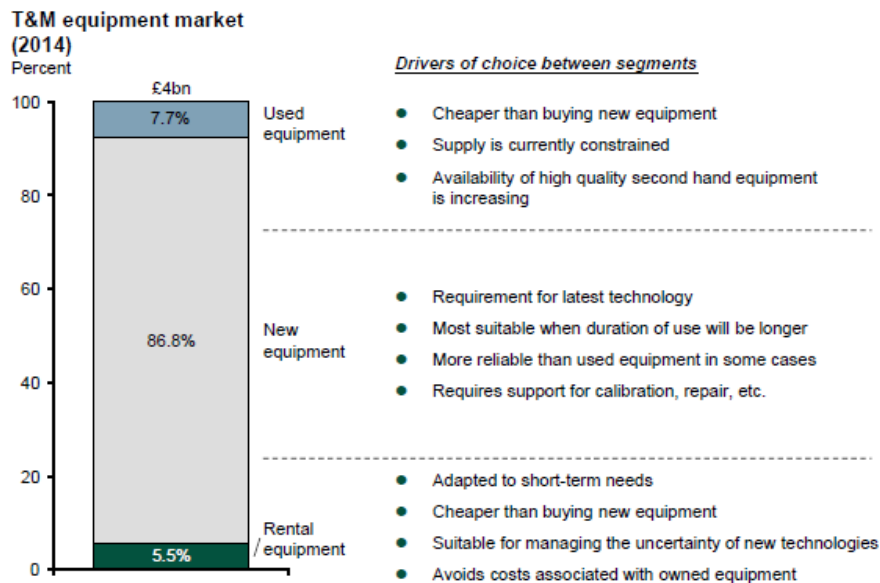
2.57 Figure 10 shows an estimated revenue split between rental and purchase of new and used TME, worldwide, in 2014. This shows that rental accounts for a relatively small proportion of total TME worldwide revenues.

⁶⁰ [Merger Notice](#), page 3.

⁶¹ In addition to these main forms of TME provision, the Parties have also submitted that, rather than renting, customers can use internal supply (ie using equipment already owned by the customer) or use demonstration equipment (ie using equipment provided for a short time by the OEM for free in the hope that the customer will choose to buy it). This is discussed further in the chapters on market definition (Chapter 5) and competitive assessment (Chapter 6)

Figure 10: TME revenue shares for new and used equipment and rental (2014)

3 The overall T&M equipment market segments into rental, used and new equipment, with different reasons for purchase driving each segment

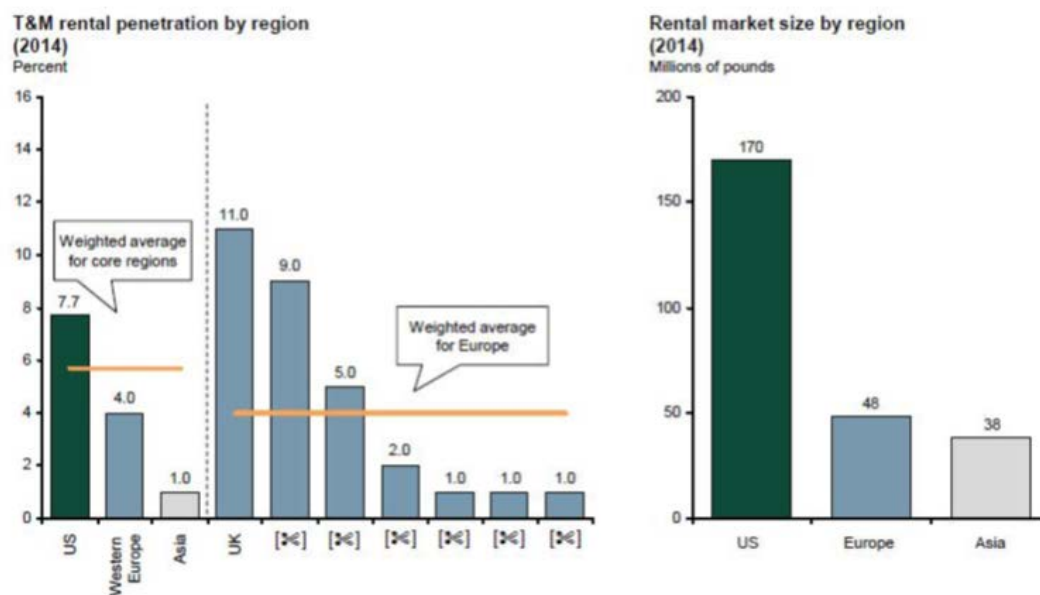


Source: The Parties ([redacted]).

2.58 Figure 11 shows how the TME rental penetration varies by region. From this it can be seen that Europe, at 4%, is below average, but within Europe there is a range of penetration rates, with the UK being highest at 11%, and [redacted] being at 1%.

Figure 11: TME rental penetration rates by region (2014)

3 T&M rental penetration is still low, especially in Asia...



Source: The Parties ([REDACTED]).

2.59 The Parties told us that the trend toward renting and/or leasing TME versus buying TME has increased in recent years.⁶²

2.60 The factors determining the choice between these options are discussed in detail in Chapter 5 (Market definition) and Chapter 6 (Competitive assessment).

Trends in end customer markets

2.61 The Parties have told us that the underlying trends in end markets worldwide which will support future growth opportunities include:⁶³

- modernisation of legacy defence systems and platforms and renewed expansion of government defence spending;
- continued development, launch and production of new commercial aerospace platforms;
- growth in the rapidly expanding commercial aerospace industry;

⁶² [REDACTED]

⁶³ [REDACTED]

- rapid increases in demand for mobile data services;
- new technologies driving telecom infrastructure upgrades (5G development/rollout began in 2016 and is expected to accelerate through 2020 and beyond); and
- increased electronic and sensor content in automotive, industrial and consumer electronics offerings, including the internet of things (IoT).

2.62 Further, a [REDACTED] Vendor Due Diligence report from 2015 provided to us by the Parties states that:⁶⁴

Rental penetration has been increasing gradually due to capex constraints amongst telecoms operators and continued outsourcing to contractors ... this has largely been in the UK, France, Spain, all of which have been strengthened by fibre rollouts over the last few years ... Rental market growth has been relatively modest at 0-5% [REDACTED] per annum.

2.63 Table 8 shows estimated growth prospects included in the above report.

Table 8: Growth prospects for European TME Rental market

Short term growth 2014-2017

<i>T&M rental market value growth (per annum) (%)</i>			
	<i>2012–2014</i>	<i>2014–2017</i>	<i>Reconciliation to T&M market volume growth</i>
			4–5% per annum T&M market volume growth
Europe	[0-5] [REDACTED]	[REDACTED]	Rental penetration increases at higher rate than historically from [REDACTED]% to [REDACTED]% during the period 2014–17, particularly in [REDACTED] due to FTTx rollout
			Stabilisation of yields due to more benign competitive environment

Medium term growth 2017-2019

<i>T&M rental market value growth (per annum) (%)</i>			
	<i>2014–2017</i>	<i>2017–2019</i>	<i>Rationale for higher growth in 2017–2019</i>
Europe	[REDACTED]	[REDACTED]	Increase due to significant impact of new 5G and IoT technologies on rental T&M demand
			Growth in Europe in 2019 will be more muted as the effects of the [REDACTED] FTTx rollout have finished by this point

Source: The Parties ([REDACTED]).

⁶⁴ [REDACTED]

3. Merger and relevant merger situation

The transaction

- 3.1 This chapter provides a summary of the events that took place in the run up to the completion of the Merger.
- 3.2 Microlease was put up for sale in late 2015 – [REDACTED].⁶⁵ Microlease ran a full sale side process with the preferred bidder being [REDACTED].⁶⁶ In parallel, [REDACTED] was negotiating to purchase Electro Rent with the intention of consolidating the two companies. [REDACTED] withdrew from the purchase of both companies as a result of the Brexit vote.⁶⁷
- 3.3 Platinum Equity Advisors, LLC (Platinum) had also expressed an interest in acquiring Microlease but [REDACTED].⁶⁸ In July 2016 Platinum was approached to re-engage in the sale process.
- 3.4 In the meantime, Platinum purchased Electro Rent Corporation for \$[REDACTED] million on 10 August 2016, at which point Electro Rent Corporation delisted from Nasdaq.
- 3.5 In terms of the Microlease transaction, Platinum met with LDC⁶⁹ on [REDACTED]. The Sale and Purchase Agreement (SPA) was signed on 15 November 2016 with completion on 31 January 2017.⁷⁰
- 3.6 Electro Rent Corporation acquired the whole of the issued share capital of Test Equipment Asset Management Limited (TEAM) and Microlease Inc.
- 3.7 The transaction was [REDACTED]:
- (a) [REDACTED]
- (b) [REDACTED]
- 3.8 [REDACTED]
- 3.9 The transaction value was £[REDACTED] million split⁷¹ in the SPA:

⁶⁵ [REDACTED]

⁶⁶ [REDACTED]

⁶⁷ [REDACTED]

⁶⁸ [REDACTED]

⁶⁹ LDC was the prior owner of Microlease Inc.

⁷⁰ Period between signing and completion – Platinum putting together debt finance for the transaction.

⁷¹ [REDACTED], stated the purchase price was based on £[REDACTED] million equity value and assumed debt of £[REDACTED] million.

(a) TEAM: £[REDACTED] million.

(b) Microlease Inc: £[REDACTED] million.

3.10 [REDACTED]

The rationale for the transaction

3.11 The Parties submitted that the rationale for this transaction is driven by pro-competitive factors, including:

- the complementarity of the Parties' offerings/asset base;
- the complementarity of their geographic focus;
- the Parties' strength in different customer segments within the TME sector;
- access to a best-in-class Microlease management team;
- 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 OEMs that are increasingly active in the rental/leasing of TME; and
- the substantial synergies resulting from the Transaction, which are estimated to be approximately £[REDACTED] million (around \$[REDACTED] million).⁷²

3.12 The Parties submitted that 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.⁷³

Relevant merger situation

3.13 Pursuant to [section 35](#) of the Act and our terms of reference (see Appendix A) we are required to investigate and report on two statutory questions: whether a relevant merger situation (RMS) has been created and if so, whether that has resulted or may be expected to result in an SLC within any market or markets in the UK for goods or services.

3.14 We address the first of the statutory questions in this section.

⁷² [Response to phase 1 decision](#), paragraph 3.1.

⁷³ [Response to phase 1 decision](#), paragraph 3.1.

Enterprises ceasing to be distinct

- 3.15 An RMS has been created if two or more enterprises have ceased to be distinct within the statutory period for reference⁷⁴ and either the turnover test or the share of supply test is satisfied.⁷⁵
- 3.16 An ‘enterprise’ is ‘the activities or part of the activities of a business’. A ‘business’ is a professional practice or any other undertaking which is carried on for gain or reward or an undertaking which supplies goods or services ‘otherwise than free of charge’.⁷⁶
- 3.17 Both Electro Rent and Microlease provide TME products for sale, lease and rental. We are satisfied that Electro Rent and Microlease (including their subsidiaries) are businesses and their activities are ‘enterprises’ for the purposes of the Act.
- 3.18 Enterprises cease to be distinct once they are brought under common ownership or common control.⁷⁷ Electro Rent acquired the entire share capital of Microlease and the enterprises are now under common ownership of Electro Rent (and are under its common control). Accordingly, we are satisfied they have ‘ceased to be distinct’.
- 3.19 The enterprises must have ceased to be distinct within the statutory timeframe which is either not more than four months before the date on which the reference is made or, where the merger took place without having been made public and without the CMA being informed of it, four months from the earlier of the time that material facts are made public or the time the CMA is told of material facts.⁷⁸ The four-month period may be extended under [section 25](#) of the Act.
- 3.20 The Merger completed on 31 January 2017 and the phase 1 investigation commenced on 1 February. On 14 June 2017, following extensions, Electro Rent was given the opportunity to offer undertakings in lieu of a reference (UILs).⁷⁹ The final date for a decision whether or not to accept the undertakings and so whether or not to refer the Merger was 23 October 2017.

⁷⁴ [Section 23](#) and [section 24](#) of the Act.

⁷⁵ [Section 23](#) of the Act provides that the value of the turnover in the UK of the enterprise being taken over must exceed £70 million or, in relation to the supply of goods or services, at least one quarter of all such goods or services which are supplied or acquired in the UK or a substantial part of the UK are supplied by or to one and the same person.

⁷⁶ [Section 129\(1\)](#) and [\(3\)](#) of the Act.

⁷⁷ [Section 26](#) of the Act.

⁷⁸ [Section 24](#) of the Act.

⁷⁹ [Section 73\(2\)](#) of the Act provides that the CMA may accept undertakings in lieu of a reference in order to remedy the SLC.

This date was reached as a result of two extensions provided for under the Act.⁸⁰

- 3.21 Following a period where the Parties sought (unsuccessfully) to find a buyer for the Electro Rent UK business, the Parties notified the CMA that a sale was not likely. Consequently, the CMA did not accept any UILs and the Merger was referred for a phase 2 investigation on 19 October 2017.
- 3.22 We therefore consider the applicable statutory time limits for a reference have been complied with.

Jurisdiction

- 3.23 The second element of the RMS test seeks to establish sufficient connection with the UK on a turnover or share of supply basis to give us jurisdiction to investigate.
- 3.24 The turnover test, which requires the value of the turnover in the UK of the enterprise acquired to exceed £70 million is not met. Accordingly, we considered share of supply.
- 3.25 The share of supply test is satisfied if the merger results in the *creation or increase* in a share of supply of goods or services of a particular description and the resulting share must be 25% or more.⁸¹
- 3.26 The Parties overlap in the rental supply of TME to customers in the UK. The Parties submitted that the Merger resulted in an increment of [X]% and their combined share of supply is approximately [X]% (by total revenues).⁸² Our analysis of revenues from TME rental suppliers in Chapter 6 suggests that the Parties' shares of supply are likely to be higher than they have estimated. We are therefore satisfied that the share of supply test in [section 23](#) of the Act is met.

⁸⁰ 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.

⁸¹ Section [23\(2\)](#), [\(3\)](#) and [\(4\)](#) of the Act. The test is also met where at least one quarter of the goods or services is supplied by the persons by whom the enterprises concerned are carried on, or are supplied to or for those persons.

⁸² [Response to phase 1 decision](#), paragraph 5.2.

Provisional conclusion on the relevant merger situation

- 3.27 In the light of the above assessment, we provisionally conclude that the Merger has resulted in the creation of a relevant merger situation.

4. Counterfactual

- 4.1 To assess the effects of the Merger on competition we need to consider what would have been the competitive situation without the Merger. This is called the ‘counterfactual’.⁸³
- 4.2 The counterfactual is an analytical tool used to help answer the question of whether the merger has or may be expected to result in an SLC.⁸⁴ It does this by providing the basis for a comparison of the competitive situation in the market with the merger against the likely future competitive situation in the market absent the merger.⁸⁵ The CMA’s approach to the counterfactual is set out in our Merger Assessment Guidelines.⁸⁶
- 4.3 In order to determine the counterfactual, we have considered, based on the evidence, what would have been the most likely scenario had Microlease not been sold to Electro Rent.

Views of the Parties

- 4.4 The Parties consider the appropriate counterfactual against which to assess the Merger is the pre-Merger competitive situation.⁸⁷

Our assessment

- 4.5 As explained in Chapter 2, Electro Rent was looking to grow its presence in the UK market by establishing a physical presence through opening its Sunbury-on-Thames branch in 2015. This would have supplemented its supply of the UK market from its European headquarters in Mechelen in Belgium, which is used to supply its entire European business. The expansion was paused following the change of ownership of Electro Rent prior to the merger with Microlease.
- 4.6 Therefore, there is evidence that, absent the Merger, it was likely that Electro Rent would have grown its presence in the UK and potentially have increased

⁸³ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraph 4.3.1.

⁸⁴ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraph 4.3.1.

⁸⁵ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraphs 4.3.1 and 4.3.6.

⁸⁶ [Merger Assessment Guidelines \(CC 2 Revised\)](#), Section 4.3.

⁸⁷ [Merger Notice](#), paragraph 87.

the competitive pressures in the rental supply of TME in the UK. However, as Electro Rent had not established full operations from its UK premises prior to the Merger, the extent to which this would result in additional competitive constraints is by its nature speculative and uncertain.

Provisional view on the counterfactual

- 4.7 While there is some evidence that Electro Rent was looking to grow its presence in the UK, through opening its premises in Sunbury-on-Thames, the effect of this expansion on competitive conditions is uncertain. Accordingly, we provisionally conclude that the appropriate counterfactual is the conditions of competition prevailing at the time of the Merger. The potential for the expansion of Electro Rent in the UK to affect the conditions of competition is assessed in our analysis of the competitive effects of the Merger.⁸⁸

5. Market definition

Introduction and overview

- 5.1 The purpose of market definition is to provide a framework for the CMA's analysis of the competitive effects of a merger. The relevant market (or markets) is the market in which a merger may give rise to an SLC and contains the products and/or services that are the most significant competitive alternatives available to the customers of the merged companies. Market definition is a useful analytical tool but is not an end in itself and identifying the relevant market involves an element of judgment. The boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of a merger in a mechanistic way. The CMA may, for example, also take into account constraints outside the relevant market (or markets).⁸⁹
- 5.2 As described in Chapter 2 above, the Parties' activities primarily overlap in the rental supply of TME. In this chapter we examine two dimensions of market definition: the product dimension and the geographic dimension. For each, we proceed by first setting out the Parties' submissions, then summarising the evidence we have received and finally explaining our assessment.
- 5.3 For each area of evidence, the relevant appendix provides more details : evidence from rental supplies and OEMs (Appendix D), evidence from customers (Appendix E), assessment of the Parties' lost opportunities

⁸⁸ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraph 4.3.2.

⁸⁹ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraphs 5.2.1 and 5.2.2.

analysis (Appendix F), review of the Parties' internal documents (Appendix G), and analysis of rental yield (Appendix H).

- 5.4 As we explain below, our provisional conclusion is that the relevant market is the rental supply of TME in the UK.
- 5.5 We have provisionally found that other forms of TME provision – purchase, leasing, internal supply⁹⁰, and demonstration equipment – are not part of the relevant market. This is because they are not close alternatives to TME rental for a significant proportion of rental customers. This is illustrated directly by the evidence we received from customers, which indicates that, in many circumstances, other forms of TME provision are not available or are not suitable. This view is also supported by the evidence in the Parties' internal documents, in which references to competition between TME purchase and rental are limited and which do not refer to other forms of TME provision as meaningful competitive alternatives to TME rental. We provide more detail on this evidence and our reasoning below.
- 5.6 The Parties also made a number of submissions regarding the duration of Microlease's rental contracts, Microlease's 'lost opportunities' data, the evolution of Microlease's rental yields and Microlease's growth strategy. The Parties have argued that these submissions show a strong constraint on TME rental from purchase and other forms of provision. We consider each of these submissions in turn below and provide our view on their relevance and their implications for our market definition assessment.
- 5.7 We found that the appropriate geographic market is the UK. The available evidence indicates that market conditions vary across countries, and that having an established UK presence is important when competing to supply some UK based customers. For instance, the Parties set different guide prices for different countries, and Electro Rent has taken steps to develop a physical UK presence. We set out more detail on this evidence and our reasoning below.

Product market definition

The Parties' submissions

- 5.8 The Parties submitted that the appropriate market definition is the supply of TME, regardless of the form of provision (eg rental, leasing or purchase of

⁹⁰ The use of equipment already owned by a customer.

new or used equipment⁹¹), and that the narrowest plausible candidate product market is the rental of TME.⁹²

5.9 The Parties submitted that this is the case because there is:

- (a) A high degree of demand-side substitutability between alternative forms of TME provision. In particular, the Parties submitted that customers are primarily concerned with acquiring the correct item of equipment in the most cost-effective manner and are less interested in whether that equipment is acquired through rental, purchase or leasing.⁹³
- (b) A high degree of supply-side substitutability, with many intermediaries who offer TME rental also offering other forms of TME provision.⁹⁴

5.10 To support their view that alternative forms of TME provision are close alternatives to TME rental, the Parties submitted that:

- (a) TME sales make up the majority of customer equipment requirements and account for a significantly higher value of revenue than TME rental.⁹⁵
- (b) Customers use a combination of different forms of TME provision to satisfy their requirements.⁹⁶
- (c) The analysis of Microlease's lost opportunities shows that Microlease lost the largest share of its rentals to OEMs and internal supply⁹⁷ (ie the use of equipment already owned by a customer).⁹⁸
- (d) The Parties' internal documents (in particular Microlease's deal management guides⁹⁹ and monthly sales reports) provide evidence of a constraint from non-rental alternatives.¹⁰⁰
- (e) The majority of the Parties' rentals are long-term and are derived from frequent users, for whom purchase is a natural alternative to TME rental.¹⁰¹

⁹¹ In what follows we do not distinguish between the purchase of new equipment and of used equipment and consider both as 'purchase'.

⁹² [Response to the phase 1 decision](#), paragraph 4.4.

⁹³ [Response to the phase 1 decision](#), paragraph 4.4(a).

⁹⁴ [Response to the phase 1 decision](#), paragraph 4.4(b).

⁹⁵ [Response to the phase 1 decision](#), paragraph 7.1.

⁹⁶ [Response to the phase 1 decision](#), paragraph 7.1.

⁹⁷ Also referred to as 'self-supply'.

⁹⁸ [Response to the phase 1 decision](#), paragraph 7.1.

⁹⁹ Microlease uses deal management guides for enquiries with a value in excess of €[§<] and has submitted [§<] such guides relating to the UK covering the period since [§<].

¹⁰⁰ [Response to the phase 1 decision](#), paragraph 7.1.

¹⁰¹ [Response to the phase 1 decision](#), paragraph 7.1.

(f) Microlease's strategy is to [REDACTED] and the only way in which a significant increase in revenue can be generated is by encouraging customers to switch away from TME purchase. Consequently, Microlease must continue to be competitive against these alternatives.¹⁰²

(g) Microlease's rental yields have declined over time and this is due to competition from TME purchase.¹⁰³

(h) Internal supply is also a close alternative to TME rental.¹⁰⁴

5.11 Finally, the Parties noted that TME designed for different sectors is not substitutable from a demand side perspective, eg TME designed for use in telecoms is not a substitute for TME designed for the aerospace sector. However, the Parties submitted that the important competitive dynamics that are relevant to the TME sector apply across all end-user segments.¹⁰⁵

Evidence from the Parties' internal documents

5.12 Our analysis of the Parties' internal documents is contained in Appendix G. Those documents both (i) discuss the general factors considered by customers when deciding between rental and purchase and (ii) include more direct references to competition between rental (specifically rental from the Parties) and other forms of TME provision.

Factors influencing the choice of rental or purchase

5.13 The Parties' internal documents describe a number of advantages of rental over purchase, including:

(a) The flexibility to adjust in response to short-run requirements (eg for a short-term need or for a piece of equipment with a low utilisation rate), allowing customers to respond to changes in demand and to situations when equipment is required at short notice, and to return products when they are no longer required.

(b) The ability for customers to access the more up-to-date technology (especially in sectors where technology changes frequently) without the need to incur the costs and risks associated with purchasing equipment.

¹⁰² [Response to the phase 1 decision](#), paragraph 7.1.

¹⁰³ [REDACTED]

¹⁰⁴ [REDACTED]

¹⁰⁵ [Response to the phase 1 decision](#), paragraph 4.3.

- (c) The reduced requirement for capital expenditure and the subsequent consequences for cash flow.
- (d) The provision of ancillary services, particularly maintenance, recalibration and the replacement of faulty or damaged equipment, which are included in rental contracts.

Of these factors, the flexibility provided by renting is particularly prominent.¹⁰⁶

5.14 In particular, Electro Rent's Confidential Information Memorandum states that: 'T&M equipment [TME] services stand as a lower-cost option relative to ownership of equipment in many cases, in particular when:

- (a) expected duration of use is less than [REDACTED];
- (b) expected utilization is less than [REDACTED]%; and
- (c) the customer is focused closely on [REDACTED].¹⁰⁷

Evidence of competition between TME rental and other forms of TME provision

5.15 The Parties' internal documents make a number of references to competition between TME rental and TME purchase. For example, deal management guides outline enquiries with a value in excess of €[REDACTED] or more and [REDACTED]. [REDACTED] of the [REDACTED] deal management guides make it clear that Microlease believed that a customer may be considering purchasing rather than renting for at least some of their requirements.

5.16 Similarly, Microlease's FY2016-17 European Business Plan states that 'in many cases, the main competitive threat to a rental or a financial solution is not a rental competitor but an alternative, like purchase, or doing nothing'.¹⁰⁸

5.17 An email from Microlease's [REDACTED] dated [REDACTED] states that '[REDACTED]'. The reason given for this view is that '[REDACTED]'.¹⁰⁹

5.18 However, as described in Chapter 6, overall, the main references to competitors in the Parties' internal documents are to other rental suppliers. Additionally, several documents suggest a limit to the extent to which purchase is an alternative to TME rental.

¹⁰⁶ For example, flexibility to respond to short term needs is referred to in the Parties: [REDACTED]; [REDACTED]; and [REDACTED].

¹⁰⁷ [REDACTED]

¹⁰⁸ [REDACTED]

¹⁰⁹ [REDACTED]

- 5.19 For example, there are relatively few occasions in Microlease's monthly sales reports in which purchase is discussed as a threat to Microlease's rental business. There are only [REDACTED] references ([REDACTED]) to rental deals being lost to purchase, to customers considering purchasing instead of renting, or to purchase being attractive for a specific piece of equipment. For context, there are over [REDACTED] references to Electro Rent in these reports.
- 5.20 Each monthly sales report between [REDACTED] dedicates a short section to discussing attempts to convert buyers into renters. While most of the points discussed in these sections are in relation to Microlease's marketing efforts around this strategy, there are a [REDACTED] number of successes recorded in these reports, such as: '[REDACTED]'.¹¹⁰
- 5.21 Additionally, when discussing Microlease's EasyRent programme, which allows customers to convert a rental into a purchase after a certain period of time, Microlease's CEO states in an email that EasyRent '[REDACTED]'.¹¹¹ Similarly, the Parties' internal documents refer to OEMs as partners rather than competitors, with Microlease's FY2016-17 European Business Plan noting that 'OEMs are of course firstly partners and customers'.¹¹²
- 5.22 The Parties' internal documents do not refer to leasing, internal supply or the use of demonstration equipment as meaningful competitive alternatives to TME rental.^{113,114}

Evidence regarding rental yield

- 5.23 The Parties provided data showing the evolution of Microlease's rental yield¹¹⁵ between [REDACTED] and [REDACTED] and of Livingston Hire's rental yield between [REDACTED] and [REDACTED]. The Parties submitted that this data indicates that Microlease's yields have been [REDACTED] over time as a result of competitive pressures from, amongst other things, OEM pricing on TME purchase.¹¹⁶ This data is analysed in Appendix H and as discussed there:

¹¹⁰ [REDACTED]

¹¹¹ [REDACTED]

¹¹² [REDACTED]

¹¹³ The Parties provided a number of emails discussing the provision of demonstration equipment to customers. However, these all appeared to relate to the management of demonstration equipment by Microlease and did not evidence a meaningful competitive interaction between TME rental and demonstration equipment.

¹¹⁴ One of the [REDACTED] Microlease deal management guides does refer to [REDACTED].

¹¹⁵ Rental yield refers to gross rental yield which is the rental revenue earned in a given month on assets which are currently on rent, relative to the original acquisition cost of those assets.

¹¹⁶ Response to the CMA Request for Information of 23 November 2017, question 1.

- (a) Livingston Hire's rental yields are [REDACTED] once a transitory period is accounted for between [REDACTED] and [REDACTED], when the Microlease and Livingston Hire systems were combined; and
- (b) Microlease's rental yields [REDACTED] from [REDACTED] to [REDACTED], followed by [REDACTED] from [REDACTED], since when Microlease's rental yield has been [REDACTED].

5.24 Rental yields are influenced by a range of factors such as the duration of the rental, the item of equipment concerned and competition from other suppliers and/or forms of TME provision. We have received limited evidence regarding the relative importance of these factors on the evolution of Microlease's rental yields. For example, the Parties' internal documents generally discuss the evolution of rental yields in factual terms rather than the causes of any fluctuations in rental yields. In contrast, the Microlease Due Diligence Report prepared by [REDACTED], which considers the evolution of Microlease's rental yield in Europe over the period [REDACTED] to [REDACTED], states that:¹¹⁷

'[REDACTED]'.

5.25 The report goes on to state that rental yield in Europe is expected to stabilise '[REDACTED]';¹¹⁸ statements elsewhere in the report suggest that this is a reference to a reduction in competition following the acquisition of Livingston Hire by Microlease. For example, the report states that '[REDACTED]'.^{119, 120}

Evidence regarding rental duration

5.26 The Parties made a number of submissions regarding rental duration, and rental duration is referred to in a number of internal documents. The Parties submitted that a significant proportion of their rental revenue is generated from long-term rentals and that this supports their argument that other forms of TME provision, specifically purchase, are close alternatives to TME rental.¹²¹ Given that the submission regarding Microlease's rental duration (provided in response to our [REDACTED]) is the most detailed of these submissions and since the evidence is broadly consistent across the Parties' various submissions, we have focused on the results of the analysis of Microlease's rental duration.

¹¹⁷ [REDACTED]

¹¹⁸ [REDACTED]

¹¹⁹ [REDACTED]

¹²⁰ It appears that from [REDACTED] Microlease specifically [REDACTED] and '[REDACTED]' ([REDACTED]).

¹²¹ For example, [Response to the Phase 1 Decision](#), paragraph 7.1.

5.27 Microlease provided data showing the proportion of UK rental revenue derived from contracts of different lengths over the period [X] to [X].¹²² The evidence we received is analysed in Appendix H, and shows that:

- (a) The average actual rental duration is [X] months.
- (b) Around [X] of Microlease's rental income is derived from each of:
contracts with an actual duration of less than 12 months; contracts with an actual duration of 12-36 months; and contracts with an actual duration of 36 months or more.
- (c) Contracts are often extended significantly beyond their initial duration, with the average contract lasting for [X] times as long as its initial duration.
- (d) Since contracts are so regularly extended, a significantly smaller proportion of the Parties' revenue is derived from longer term contracts when initially requested rather than actual duration is considered. For example, the average initially requested duration is [X] months;¹²³ [X]% and [X]% of Microlease's revenue are derived from contracts with an initial duration of 6 months or less and 12 months or less respectively. [X]% of Microlease's rental revenue is derived from contracts with an initial duration of more than 36 months.

5.28 Microlease uses [X] when setting rental prices, so that [X] prices tend to be offered if [X] are expected. The [X] is informed by the customer's previous rental history.¹²⁴

Evidence from Microlease's lost opportunities analysis

5.29 Microlease's lost opportunities data provides information on the TME rental opportunities lost by Microlease in the UK between March 2014 and February 2017. The Parties submitted this data as evidence that TME rental faces competition from other forms of TME provision. The detailed analysis of this data is presented in Appendix F and shows that (for opportunities where the relevant information is recorded):

- (a) Most opportunities (over [X]% by number) were lost to options other than rental (either purchase – [X]% of opportunities by value and [X]% by

¹²² [X]

¹²³ We note that the results of this analysis are different from those in the Microlease Due Diligence Report reported in paragraph 5.24.

¹²⁴ [X]

number – or internal supply – [REDACTED]% of opportunities by value and [REDACTED]% by number).

- (b) Rental from a different supplier is the customer's choice in approximately [REDACTED] of lost opportunities.
- (c) Purchase of the equipment is chosen more frequently for opportunities of higher value and longer duration.
- (d) Only a small number of customers ([REDACTED]%) used a piece of demonstration equipment from an OEM.

Evidence from third parties

- 5.30 During our inquiry, we conducted telephone calls with 29 customers.¹²⁵ 11 of these customers were included only in Microlease's customer list, three were included only in Electro Rent's customer list and 15 were included in both customer lists.¹²⁶ These customers accounted for 50-60% [REDACTED] and 60-70% [REDACTED] of Microlease's and Electro Rent's 2016 UK rental revenue respectively.
- 5.31 We received responses from an additional 55 customers to our online questionnaire. The respondents to our online questionnaire were mainly from customers with relatively low expenditure on TME rental in the last two years.¹²⁷ A detailed examination of the evidence concerning the constraint on rental from TME purchase provided by customers is contained in Appendix E.
- 5.32 We also conducted calls with 10 TME intermediaries (either rental providers or resellers) and five OEMs¹²⁸ whilst five further intermediaries responded to questions by email. A detailed examination of this evidence is contained in Appendix D.

¹²⁵ We also contacted one customer ([REDACTED]) who was in fact not a rental customer, but leased TME from Microlease.

¹²⁶ Both Microlease and Electro Rent provided a list of all customers who rented an item from them in the previous two years. We prioritised contacting the Parties' customers with the largest rental expenditures and the 29 customers we talked to include 17 of Microlease's 20 largest UK customers and 13 of Electro Rent's 20 largest UK customers.

¹²⁷ 35 of the 48 respondents to the relevant question reported spending less than £10,000 on TME rental in the last two years.

¹²⁸ The OEMs we spoke to manufactured equipment which accounted for at least 40-50% [REDACTED] of Microlease's 2016 UK rental revenue and 60-70% [REDACTED] of Electro Rent's 2016 UK revenue ([REDACTED]).

Evidence from customers

- 5.33 Our calls with customers illustrated that customers consider a range of different factors when deciding on the most appropriate form of TME provision. These factors are consistent with those referred to in the Parties' internal documents (see paragraph 5.13) and include:
- (a) The expected length of time for which the equipment will be required and the expected utilisation rate – the longer, or the more frequently, a piece of equipment is required, the more viable purchase is likely to become.
 - (b) Uncertainty regarding the time for which equipment will be required¹²⁹ – rental can be an attractive option when customers face uncertain requirements since rental provides flexibility which purchase does not, as the customer can return the equipment when it is no longer required.
 - (c) The need for recalibration of and repairs to equipment¹³⁰ – TME equipment needs to be periodically recalibrated and/or repaired. Some customers noted that such services were organised by the rental supplier, who was able to provide replacement equipment, whilst separate arrangements would need to be made were the customer to have purchased the equipment.
 - (d) Cashflow and capital expenditure constraints¹³¹ – a number of customers noted that TME is expensive and they were unable or unwilling to undertake the capital expenditure required to purchase the equipment.
 - (e) A few customers referred to other factors including the need to maintain the equipment¹³² and the associated cost, and a desire to use up-to-date equipment in the face of technological change.¹³³ In the latter case, these customers considered that it was more cost effective to rent this equipment rather than to purchase the required items.
- 5.34 The customers who had a view varied¹³⁴ in their opinion regarding the minimum length of use that would justify purchasing, rather than renting, the equipment and the precise length of time depended on factors such as utilisation and the price of the equipment. For example, one customer indicated that it would consider purchase for requirements as short as two to

¹²⁹ This factor was mentioned by eleven of the customers we spoke to.

¹³⁰ These factors were mentioned by nine of the customers we spoke to.

¹³¹ This factor was mentioned by four of the customers we spoke to.

¹³² Mentioned by one customer.

¹³³ Mentioned by four customers.

¹³⁴ Nine customers provided an estimate of the minimum length that would justify purchasing, rather than renting. This issue was not discussed with all customers because, for example, it was not relevant to customers who had not considered purchasing to any significant extent.

three months, whereas another stated that leasing/purchasing only made financial sense if an item was required for four to five years.

- 5.35 Overall, customers considered that equipment would have to be used for at least 12 months, and more often between two and three years, before the cost of rental and purchase would become comparable (see Appendix E). However, a number of customers noted that the other factors outlined at paragraph 5.33 mean that, even once the costs of rental and purchase become equivalent, customers may prefer rental to purchase. For example, a number of customers noted that, although they typically rent equipment for extended periods of time and, in hindsight, it may have been preferable to purchase that equipment, they lack the certainty and/or capital expenditure budget required to make the purchase.¹³⁵
- 5.36 Consequently, for 22 of the 29 customers we spoke to TME purchase appears not to be a close alternative to TME rental (see Appendix E). Specifically:
- (a) 13 customers explicitly told us that they do not consider purchase to be a close alternative for all, or the vast majority, of their rental requirements.¹³⁶
 - (b) Four customers told us that they generally seek to rent rather than purchase because of the flexibility renting provides and/or because of the calibration and repair services provided by their rental supplier.¹³⁷ One of them added that even if, in view of the Merger, it was exploring the possibility of purchasing some equipment, it would still need to rent a significant proportion of its requirements.¹³⁸
 - (c) One customer told us that it has run an internal investigation on whether to purchase the equipment, but the decision has been to continue renting it, partly because of repair and calibration costs.¹³⁹
 - (d) For four customers, the lack of substitutability can be clearly inferred by the fact that they rent only for short projects, while purchase is preferred for equipment with long-term use.¹⁴⁰

¹³⁵ See Appendix E.

¹³⁶ [REDACTED]

¹³⁷ [REDACTED]

¹³⁸ [REDACTED]

¹³⁹ [REDACTED]

¹⁴⁰ [REDACTED]

- 5.37 For six of the remaining seven customers we talked to, purchase appears to be a close alternative to rental for at least part of their requirements,¹⁴¹ while one customer did not provide a clear indication of their preferences.¹⁴²
- 5.38 Two customers¹⁴³ we called said that demonstration equipment was an alternative to rental. Demonstration equipment is TME loaned by an OEM to a customer at no cost for a short time with a view to the customer subsequently choosing to buy it. However, both customers noted that this was only possible for short periods of time, for example rentals lasting less than two weeks. One of these customers stated that demonstration equipment was intended to illustrate the capability of equipment to customers who are considering purchase.¹⁴⁴ As a result, when this customer used demonstration equipment rather than rental it was often because it faced a short-term requirement and rental suppliers imposed minimum rental durations which exceeded the length of its requirements (eg the customer required an item for one week but rental suppliers required a minimum one month rent for that specific item).
- 5.39 The customer calls and follow-up emails also provide information on the extent to which internal supply is an alternative to TME rental for the customers contacted. Internal supply is where the customer chooses not to rent the equipment and instead uses equipment it already has. Overall, the evidence suggests that internal supply is unlikely to be a close alternative for the majority of rented items for most of the customers we talked to. In particular:¹⁴⁵
- (a) Three customers told us that, in most cases, internal supply is not an option for them.¹⁴⁶
 - (b) 12 customers appear to own no testing equipment or very few items compared to their rental volume.¹⁴⁷ For these customers, internal supply is therefore either impossible or very unlikely.
 - (c) Four further customers told us that the types of equipment they rent are different from the types of equipment they own.¹⁴⁸ For these customers, therefore, internal supply is usually not an option.

¹⁴¹ [REDACTED]

¹⁴² [REDACTED]

¹⁴³ [REDACTED]

¹⁴⁴ [REDACTED]

¹⁴⁵ No clear inference can be drawn from four of the customers we spoke to, as they own a significant volume of TME, but the possibility of using internal supply as a substitute for rental was not discussed in the calls.

¹⁴⁶ [REDACTED]

¹⁴⁷ [REDACTED]

¹⁴⁸ [REDACTED]

- (d) Three customers told us that where they both own and rent particular types of equipment, rental is used to flex the number of items they use, when fluctuations in workflow require them to use more units than those already owned.¹⁴⁹ For these customers, therefore, it is reasonable to infer that internal supply is not an option for many of their rental requirements.
- (e) Two of the customers contacted operate multiple business divisions and the equipment they own could be used across each of these divisions. They told us that they would only consider rental when the required equipment was not available internally.¹⁵⁰
- (f) For one customer, on the other hand, internal supply is an alternative, as it reduced its rental expenditure by 40% by moving equipment within the business.¹⁵¹

5.40 The online customer questionnaire also asked customers which forms of TME provision they had considered instead of TME rental and which forms of TME provision they would have used had they been unable to rent the equipment they needed from the Parties (see Appendix E).

5.41 17 out of 55 respondents said that purchase was a viable option for the last piece of equipment they rented from the Parties.¹⁵² However, only seven respondents said that purchasing equipment was their next best option. 34 of 55 respondents stated that another rental supplier was their next best option. No customers indicated leasing equipment as their best alternative to rental whilst seven respondents said that they would have used TME which they already owned.¹⁵³

Evidence from OEMs and other rental suppliers

5.42 The views expressed by TME intermediaries and OEMs on the factors influencing customers' choice between renting and purchasing TME are consistent with the evidence received from customers and from the Parties' internal documents (see paragraphs 5.13 and 5.33).

5.43 Of the 15 TME intermediaries and OEMs we spoke to, five told us that they considered rental and purchase to be catering to different customer requirements, with very limited overlap. Only two of these third parties told us

¹⁴⁹ [REDACTED]

¹⁵⁰ [REDACTED]. In the case of one of these customers ([REDACTED]), the stock is managed by Microlease.

¹⁵¹ [REDACTED]

¹⁵² Question 6 of the online questionnaire (see Appendix E).

¹⁵³ Question 7 of the online questionnaire (see Appendix E). The other responses were 'don't know' (3) and 'other' (4).

that they considered rental providers and the sellers of TME to be competing with each other.

Our assessment of the evidence

- 5.44 The Parties have submitted that internal supply, the use of OEMs' demonstration equipment, leasing and purchase are sufficiently close alternatives to TME rental to be considered part of the relevant market (paragraphs 5.8 to 5.10).
- 5.45 We agree with the Parties' submission that many customers use a combination of different forms of TME provision to satisfy their requirements and that, overall, TME purchases account for a significantly higher value of sales than TME rental. However, these two observations do not imply that different forms of TME provision are close alternatives. Both observations are also consistent with different forms of TME provision catering to distinct requirements of customers, rather than being substitutable. We consider the extent to which this is the case below.
- 5.46 In making our assessment we begin by considering the evidence regarding purchase before considering the evidence regarding other forms of TME provision.
- 5.47 A strict quantitative application of a SSNIP test¹⁵⁴ is not possible in this case, where there are a wide range of products, prices are individually negotiated and are also influenced by non-price aspects of competition. We have therefore focused on a more qualitative assessment of the competitive constraint on TME rental from other forms of TME provision.¹⁵⁵

Purchase

- 5.48 We agree with the Parties that TME rental and TME purchase are likely to be close alternatives in certain circumstances. This is reflected in the fact that the Parties' internal documents do discuss competition between TME purchase and TME rental to some extent (paragraphs 5.15 to 5.17), the evidence from customers (paragraphs 5.33 to 5.41) and that a significant proportion of customers in the lost opportunities analysis ($\frac{1}{3}$)% in terms of number of

¹⁵⁴ The [Merger Assessment Guidelines \(CC 2 Revised\)](#) describe how an analytical framework to define the appropriate market is the consideration of whether a hypothetical monopolist could sustain a small but significant non-transitory increase in price (ie SSNIP).

¹⁵⁵ This is consistent with the approach taken by the CMA in the recent [Diebold/Wincor](#) and [Clariant/Kilfro](#) merger cases.

opportunities) purchased equipment rather than renting from Microlease (paragraph 5.29).

5.49 However, our view is that, for a significant proportion of rental customers, TME purchase is not a sufficiently close alternative to TME rental to be considered part of the relevant market.

5.50 First, the Parties' internal documents (paragraph 5.13 and Appendix G) and our calls with customers (paragraph 5.33 and Appendix E) and with OEMs and intermediaries (paragraph 5.42 and Appendix D) indicate the factors which are considered when deciding whether to rent or to purchase. The most important factors affecting the choice between rental and purchase are:

- (a) The need for flexibility and to respond to short-term requirements – one advantage of rental is the possibility of accessing equipment on a temporary basis or, for example, to respond to short-run requirements or to respond to fluctuations in workloads.^{156, 157}
- (b) A requirement to access up-to-date technology (especially in sectors where technology changes frequently) without the need to incur the costs and risks associated with purchasing equipment¹⁵⁸ – such circumstances make rental a more attractive option.
- (c) The ability or willingness of customers to undertake capital expenditure – since equipment is expensive to purchase, rental may be preferred if customers are unable or unwilling to make significant capital expenditures.¹⁵⁹
- (d) The need for ancillary services, such as maintenance, recalibration and the provision of replacement units – such services are organised by rental suppliers but need to be organised separately when equipment is owned.¹⁶⁰

¹⁵⁶ See Appendix G for examples from the Parties' internal documents. 16 of the 29 customers we called referred to these factors ([§]).

¹⁵⁷ In response to our working papers the Parties submitted that in some circumstances uncertainty might lead to a customer purchasing rather than renting equipment and provided a hypothetical example to illustrate this ([§]). We agree that in certain circumstances the possibility that an item might be needed again, or for longer, might lead a customer to purchase rather than to rent. However, the available evidence, including from the Parties' internal documents, identifies the flexibility provided by rental in the face of uncertain workloads and requirements as an advantage of rental for a significant number of rental customers.

¹⁵⁸ See Appendix G for examples from the Parties' internal documents. Four customers we called referred to this factor.

¹⁵⁹ Six customers referred to this factor. Also see Appendix G for examples from the Parties' internal documents.

¹⁶⁰ See Appendix G for examples from the Parties' internal documents. These factors were referred to by nine of the customers we called.

- (e) Utilisation rates – rental is more likely to be preferred when equipment is likely to be required infrequently (so that utilisation is insufficiently high) or if there is insufficient prospect of the equipment being used repeatedly.¹⁶¹

5.51 This range of factors suggests that rental and purchase cater to a number of distinct customer requirements. Consequently, it is likely that purchase will not be a close alternative to rental for customers in many circumstances.

5.52 Second, the direct evidence from the Parties' internal documents and that provided by third parties indicates that purchase is, in fact, not a close alternative to rental in many circumstances. In particular:

- (a) Purchase was not a close alternative to rental for 22 of the 29 customers with whom we spoke (paragraphs 5.36 and 5.37).¹⁶² Notably, 13 customers explicitly told us that they do not consider purchase as a close alternative for all, or the vast majority, of their rental requirements.¹⁶³
- (b) Only 7 of 55 respondents to our online questionnaire viewed purchase as the next best alternative to rental from one of the Parties (paragraph 5.41). In contrast, 34 respondents viewed rental from a different supplier as their next best alternative.¹⁶⁴
- (c) The Parties' internal documents make relatively few references to TME purchase being a close alternative for current rental customers (paragraphs 5.15 to 5.19). For example, Microlease's monthly sales reports (which focus predominantly on the UK) contain only [REDACTED] references to a customer considering purchase instead of rental, to a rental deal being lost to purchase or to purchase being attractive for a specific piece of equipment. In contrast, there are over [REDACTED] references to Electro Rent in these reports, most of which are UK specific (see Chapter 6).

5.53 Third, the Parties submitted that an analysis of Microlease's rental durations, the Microlease lost opportunities analysis, an analysis of the evolution of Microlease's rental yields and Microlease's growth strategy support their submission that other forms of TME provision are a close alternative to TME rental. However, in our view:

¹⁶¹ For example, see paragraph 5.14.

¹⁶² [REDACTED]

¹⁶³ [REDACTED]

¹⁶⁴ Albeit 16 of those 34 respondents did not know who that supplier would be.

- (a) There are limits to the insights which can be drawn from an analysis of rental duration for the purposes of our market definition assessment. However, the analysis of Microlease's rental duration provides some further support that purchase is not a close alternative to rental in many circumstances. This is because the analysis shows that a substantial proportion of Microlease's rental revenues is derived from shorter rentals where purchase is less likely to be an alternative.
- (b) The lost opportunities analysis does not contradict our view that purchase is not a close alternative to rental in many circumstances. This is because it is an analysis of customers who decided not to rent from Microlease whereas the most direct evidence for our assessment is evidence of the options available in circumstances where customers currently rent.
- (c) Neither the analysis of Microlease's rental yields nor Microlease's growth strategy are informative of the extent to which purchase (or other forms of TME provision) are close alternatives to TME rental.

5.54 The following sections explain the basis for our view in more detail, taking each piece of analysis in turn.

Rental duration

- 5.55 To support their submission that purchase is a close alternative to rental, the Parties have noted that [REDACTED] of Microlease's revenue is accounted for by contracts with an actual duration of 36 months or more (paragraph 5.27(b)). The Parties have submitted that purchase is a natural alternative to rental for customers renting for this length of time.
- 5.56 First, we agree that, all else being equal, purchase is a closer alternative to long rentals than to short rentals. However, as discussed in paragraph 5.50, the length of a requirement (and a simple comparison of the cost of rental and of purchase) is not the only determinant of the choice between rental and purchase. Consequently, the other factors which influence the choice between rental and purchase may mean that customers commonly rent equipment for long periods of time but still do not see purchase as a close alternative to rental.¹⁶⁵ These additional factors limit the extent to which an analysis of rental duration is informative of the extent to which purchase is an alternative in circumstances where customers currently rent.

¹⁶⁵ During our calls customers discussed a number of examples which illustrated this point (see Appendix E).

- 5.57 Second, we note that a significant proportion of the Parties' revenue is derived from shorter duration rentals, for which purchase is less likely to be a close alternative to rental.
- 5.58 The evidence we have received indicates a range of rental durations, depending on the equipment concerned and the customer's circumstances, at which the costs of rental and the costs of purchase become equivalent.¹⁶⁶ However, the evidence indicates that a reasonable rule of thumb is around three years. This rule of thumb is consistent with:
- (a) The statement in Electro Rent's Confidential Information Memorandum that rental '...stand[s] as a lower-cost option relative to ownership of equipment in many cases, in particular when ... expected duration of use is less than [REDACTED]...'.¹⁶⁷
 - (b) The ratio between monthly earnings and the cost of the assets reported by a number of rental providers, including the Parties, which indicates that rental providers typically require three years to recover the cost of purchasing the equipment (see Appendix D).
 - (c) The information provided during our customer calls which, overall, indicated a timeframe of two to three years before the costs of rental and of purchase become equivalent (see Appendix E).
- 5.59 In this context, a significant proportion ([REDACTED]) of Microlease's rental revenue is derived from contracts with an actual duration of less than three years. Furthermore, [REDACTED] of Microlease's rental revenue is derived from contracts with an actual duration of less than 12 months, where purchase is less likely to be an alternative to rental (see paragraph 5.27(b)).
- 5.60 Third, the Parties' submission is based on an analysis of actual duration. However, as the analysis discussed in paragraphs 5.26 to 5.28 and Appendix H shows, contracts are regularly extended significantly beyond their initial duration. If initially requested, rather than actual duration, is used, [REDACTED]% of Microlease's rental revenue is derived from contracts with an initial duration of less than 12 months and only [REDACTED]% of Microlease's rental revenue is derived from contracts with an initial duration of more than 36 months.
- 5.61 We agree with the Parties that, in some cases, customers are likely to request a short initial duration in the expectation that they are likely to extend their

¹⁶⁶ This range is consistent with the range of factors which affect the decision regarding whether to rent or to purchase.

¹⁶⁷ [REDACTED]

contract. This is consistent with Microlease's use of a measure of [REDACTED] (based on the customer's previous rental behaviour) when pricing rental contracts.¹⁶⁸

- 5.62 Therefore, neither actual nor initially requested duration is a perfect measure of the duration which a customer might have had in mind when deciding whether to rent an item. This further limits (in addition to the issues discussed in paragraph 5.56) the extent to which any analysis of rental durations can inform the extent to which purchase is a close alternative to rental.¹⁶⁹
- 5.63 However, as described in Appendix H, we consider that an analysis of initial duration is more informative than an analysis of actual duration for our assessment. This is because shorter duration contracts are associated with higher weekly rental rates and are therefore more costly for customers. This suggests that customers requesting a shorter duration must either: a) be quite confident that they actually only need the item for that shorter duration or b) benefit in other ways from requesting a shorter duration (eg because they maintain flexibility or they face expenditure constraints).
- 5.64 Both of these factors also affect the attractiveness of purchase to a customer. All else being equal, purchase is less attractive relative to rental of a shorter duration and purchase is also less attractive if there are other factors that make a customer unable or unwilling to commit to renting an item for as long as they may eventually require it. Therefore, initial duration is informative of both the time period over which a customer considers they require the product and the other constraints which they face, both of which affect the substitutability of purchase and rental for that customer.
- 5.65 Consequently, given that
- (a) purchase is less likely to be a close alternative, all else being equal, to short rentals than to long ones,
 - (b) [REDACTED]% of Microlease's rental revenue is derived from contracts with an initial duration of less than 12 months and [REDACTED] of Microlease's rental revenue is derived from contracts with an actual duration of less than 12 months, and

¹⁶⁸ [REDACTED]

¹⁶⁹ The Parties submitted that when prices are not fully adjusted in line with [REDACTED] a customer is less likely to rent from Microlease ([REDACTED]). However, this observation does not allow one to identify the source of any competitive constraints and therefore the extent to which purchase is an alternative to rental or provides a competitive constraint on Microlease. The Parties internal document which discusses the use of [REDACTED] when setting prices ([REDACTED]) does not mention the need to incorporate [REDACTED] to respond to competition.

(c) taking into account the more direct evidence (paragraph 5.52) regarding the extent to which purchase is an alternative to rental,

we consider that an analysis of rental duration further supports our view that purchase is not a close alternative for a significant proportion of rental transactions.

The lost opportunities analysis

- 5.66 The Parties have also highlighted the results of the lost opportunities analysis, and in particular the fact that [%] of opportunities by value were lost to purchase (see paragraph 5.29).
- 5.67 Our market definition assessment requires a consideration of the extent to which other forms of TME provision are alternatives in circumstances where customers currently rent. This is because it is the options available to customers in those circumstances which would determine a hypothetical TME rental monopolist's incentives to increase prices and/or reduce quality.
- 5.68 However, the lost opportunities analysis focuses on circumstances where customers decided not to rent from Microlease. Therefore, it is informative for our assessment only to the extent that it allows us to infer information about the alternatives available in circumstances where customers do currently rent. The most important step when making such inferences is to assume that the options used by customers when they decided not to rent from Microlease are also close alternatives in circumstances where customers currently rent. The most important step when making such inferences is to assume that the options used by customers when they decided not to rent from Microlease are also close alternatives in circumstances where customers currently rent. The reasonableness of this assumption must be assessed in light of the other available evidence.
- 5.69 In our view, the available evidence (as explained in paragraphs 5.50 to 5.54) indicates that rental and purchase are often used to respond to different requirements. Consequently, the evidence does not support the assumption required to use the lost opportunities analysis to make inferences about the

extent to which other options are close alternatives in circumstances where customers do currently rent.^{170,171}

- 5.70 Additionally, as discussed in Appendix F, we have doubts about the accuracy of some of the information recorded in the lost opportunities dataset and therefore the reliability of the insights which can be derived from it. For example, the value of the opportunities indicated as lost to one TME rental supplier appears grossly disproportionate to its overall rental revenue.¹⁷²

The evolution of Microlease's rental yields and Microlease's growth strategy

- 5.71 The Parties have also highlighted the following specific pieces of evidence to support their submission that purchase (and other forms of TME provision) are a close alternative to TME rental:

(a) The evolution of Microlease's rental yields. In particular, the Parties have submitted that:

- (i) the decline in Microlease's rental yields prior to [REDACTED] (see paragraph 5.23) is attributable to the competitive constraint from purchase; and
- (ii) the fact that Microlease's rental yields have not increased following [REDACTED] is evidence of a competitive constraint from purchase (and other rental suppliers).¹⁷³

(b) Microlease's growth strategy, which is focused on encouraging customers to switch from TME purchase to TME rental.

- 5.72 First, in our view, the analysis of Microlease's rental yields is not informative of the sources of the competitive constraints faced by Microlease (or rental suppliers more generally) and is therefore not informative of the extent to which purchase is an alternative to rental. As discussed in Appendix H, there

¹⁷⁰ As we describe in Appendix F, our review of the lost opportunities database has also highlighted a number of examples which are consistent with the lost opportunities not being reflective of circumstances in which customers currently rent from Microlease.

¹⁷¹ The Parties have submitted that the results of the lost opportunities analysis are broadly in line with the evidence from the online questionnaire ([REDACTED]). As we explain in Appendix F, in our view neither piece of evidence allows strong inferences to be made about the options available to the wider set of Microlease and Electro Rent rental customers in circumstances where, pre-merger, they decided to rent from the Parties. This is because the lost opportunities analysis focuses on customers who decided not to rent from Microlease and the online questionnaire focuses on the subset of the Parties' customers with lower rental expenditures.

¹⁷² As we note in Appendix F, there is also some evidence that the lost opportunities for which information is available are more likely to be higher-value lost opportunities.

¹⁷³ [REDACTED]

are a number of factors that affect rental yields including contract durations, the mix of products on hire and changes in competitive constraints.

- 5.73 The limited evidence we have received, contained in the Microlease's Due Diligence report and discussed in paragraphs 5.24 and 5.25, has indicated that the decline in Microlease's rental yields prior to 2015 is attributable to an increase in average contract duration and competition between Livingston and Microlease.
- 5.74 Moreover, the Parties have offered multiple explanations as to why Microlease's rental yields might not have increased following the Livingston merger. On the one hand, the Parties have submitted that [REDACTED].¹⁷⁴ On the other hand, they have argued that, shortly after the Livingston merger, [REDACTED] (which would also hold yields down).¹⁷⁵
- 5.75 Second, we accept that Microlease's growth strategy focuses on encouraging customers to switch from purchase to rental. This is reflected in Microlease's monthly sales reports which, between [REDACTED], include a short section discussing attempts to convert buyers into renters (see paragraph 5.20) and it is not surprising given the comparative value of TME purchase. However, this does not necessarily imply that purchase is a close alternative for a significant proportion of existing rental customers.
- 5.76 Moreover, given the Parties' ability to price discriminate (see paragraphs 6.17 to 6.26) the need to be competitive with purchase to attract customers currently purchasing equipment does not imply that the constraint from purchase is binding in relation to those customers who are currently renting, for many of whom, as seen in paragraphs 5.49 to 5.54, purchase does not appear to be a close alternative.

Other forms of TME provision

- 5.77 In our view, the evidence does not support a view that internal supply, the use of demonstration equipment or leasing of equipment are sufficiently close alternatives to TME rental to be considered as part of the relevant market.

Demonstration equipment and leasing

- 5.78 Competition from demonstration equipment and the leasing of equipment are not mentioned to a material extent in the Parties' internal documents. The

¹⁷⁴ [REDACTED]

¹⁷⁵ [REDACTED]

evidence from these documents is consistent with the evidence we received from the Parties' customers. As noted in Appendix E, only two of the customers¹⁷⁶ we spoke to mentioned leasing as an option that they use and in both cases these customers explained that the circumstances in which leasing was an alternative to rental were rare. Likewise, only three of 55 respondents to our online questionnaire reported that, in relation to the last item they rented from the Parties, it would have been viable to acquire the equipment on a finance lease or an operating lease.¹⁷⁷ Moreover, no respondents indicated leasing as the next best option to their latest rental from the Parties.

- 5.79 Only two of the 29 customers¹⁷⁸ with whom we spoke told us that the use of demonstration equipment was an alternative to rental. However, both customers noted that this was only possible when the equipment was required for a short period of time and one explained that these time periods were often shorter than the minimum rental periods required by rental suppliers.¹⁷⁹ As a result, the circumstances in which the use of demonstration equipment was an alternative to rental for these two customers were extremely limited.¹⁸⁰

Internal supply

- 5.80 Internal supply describes the situation where the customer chooses not to source the TME from an external supplier and instead sources the required piece of TME internally. Such scenarios are not commonly considered part of the relevant market in merger assessments, since in these circumstances customers have specifically decided not to proceed with a transaction. Nevertheless, the Parties have made submissions that internal supply is a significant constraint on TME rental and we have assessed it on its merits.
- 5.81 We consider that there are good reasons to expect that the circumstances in which internal supply is a close alternative to rental for existing rental customers are limited. For example, the possibility of using internal supply relies on a customer already owning the piece of equipment they are seeking to rent and that equipment not being available immediately but, as the Parties have noted, becoming 'available internally in a timely fashion'.¹⁸¹ However, we

¹⁷⁶ [REDACTED]

¹⁷⁷ Question 6 of the online questionnaire (see Appendix E).

¹⁷⁸ [REDACTED]

¹⁷⁹ [REDACTED]

¹⁸⁰ We also note that only [REDACTED]% of Microlease's opportunities were lost to demonstration equipment (see Appendix E), suggesting that customers considering rental at all rarely consider the use of demonstration equipment as well.

¹⁸¹ [REDACTED]

consider that when a customer rents it will usually be because these circumstances do not apply and the equipment is not available internally.

- 5.82 The Parties have made a number of submissions regarding internal supply and have particularly highlighted Microlease's lost opportunities analysis, which indicates that [X]% of opportunities by number were lost to customers' internal supply (see paragraph 5.29). We have explained the limitations of the lost opportunities analysis at paragraphs 5.66 to 5.70 and the reasons why less weight can be placed on it, in light of more direct evidence of the extent to which internal supply is an alternative to TME rental customers.
- 5.83 The more direct evidence indicates that internal supply is not a close alternative to rental. In particular, the evidence from customers illustrates that it is because the equipment is not available, either at all or in a timely manner, that many rental customers are renting equipment in the first place. As a result, and as described in paragraph 5.39, internal supply was not a close alternative to TME rental for most of the customers we called. In particular, internal supply was not an option at all for 16 of those customers who reported that they owned no or very few items of the types of equipment which they rented.¹⁸²
- 5.84 Similarly, only seven of 55 respondents to our online questionnaire referred to internal supply as their next best alternative to rental.¹⁸³ By contrast, 34 respondents viewed rental from a different supplier as their next best alternative.¹⁸⁴
- 5.85 Finally, internal supply is not mentioned as a meaningful competitive alternative to TME rental in the Parties' internal documents.

Possibilities for supply-side substitution

- 5.86 The Parties have submitted that suppliers of other forms of TME provision could easily move into the rental market.¹⁸⁵ However, in our view, many of the barriers to entry discussed in paragraphs 7.8 to 7.34 apply equally to suppliers attempting to switch from other forms of TME provision, especially stock requirements, both in terms of scale and range, and the need for logistics and inventory management expertise.

¹⁸² [X]

¹⁸³ Additionally, only 10 of 55 customers viewed internal supply as even a 'viable option'.

¹⁸⁴ Albeit 16 of those 34 respondents did not know who that supplier would be.

¹⁸⁵ [Response to phase 1 decision](#), paragraph 4.4.

- 5.87 For example, the OEMs we contacted highlighted a number of factors which would limit their ability to begin to provide rental services on a significant scale in the UK.¹⁸⁶ Specifically, one OEM told us that the TME rental business has traditionally been multi-vendor (meaning that rental suppliers each offer equipment from a range of manufacturers) and that customers expect this to be the case. As a result, it is difficult for OEMs to expand into rental, since they are unlikely to want to offer products from a range of different manufacturers.¹⁸⁷ Another OEM also explained that one of the reasons it prefers to rely on rental partners is because it lacks the necessary logistics and inventory management expertise.¹⁸⁸
- 5.88 We have received no evidence that suppliers active in other forms of TME provision are considering expanding into or switching their activities to TME rental.

Product segmentation

- 5.89 We agree with the Parties that TME designed for different sectors is not substitutable from a demand side perspective (eg TME designed for use in telecoms is not a substitute for TME designed for the aerospace sector). This may suggest that the competitive dynamics could differ across these end-user segments, such that a further segmentation of the market by types of equipment is possible.
- 5.90 However, the Parties have submitted that the important competitive dynamics that are relevant to the TME sector apply across all end-user segments and that therefore a further delineation of the market by product type is unnecessary.¹⁸⁹ We have found no evidence to contradict this assessment and we consider the extent to which suppliers are differentiated in our competitive assessment (Chapter 6).

Provisional conclusion on the relevant product market

- 5.91 For the reasons provided above, we provisionally conclude that the product market is the rental supply of TME. We will take into account in our competitive assessment constraints from outside the relevant product market from other forms of TME provision.

¹⁸⁶ None of the OEMs we contacted directly provide TME rental services as a normal part of its business.

¹⁸⁷ [REDACTED]

¹⁸⁸ [REDACTED]

¹⁸⁹ [Response to phase 1 decision](#), paragraph 4.2.

Geographic market definition

The Parties' submissions

5.92 The Parties have submitted that the relevant geographic market is wider than the UK and probably global and that the UK is the narrowest candidate geographic market.¹⁹⁰ To support this submission the Parties note that:

- (a) Much TME can be shipped to any location in the world without significant delay or cost.¹⁹¹
- (b) UK customers are supplied by suppliers based outside of the UK such as Interlligent (based in Israel) and TRS RenTelco (based in the US), whilst Electro Rent itself supplies the UK from Belgium.¹⁹²

Evidence from the Parties' internal documents

5.93 The Parties' internal documents (see Appendix G) indicate that some UK customers have a preference for a UK-based supplier and that competitive dynamics differ across geographic areas.

5.94 For example, one Microlease monthly sales report states that '[c]ompetitive threats differ from territory to territory. [REDACTED]'. Similarly, Microlease's October 2015 CEO Europe Board Report refers to Microlease's UK presence as a reason for its success in 'maintaining a high winning ratio against [REDACTED]'.¹⁹³

5.95 The way in which the Parties set prices also indicates that competitive conditions vary across geographic areas (see Appendix G for a detailed discussion). One factor considered when setting prices is the territory in which the customer is located. In particular, [REDACTED].¹⁹⁴ These adjustments vary across countries, including within the Eurozone, suggesting that the multipliers are used to adjust for different market conditions (eg service standards or competitive interactions) across different territories and not just for exchange rate fluctuations.¹⁹⁵

¹⁹⁰ [Response to phase 1 decision](#), paragraphs 4.5 and 4.8.

¹⁹¹ [Response to phase 1 decision](#), paragraph 4.5.

¹⁹² [Response to phase 1 decision](#), paragraph 4.6.

¹⁹³ [REDACTED]

¹⁹⁴ [REDACTED]

¹⁹⁵ We also note that [REDACTED].

Evidence concerning Electro Rent's UK presence

5.96 Electro Rent Europe was established in 2005¹⁹⁶ and since then Electro Rent has slowly increased its European business and its awareness amongst UK customers. Electro Rent informed us that, in order to expand its operations into new countries, [REDACTED].^{197, 198}

5.97 [REDACTED]¹⁹⁹

5.98 A number of the Parties' internal documents discuss Electro Rent's intention to establish a physical UK presence. Electro Rent has explained that the UK premises were intended to involve the establishment of a larger sales team located in the UK as well as facilities to hold and to recalibrate stock in the UK.²⁰⁰ Those internal documents (summarised in Appendix G) discuss how establishing a physical UK presence was intended to increase Electro Rent's ability to compete to supply UK customers. For example, Electro Rent's Marketing Campaign Programme states:

Why are we focused on this/what are we trying to solve? ... [REDACTED] ... local presence. [REDACTED].²⁰¹

Evidence from third parties

5.99 Views varied across customers as to whether having a UK presence is important for a rental supplier supplying UK customers.²⁰² These calls are discussed further in Appendix E.

(a) Five customers see a lack of a UK presence as a severe limitation. For four of these customers²⁰³ this is because a Europe-based supplier would not be able to supply equipment and/or support services sufficiently quickly. The final customer did not select Electro Rent as a rental provider in the UK (despite using it as supplier in the Benelux) because it lacked a UK presence.²⁰⁴

¹⁹⁶ Prior to this time, we understand that Electro Rent was sub-renting items to a European based provider ([REDACTED]).

¹⁹⁷ [REDACTED]

¹⁹⁸ Microlease has also employed a similar approach establishing sales offices in various European countries in order to compete more effectively in those countries.

¹⁹⁹ [REDACTED]

²⁰⁰ [REDACTED]

²⁰¹ [REDACTED]

²⁰² The issue was explicitly discussed with only nine customers.

²⁰³ [REDACTED]

²⁰⁴ [REDACTED]

- (b) Three customers²⁰⁵ consider a UK presence to be an advantage, in particular when equipment is required quickly, but not necessary for dealing with a rental supplier.
- (c) Four other customers told us that a UK presence is not a factor in their choice of rental provider.²⁰⁶ In particular, one customer decided to use Electro Rent after deliberately looking for suppliers outside of the UK, because of the high prices it was offered by Livingston and Microlease.²⁰⁷

5.100 One other customer²⁰⁸ described how it had considered using TRS RenTelco but the customer had understood that TRS RenTelco was unable to supply equipment adapted to European frequencies²⁰⁹ and it was also discouraged by the transit costs associated with renting from a US-based company.

5.101 The information we have received indicates that the UK rental revenues of non-UK-based suppliers are extremely limited. Specifically:

- (a) Interlligent is primarily based in Israel although it has recently begun to assemble a UK stock. Its UK rental revenue is approximately £[REDACTED] per annum.
- (b) TRS RenTelco is a large US-based supplier with minimal UK revenue (approximately \$[REDACTED] per annum).
- (c) Leasametric (based in France) and Instrumex (based in Germany) both have minimal rental revenue in the UK.

5.102 As discussed in Appendix D, one overseas-based rental supplier reported that a UK presence was a significant factor in its competition with the Parties for customers within the UK, and that it had lost business because customers could not wait for the time required to ship the equipment to the UK.²¹⁰

Our assessment of the evidence

5.103 The evidence supports the view that the appropriate geographic market is the UK. This is because the available evidence indicates that market conditions

²⁰⁵ [REDACTED]

²⁰⁶ [REDACTED]

²⁰⁷ [REDACTED]

²⁰⁸ [REDACTED]

²⁰⁹ The customer concerned was a telecommunications customer and this submission is consistent with the information provided by the Parties during the main party hearing that PIM testers (an item used in the telecommunications industry) tend to be specific to each geographic area ([REDACTED]).

²¹⁰ [REDACTED]

vary across countries and that having an established UK presence is important when competing to supply some UK based customers. In particular:

- (a) Electro Rent's experience of gradual expansion in the UK illustrates the importance of raising awareness amongst UK customers and establishing a UK presence when competing to supply UK customers. Electro Rent's internal documents make it clear that a desire to compete more effectively to supply UK customers was an important factor in establishing a physical UK presence.²¹¹
- (b) Electro Rent's view is consistent with the evidence from some customers (paragraph 5.99) who indicated that a lack of UK premises was a reason why they had not considered Electro Rent previously. It is also consistent with the reasons given in Microlease's internal documents for its competitive advantages over Electro Rent in the UK (see paragraph 5.94) and Microlease's decision to establish sales offices in various European countries.
- (c) The Parties adjust prices across countries in order to adjust to differences in the [REDACTED] across these countries (paragraph 5.95 and Appendix G).
- (d) We have identified a number of TME rental providers who operate exclusively or predominantly in the UK, such as MCS and EMC Hire. On the other hand, while the Parties have submitted that customers are supplied by a number of non-UK based suppliers, as discussed in paragraph 5.101 the UK rental revenues of non-UK based suppliers are extremely limited. This is consistent with the importance of having a UK sales presence.

5.104 Finally, whilst we consider that variations in market conditions across countries and the importance of an established UK presence indicates that the appropriate geographic market is the UK, we agree with the Parties that stock located outside of the UK can be used to supply UK customers and that customers can be supplied from a global stock pool. This is illustrated by Electro Rent's ability to compete to supply UK customers (see paragraph 6.44) and in Microlease's operations. Therefore, TME rental sales to UK customers from suppliers whose stock is based outside the UK are considered as part of the UK market.

²¹¹ As we discuss (eg paragraph 6.48), [REDACTED].

Provisional conclusion on the relevant geographic market

5.105 We provisionally conclude that the relevant geographic market is the UK.

Provisional conclusion on market definition

5.106 For the reasons set out above, our provisional conclusion is that the relevant market for our competitive assessment is the rental supply of TME in the UK.

6. Assessment of the competitive effects of the Merger

Overview

- 6.1 In our provisional view, Microlease is the leading supplier of TME rental in the UK and Electro Rent, although smaller in the UK, is its closest competitor. Although some customers appear to be unaware of or reluctant to use Electro Rent, the evidence shows that Electro Rent is a much closer competitor to Microlease in the UK than other rental suppliers.
- 6.2 Evidence from the Parties' internal documents and from third parties (customers, other rental suppliers and OEMs) illustrates that the Parties compete closely to supply a significant proportion of customers in the UK. Meanwhile, the evidence indicates that other rental suppliers are alternatives to the Parties in only a limited number of situations. This is because other rental suppliers either do not supply the same product/customer groups or focus on narrow product segments. None of the other suppliers offers TME rental across all of the sectors supplied by the Parties and none supply equipment in the [✂] segment (the Parties' largest customer group in the UK) to a material extent within the UK.
- 6.3 Additionally, there is evidence that Electro Rent's decision to establish a physical UK presence may have led to it becoming a stronger competitor in the UK absent the Merger.
- 6.4 We have also considered the extent to which the Parties' rental services compete with other forms of TME provision – in particular, the purchase of TME, but also a customer choosing to supply itself internally, and the use of OEMs' demonstration equipment. As we explain, the evidence indicates that other forms of TME provision are not close alternatives to rental from the Parties in a significant proportion of situations. This is particularly reflected in the Parties' internal documents and in the evidence we received from customers (both from our calls and from the online questionnaire).

- 6.5 To support their submission that other forms of TME provision are close constraints on their rental businesses, the Parties have made a number of submissions and provided a number of pieces of analysis, which we consider in further detail below.
- 6.6 In our view, the Merger would leave many customers with only one credible TME rental supplier in the UK, and for many of these customers other forms of TME provision are not a close alternative to rental from the Parties. Therefore, the Merger is likely to result in a significant reduction in the alternatives available to a significant proportion of the Parties' rental customers. The evidence indicates that the Parties have the ability to, and do, price discriminate across customers based upon the options which are likely to be available to each customer. As a result, the Parties are likely to be able to increase prices selectively for customers whose options are materially reduced as a result of the Merger without raising prices for others.
- 6.7 In the following sections we explain in detail the basis for this view by:
- (a) Considering the nature of competition and specifically the dimensions of competition between TME rental suppliers and evidence regarding how the Parties set prices.
 - (b) Setting out the theory of harm considered in this case and summarising the Parties' submissions regarding the competitive assessment.
 - (c) Setting out the key evidence regarding competition between the Parties in the UK and then the evidence regarding competition between the Parties and other rental suppliers in the UK.
 - (d) Providing our assessment of the evidence regarding competition between TME rental suppliers in the UK.
 - (e) Setting out the key evidence regarding competition between the Parties and other forms of TME provision and then providing our assessment of that evidence.
 - (f) Summarising third-party views on the Merger.
 - (g) Providing our provisional conclusions regarding the competitive assessment.

- 6.8 For each area of evidence, the relevant appendix provides a more detailed description of the evidence.²¹²

Nature of competition

Dimensions of competition in TME rental

- 6.9 The Parties' internal documents (summarised in Appendix G) refer to price and product availability as the main parameters of competition between rental suppliers. For example, Electro Rent's 2015 Annual Report states that:

Competition in our industry is concentrated on price. Our competitors engage in aggressive pricing for both rentals and sales. In order to maintain or increase our market share, we may choose to lower our prices, resulting in lower revenues and decreased profitability. In addition to price, we compete on the breadth of our product offerings, extensive sales channels, experienced customer and technical support and proprietary equipment management systems.²¹³

- 6.10 Other documents also indicate the provision of support services (such as technical advice, calibration and repairs) and a local presence as being important, at least for some customers. For example, Electro Rent's 2015 Annual Report states that:

Most of our equipment is technically complex and must be tested and serviced when returned to us. We do most of that testing in house, using a team of experienced technicians and our state of the art calibration laboratory.²¹⁴

- 6.11 Meanwhile, Microlease's internal documents suggest that for some customers a UK presence was seen as making Electro Rent a more attractive supplier:

[REDACTED]^{215,216}

²¹² Evidence from rental supplies and OEMs (Appendix D), evidence from customers (Appendix E), assessment of the Parties' lost opportunities analysis (Appendix F), review of the Parties' internal documents (Appendix G), analysis of rental yield (Appendix H) and evidence from the Parties' mystery shopping exercises (Appendix I).

²¹³ [REDACTED]

²¹⁴ [REDACTED]

²¹⁵ [REDACTED]

²¹⁶ Likewise, a Microlease monthly sales report states that: 'Competitive threats differ from territory to territory. [REDACTED].

- 6.12 Similarly, Electro Rent's internal documents setting out its rationale for establishing a UK office (see paragraph 5.98) also make it clear that a [REDACTED].
- 6.13 The factors mentioned in the Parties' internal documents are consistent with the views expressed by customers (see Appendix E). The single most important factor mentioned by customers was price, with 19 of 29 rental customers we have spoken to²¹⁷ referring to this factor. A number of customers provided specific examples of instances where they had sought quotes from multiple suppliers with the intention of negotiating over prices.²¹⁸
- 6.14 Regarding the service offered by rental suppliers, the speed of delivery and/or the availability of replacement equipment (eg when items need to be recalibrated or repaired) were also mentioned by twelve customers as being important.²¹⁹ Both of these factors are related to the depth of a supplier's stock.
- 6.15 Views varied across customers about the importance of a UK presence. Five customers²²⁰ saw the lack of a UK presence as a severe limitation on a rental supplier's ability to compete and three others considered a UK presence as an advantage.²²¹ However, four customers explicitly told us that a UK presence is not a factor in their choice of rental provider.²²²
- 6.16 Finally, customers expressed a range of views on the importance of being able to source all of their rental requirements from a single supplier. Seven of 29 customers explicitly expressed a preference for sourcing all the equipment they require from a single supplier. These customers referred to logistics efficiencies and reduced overheads as well as the possibility of obtaining volume discounts and better prices as the advantages of doing so. However, four of 29 customers told us they multi-source on a significant scale.²²³

The Parties' price setting

- 6.17 The Parties provided a number of internal documents which describe how they set prices for customers. These documents are described in Appendix G.

²¹⁷ [REDACTED]

²¹⁸ For example, seven customers discussed seeking quotes from both Electro Rent and Microlease and using these to negotiate a better price.

²¹⁹ Seven customers mentioned the speed of delivery whilst five customers referred to the replacement of equipment.

²²⁰ [REDACTED]

²²¹ [REDACTED]

²²² [REDACTED]

²²³ [REDACTED]

- 6.18 Both Parties produce guide prices which are used by sales staff when negotiating with customers. These guide prices are based on a range of factors including:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED]; and
 - (d) [REDACTED].
- 6.19 The Parties submitted that they set different prices depending upon the [REDACTED] and that [REDACTED]. The Parties explained that this is to account for:²²⁴
- (a) [REDACTED]; and
 - (b) [REDACTED].
- 6.20 A number of Microlease internal documents make it clear that these guide prices are intended to inform negotiations with customers but that sales people are expected to '[REDACTED]'.²²⁵ Similarly, during the main party hearing Electro Rent explained that most customers would not pay the guide price.²²⁶
- 6.21 Some of the factors which influence prices are mentioned in an internal Microlease presentation, which states that a salesperson might wish to offer [REDACTED] because it '[REDACTED]'.²²⁷ The salesperson's knowledge of a customer's circumstances, therefore, is used to determine the price that is quoted to that customer.
- 6.22 Another factor taken into account is the [REDACTED].^{228,229}
- 6.23 The Parties submitted that the extent to which contracts are extended means that Microlease is unable to identify which contracts are truly short-term when setting prices and implies that, even for contracts with a short initial duration, Microlease must set prices which are competitive vis-à-vis other options, including purchase.²³⁰

²²⁴ [REDACTED]

²²⁵ [REDACTED]

²²⁶ [REDACTED]

²²⁷ [REDACTED]

²²⁸ [REDACTED]

²²⁹ Microlease also estimates the average roll-on across all its customers ([REDACTED]).

²³⁰ [REDACTED]

6.24 However, in our view, initially requested duration is informative for identifying those contracts which are genuinely short-term, and this is indicated by the following:

(a) There is a significant correlation between the requested and actual duration of a contract and the requested duration explains a significant proportion of the actual duration.²³¹ Therefore, contracts with a longer initial duration are systematically more likely to have a longer actual duration.

(b) As noted at paragraph 6.19 the Parties told us that they do [REDACTED]

6.25 That the Parties have an awareness of the options which are likely to be available to their customers is also reflected in:

(a) Microlease's monthly sales reports, [REDACTED]. For example:

(i) The [REDACTED] report states that '[REDACTED]'.^{232,233}

(ii) From [REDACTED], the reports also include a summary of key deals lost and won and the reasons why, [REDACTED].

(iii) [REDACTED].

(b) Microlease's deal management guides, which prompt the sales person [REDACTED].²³⁴

(c) The CMA's calls with customers, in which seven customers²³⁵ explicitly discussed obtaining quotations from both Electro Rent and Microlease and using these quotations to negotiate better prices.

6.26 Consequently, in our view, the Parties are able to set prices individually for customers based on the options which are likely to be available to them. Therefore, if the Merger reduces the options available to a group of customers, the Parties have the ability to increase prices selectively for those customers without increasing prices for others, and can consequently avoid the risk that those other customers switch away as a result of the price

²³¹ Across all contracts the correlation between initial and actual duration is [REDACTED] and the r-squared of a regression between actual and requested duration is [REDACTED]%. The Parties submitted that this r-squared was low and that it illustrated that initial duration could not be used to reliably predict actual duration. We agree that the r-squared is [REDACTED]% but disagree that this means that initially requested duration is not a useful predictor of actual duration.

²³² [REDACTED]

²³³ Likewise, the July 2015 report includes the statements: '[REDACTED]'.

²³⁴ [REDACTED]

²³⁵ [REDACTED]

increase. This means that, if such a group of customers exists, an SLC is more likely to arise.

Theory of harm

- 6.27 Theories of harm describe the possible ways in which an SLC could arise as a result of a merger, and provide the framework for our analysis of the competitive effects of a merger. In this case, we have investigated one theory of harm: loss of competition as a result of the Merger in the rental supply of TME in the UK.
- 6.28 A loss of competition in the rental supply of TME in the UK could lead to consumer harm through higher prices for TME rental and/or reduced service quality (eg in terms of depth of stock, and reliability of delivery).

The Parties' submissions

- 6.29 The Parties submitted that Electro Rent is not a particularly important source of competition to Microlease in the UK and that the Parties face competition from other rental competitors as well as other forms of TME provision. The Parties highlighted in particular MCS Test Equipment, TES, EMC Hire, Interlligent, First Rental, Instruments4Hire, Inlec and Seaward as UK rental competitors. The Parties submitted that the OEMs Rohde & Schwarz and Keysight provide TME rental and that the US based rental supplier TRS RenTelco is making efforts to enter the market. The Parties also submitted that other forms of TME provision impose an important competitive constraint on them.²³⁶
- 6.30 To support their submissions the Parties stated that:
- (a) Internal documents refer to other competitors and in particular a constraint from OEMs.²³⁷
 - (b) Electro Rent is one of a number of smaller competitors to Microlease in the UK and references in Microlease's internal documents are unlikely to be reflective of the competitive constraint posed by Electro Rent on Microlease in the UK because:
 - (i) Many internal documents do not have a UK focus and discuss competition on a European or global basis. Electro Rent is globally

²³⁶ [Response to phase 1 decision](#), paragraphs 5.3 and 6.1.

²³⁷ [Response to phase 1 decision](#), paragraph 6.4.

one of the largest TME rental suppliers and many of these references refer to competitive interactions outside of the UK.

- (ii) Several internal documents were produced at a time when [REDACTED].²³⁸ This explains the prevalence of Electro Rent in Microlease's internal documents.
- (c) Individual customers generally require equipment from a specific product segment (eg wireline telecommunications) and some rental competitors are particularly strong in particular product segments. Collectively the competitors who are present constrain the Parties across all product segments.²³⁹
- (d) The Parties' mystery shopping exercises provide evidence that a number of competitors are able to offer and to deliver equipment.²⁴⁰ Similarly, Microlease lost more tenders in the Microlease lost opportunities data to other rental suppliers in combination than it did to Electro Rent individually.²⁴¹
- (e) The Parties are not significantly differentiated (for example in terms of depth or range of scope or preferential relationships with OEMs) from other competitors.²⁴²
- (f) A range of evidence, as described at paragraph 5.10, supports the submission that other forms of TME provision are an effective constraint on the Parties.

Evidence regarding competition between the Parties

The scale of the Parties' UK rental activities

- 6.31 Microlease's UK rental activities are substantially larger than those of Electro Rent. For example, Electro Rent's UK rental revenue was £[REDACTED] in 2015 whilst Microlease's UK rental revenue was £[REDACTED] in FY15-16.²⁴³
- 6.32 As illustrated in Table 9, in the UK, [REDACTED] customers are the main customer group for both Parties.

²³⁸ [REDACTED]

²³⁹ [Response to phase 1 decision](#), paragraph 6.5.

²⁴⁰ [Response to phase 1 decision](#), paragraph 6.2.

²⁴¹ [Response to phase 1 decision](#), paragraph 5.7.

²⁴² [Response to phase 1 decision](#), paragraph 6.2.

²⁴³ In FY15-16 Microlease's financial year ended in February 2016.

Table 9: Parties' UK rental revenues by customer group

Customer Group	Microlease (FY to February 2016)		Electro Rent (2015)	
	UK rental revenues (£m)	% of total	UK rental revenues (£m)	% of total
A&D	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Telecoms	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Uncategorised	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]		[REDACTED]	

Source: The Parties ([REDACTED]).

*In the case of Electro Rent, all rental revenue in the other category were allocated to 'infotech'.

Evidence from the Parties' internal documents

Evidence regarding competition from Electro Rent in Microlease's Internal Documents

- 6.33 As described in Appendix G, Microlease's internal documents frequently indicate an awareness of Electro Rent as a significant competitive presence in the UK. These documents mention Electro Rent far more frequently than any other firm when discussing the competition faced by Microlease.
- 6.34 In addition to being mentioned more frequently than any other firm, Electro Rent is discussed explicitly as the main source of competitive pressure which influences Microlease's price-setting decisions, including in the UK. For example, [REDACTED].²⁴⁴
- 6.35 The Microlease internal documents which most clearly focus on the UK are Microlease's monthly sales reports. We have copies of these documents for the period March 2015 to February 2017. The reports cover UK, Nordics & Export, meaning they are not exclusively about the UK, but their coverage of the UK is extensive and the UK is the main focus of these reports.^{245,246}
- 6.36 Electro Rent is by far the most frequently mentioned competitor in these monthly sales reports. Between March 2015 and February 2017, Electro Rent is mentioned as a competitor on around [REDACTED] separate occasions.^{247,248} By

²⁴⁴ [REDACTED]

²⁴⁵ For example, Microlease provided European wide sales data [REDACTED]. This data showed that in 2016 Microlease's UK rental revenue was £[REDACTED] whilst the combined rental revenue of Denmark, Finland, Norway and Sweden (the countries identified as in the Nordic region in [REDACTED]) was £[REDACTED].

²⁴⁶ We do not have a clear definition of the customer locations covered by the 'Export' section, but we note that Microlease's sales manager for [REDACTED] produced the reports (Merger Notice, page 25). The only data we have about the size of Microlease's revenue from 'Export' customers suggests that it was about £[REDACTED] in 2016/17, or about [REDACTED]% of the region's rental revenue in 2016/17. We understand that the £[REDACTED] figure does not include the Nordics ([REDACTED]).

²⁴⁷ [REDACTED]

²⁴⁸ We estimate that Electro Rent is mentioned on [REDACTED] separate occasions in these reports. A separate occasion does not include two mentions of a firm which are clearly refer to the same thing. For example, the statement in

comparison, there are fewer than [REDACTED] occasions in which other competitors are mentioned in any context.

6.37 Of the references to Electro Rent, [REDACTED] are discussions explicitly of one of the following: competition with Electro Rent within the UK; Electro Rent's presence within the UK; or Electro Rent's staffing within the UK. In addition, there are a further [REDACTED] occasions on which the reports discuss competition with Electro Rent in relation to customers who are listed in the UK sales database of either Electro Rent or Microlease. Given the UK focus of these reports and the presence of these firms in the Parties' UK sales databases, we interpret these [REDACTED] occasions as being likely to refer to competition with Electro Rent within the UK. In total, therefore, the sales reports contain [REDACTED] separate occasions which we interpret as discussions of competition with Electro Rent specifically within the UK.

6.38 Microlease's internal documents also show a close interest in the possibility of Electro Rent establishing a UK presence. For example, Microlease's monthly sales reports provide regular updates on Electro Rent's UK operations, with references to Electro Rent's UK presence in [REDACTED].²⁴⁹ Similarly, Microlease's [REDACTED] CEO updates also express concern about [REDACTED]. For example, in the [REDACTED] report such concerns are expressed as follows:

[REDACTED]²⁵⁰

Evidence regarding competition from Microlease in Electro Rent's Internal Documents

6.39 Given that the UK represents a smaller proportion of Electro Rent's business than Microlease's, Electro Rent's internal documents are less likely to consider competition specifically in the UK and are more likely to discuss competition at the global or European level. For example, Electro Rent's 2013, 2014 and 2015 Annual Reports all refer to the European competitors as being Microlease and Livingston Hire.

6.40 A number of Electro Rent's internal documents discussing Electro Rent's UK expansion plans clearly indicate that Microlease is the main UK TME rental supplier. For example:

the November 2016 report that '[REDACTED]' is counted as one mention of Electro Rent, even though the word 'Electrorent' is used twice. This figure is therefore not a simple word count.

²⁴⁹ [REDACTED]

²⁵⁰ [REDACTED]

- (a) An Electro Rent Marketing Campaign Program describes Electro Rent's marketing position as follows: 'Who is our target customer and how do we reach them? ... What is their problem/challenge? ... [REDACTED]'.²⁵¹
- (b) Electro Rent also circulated an email to their UK customers in the aftermath of the acquisition of Livingston Hire by Microlease, with the header '[REDACTED]'.²⁵² This presented Microlease as [REDACTED] in TME rental, and the increase in Electro Rent's UK presence as a significant competitive threat to Microlease: '[REDACTED]'.

Evidence from Microlease's lost opportunities analysis

- 6.41 As described in Chapter 5, Microlease's lost opportunities analysis is an analysis of rental opportunities recorded by Microlease where the customer decided not to rent from Microlease. Of the [REDACTED] opportunities which are known to have been lost by Microlease to a competitor or to an alternative form of TME supply between March 2015 and February 2017, [REDACTED]% of opportunities by number and [REDACTED]% of opportunities by value were won by Electro Rent.²⁵³ Electro Rent is the individual competitor that won the largest number of opportunities lost by Microlease ([REDACTED] won a similar proportion by value).²⁵⁴
- 6.42 This result is more pronounced if the analysis is restricted to those customers who had actually rented TME equipment from Microlease at some point in time (although did not necessarily rent from someone else on the occasion recorded in the lost opportunities dataset). Although the proportion of contracts won by Electro Rent is similar to the baseline case ([REDACTED]% in terms of number, [REDACTED]% in terms of value), [REDACTED] won only [REDACTED]% by number and [REDACTED]% by value.
- 6.43 In situations where the customer decided to rent the equipment from an alternative supplier on that occasion, Electro Rent is by far the most commonly chosen individual supplier ([REDACTED]²⁵⁵ opportunities out of a total of [REDACTED]), although the share in terms of value is still similar to [REDACTED].²⁵⁶

²⁵¹ [REDACTED]

²⁵² [REDACTED]

²⁵³ The share has been computed by dividing the number (or value) of the UK TME opportunities won by Electro Rent by the number (or value) of all opportunities where the reason for loss was the purchase of new or used equipment, rental from a different supplier, the use of manufacturer demo or the customer's internal supply.

²⁵⁴ As noted in paragraph 5.29(a), a greater proportion of opportunities were lost to other forms of TME provision (particularly purchase and internal supply) than were lost to Electro Rent.

²⁵⁵ This figure is a range because in some cases, more than one possible winner is indicated for a lost opportunity. [REDACTED] is the figure if the opportunity where Electro Rent is listed alongside another supplier is assumed to have been won by that other supplier.

²⁵⁶ [REDACTED]

Evidence from third parties

Evidence from customers

6.44 As described in Appendix E, most of the 29 customers we contacted by telephone (who accounted for 50-60% [§§] and 60-70% [§§] of Microlease's and Electro Rent's 2016 UK rental revenues respectively) viewed the Parties as close competitors. Specifically:

- (a) 20 of the 29 customers we spoke to considered both Parties as credible competitors, having used or actively considered both of them for their rental needs.²⁵⁷
- (b) One further customer, although only having considered its options to a limited extent and not having used Electro Rent before, expressed concerns with the Merger,²⁵⁸ suggesting that it sees Electro Rent as a potential supplier.
- (c) Only seven customers did not indicate Electro Rent was a credible alternative to Microlease in the UK. In three cases this was because Electro Rent lacked an established physical UK presence.²⁵⁹ In another case it was because Electro Rent did not stock sufficient numbers of the items the customer required.²⁶⁰ In another case it was because equipment from specific manufacturers was required and Microlease is the UK technology partner of these firms.²⁶¹ In the remaining two cases²⁶² the customers did not appear to have actively considered the alternatives available to them.²⁶³

6.45 Customers did not provide a consistent view of how the service quality compared between Electro Rent and Microlease. However, seven customers stressed that Electro Rent tended to offer lower prices than Microlease²⁶⁴ and another seven customers described explicitly how they have previously sought quotations from both Parties and used them to negotiate better terms.²⁶⁵

²⁵⁷ [§§]. Note that one customer ([§§]) told us that it did not consider Electro Rent as a supplier only because it had the impression that the merger with Microlease had already been completed.

²⁵⁸ [§§]

²⁵⁹ [§§]

²⁶⁰ [§§]

²⁶¹ [§§]

²⁶² [§§]

²⁶³ Of the remaining two customers, one has ceased operations and did not express a view and the other was not a rental customer and so did not express a view regarding the credibility of Electro Rent as a rental supplier ([§§]).

²⁶⁴ [§§]

²⁶⁵ [§§]

- 6.46 Respondents to our online questionnaire (who were customers with lower rental expenditure) were less aware of Electro Rent and relatively few of them viewed Electro Rent as an alternative to Microlease.
- 6.47 In particular, whilst all four of the Electro Rent customers who answered the relevant question had used Microlease in the last two years, only four of the 44 Microlease customers had used Electro Rent in the last two years. Likewise, three of the five Electro Rent customers who answered the relevant question named Microlease as their next best alternative to Electro Rent. However, only two of the 29 Microlease customers who said that an alternative rental supplier was their next best alternative to Microlease said that they would have used Electro Rent. Of the remaining 27 respondents, 17 did not know which other supplier they would have used²⁶⁶ and the remaining 10 respondents listed a range of providers with EMC Hire and TES referred to most frequently (three times each).

Evidence from OEMs and rental suppliers

- 6.48 The Parties are the only two UK rental partners of some of the largest OEMs (Keysight, Viavi and EXFO); they are also both rental partners of the OEM Rohde & Schwarz. These partnerships allow the Parties to purchase OEMs' equipment at discounts not available to other rental suppliers, use the OEMs' logos in their communications with customers, and/or get visibility of the OEMs' product pipelines (see Appendix D).
- 6.49 As discussed in more detail in Appendix D, four of the OEMs and the TME reseller we contacted (EXFO, Anritsu, Keysight and Viavi; and Link Microtek) told us that the Parties are the only two significant rental companies in the UK.²⁶⁷ Rohde & Schwarz was aware of three rental suppliers active in the UK in addition to the Parties: EMC Hire, MCS and Interlligent. For Rohde & Schwarz's UK office, [REDACTED].

Evidence regarding Electro Rent's UK expansion

- 6.50 Electro Rent's internal documents suggest that there were three main elements to Electro Rent's rationale for establishing a UK presence:
- (a) that it would raise brand awareness amongst UK customers;

²⁶⁶ 16 responded 'Don't know' and one responded with a comment which indicated that they did not know.

²⁶⁷ As noted above, the OEMs we contacted manufacture equipment which accounted for at least 40-50% [REDACTED] of Microlease's 2016 UK rental revenue and 60-70% [REDACTED] of Electro Rent's 2016 UK revenue ([REDACTED]).

- (b) that it would allow Electro Rent to compete for customers for whom its lack of UK presence was a reason to prefer UK-based suppliers; and
- (c) that Electro Rent could present itself as the only effective alternative to Microlease for UK customers.

6.51 This rationale is reflected in Electro Rent's Marketing Campaign Program,^{268,269} which offers the following reasons for wishing to develop a physical UK presence:

- (a) 'Because now [REDACTED] with the merge [sic] of two T&M suppliers;
- (b) Now we are [REDACTED] in UK to enter this market;
- (c) Our customer base is [REDACTED] in UK to open a local office;
- (d) Our clients have asked us [REDACTED]'.

6.52 Although Electro Rent has established a physical UK presence,²⁷⁰ including a warehouse with the capability to hold equipment, [REDACTED].²⁷¹

6.53 Electro Rent has explained that its strategy in the UK has been to gradually attract customers, focusing in particular on [REDACTED] customers and on those spending significant sums on rental.²⁷² This focus is consistent with both the composition of Electro Rent's UK rental revenue (where [REDACTED] is the main group) and the difference in awareness of Electro Rent between the customers contacted by telephone and respondents to our online questionnaire (where the former had larger rental expenditures than the latter) – see paragraphs 6.44 to 6.47.

²⁶⁸ [REDACTED]

²⁶⁹ This document goes on to state: [REDACTED].

²⁷⁰ See Appendix B for details.

²⁷¹ [REDACTED]

²⁷² [REDACTED]

Evidence regarding competition from other rental suppliers

Evidence from the Parties' internal documents

Evidence regarding competition from other rental intermediaries

- 6.54 While other rental suppliers are mentioned in the Parties' internal documents presented in Appendix G, they are referred to far less frequently than the Parties refer to each other.
- 6.55 As described in Appendix G, the separate occasions on which any other rental suppliers are mentioned in Microlease's monthly sales reports are only [X] as many as the separate mentions of Electro Rent. Additionally, the majority of the suppliers²⁷³ suggested by the Parties as competitors (see Appendix D for a full list) do not appear at all in these sales reports.²⁷⁴
- 6.56 Microlease's FY2015-16 European Business Plan does note that 'in the UK, there are other strong competitors, notably [X]' and that '[X] has also become a force in the UK'.²⁷⁵ However, the strategy notes that accompany these references indicate that Microlease considered these suppliers as a limited threat.²⁷⁶
- 6.57 Regarding the specific suppliers mentioned in the Parties' internal documents (see Appendix G for more details):
- (a) Interlligent is mentioned less than [X] as often as Electro Rent in Microlease's monthly sales reports; some of these references make it clear that Interlligent has yet to establish itself in the UK and suggest that its competitive interactions with Microlease are limited. For example, the [X] sales report states: '[X]'.²⁷⁷
 - (b) EMC Hire does not appear to be explicitly referred to in the Parties' internal documents as a rental competitor.
 - (c) TES is referred to on [X] occasions²⁷⁸ in Microlease's deal management guides and monthly sales reports.

²⁷³ [X]

²⁷⁴ [X]

²⁷⁵ [X]

²⁷⁶ This document states that '[X]'.
²⁷⁷ [X]

²⁷⁸ This figure excludes one reference to [X].

- (d) MCS is also referred to on [REDACTED] occasions²⁷⁹ in Microlease's monthly sales reports.
- (e) Inlec is referred to [REDACTED]. However, [REDACTED]. On the other occasion, Inlec is mentioned by Microlease when [REDACTED].
- (f) TRS RenTelco is referred to by one customer when negotiating with Microlease, but other internal documents make it clear that TRS RenTelco is not active in Europe to a material extent.

Evidence regarding competition from OEMs as rental providers

- 6.58 In our view, a number of documents indicate that OEMs as meaningful rental competitors within the UK. For example, although Microlease's Due Diligence Report notes the presence of 'OEM offering rental service for RF, Mobile test, and EMC equipment',²⁸⁰ this document identifies [REDACTED] as the largest OEM providing such a service,²⁸¹ and [REDACTED] are explicitly noted to only provide rental services outside the UK. Microlease's Due Diligence Report states that, in the UK, Microlease is a 'rental partner' rather than a competitor to [REDACTED].²⁸²
- 6.59 Similarly, Electro Rent provided a confidential information memorandum which notes that, although OEMs may sell TME to consumers, 'OEMs do not themselves typically provide a rental or leasing alternative due [REDACTED]',²⁸³ and that they see Electro Rent as a 'key partner' instead of a competitor for rental.

Evidence from Microlease's lost opportunities analysis

- 6.60 As shown in Appendix F, the lost opportunities analysis shows that, for potential contracts where information is available, Microlease lost slightly more than [REDACTED] of these potential rental contracts to alternative rental supply (including Electro Rent). However, [REDACTED] is the only supplier (in addition to Electro Rent) who won a significant proportion of opportunities: [REDACTED]% in terms of number, [REDACTED]% in terms of value.²⁸⁴ Each of the other rental suppliers won less than [REDACTED]% of opportunities. If the analysis is restricted to those customers who had actually rented some equipment from Microlease at some stage, the proportion of contracts won by [REDACTED] is significantly lower ([REDACTED]% in

²⁷⁹ This figure excludes one reference to MCS [REDACTED], and one to MCS activity in [REDACTED].

²⁸⁰ [REDACTED]

²⁸¹ The report estimates that [REDACTED] European rental revenue is larger than any firm other than the Parties.

²⁸² [REDACTED]

²⁸³ [REDACTED]

²⁸⁴ As noted in Appendix F the rental revenue associated with opportunities lost to TES ([REDACTED] in 2016) appears grossly disproportionate in comparison to TES' actual rental revenues ([REDACTED]).

terms of number, [X]% in terms of value), while other rental suppliers won even lower proportions.

- 6.61 While [X]% of the opportunities were lost to OEMs, only [X] out of the [X] opportunities included in the analysis were lost to rentals from an OEM.²⁸⁵

Evidence from the mystery shopping exercises

- 6.62 The Parties commissioned two ‘mystery shopping’ exercises (one by [X] and one by [X]) in which rental quotations and equipment were sought from six rental suppliers: [X] (see Appendix I).
- 6.63 [X] was able to receive the requested equipment by the deadline only from [X]. [X] delivered the equipment one full day after the deadline. [X] delivered it the morning after the deadline, but could only supply equipment from manufacturers other than the one requested. [X] shipped the equipment from the US but FedEx requested extra information for customs clearance. A quotation had not been obtained from [X] after one week. [X] appears to have doubted the nature of the order and no delivery took place.
- 6.64 [X] received quotations from all of the suppliers, although it took six days to get one from [X] and five days to get one from [X]. [X] provided a quotation for some items but was unable to do so for the [X] equipment which was requested.

Evidence from third parties

Evidence from OEMs and rental suppliers

- 6.65 The Parties listed 20 third-party rental suppliers with whom they submitted that they compete (see Appendix D),²⁸⁶ of which we have received information from 15,²⁸⁷ either through a call or by email. The rental suppliers we contacted can be grouped in two broad categories (based on the Parties’ classifications):

- (a) Those providing rental services for items included in the ‘RF Test & Scopes’ and the ‘Telecommunications’ segments (among others); and

²⁸⁵ If the analysis is restricted to customers who had rented from Microlease at some stage, the proportion of opportunities (by number) lost to purchase is [X]%.

²⁸⁶ Two of the firms listed by the Parties were different brands of the same rental supplier.

²⁸⁷ See Appendix D, for the reasons why we did not contact the remaining four rental suppliers listed by the Parties.

- (b) Those active mostly or exclusively in the 'Industrial' and 'General Purpose' product segments.

'RF Test & Scopes' and 'Telecommunications' rental suppliers

6.66 Nine of the rental suppliers we contacted were classified by the Parties to the first group (see Appendix D); they are either very small or focused on specific product niches (or both) or are not active in the UK to a material extent.

- *EMC Hire*²⁸⁸

6.67 EMC Hire is a UK-based company specialising in the rental of Electro-Magnetic Compatibility (EMC) equipment, a relatively small segment of the TME industry.

6.68 For EMC Hire, Microlease is both a competitor [REDACTED].

6.69 EMC Hire's rental revenue is approximately £500,000 per year.

- *First Rental*²⁸⁹

6.70 First Rental is a UK-based company renting IT and Audio Visual equipment (computers, tablets, etc) and electrical testing equipment. In relation to testing equipment, First Rental focuses on general purpose equipment, while it does not supply any telecommunications test equipment, given their greater cost.

6.71 According to First Rental, [REDACTED].²⁹⁰

- *Instrumex*²⁹¹

6.72 Instrumex is a company based in Germany with minimal TME rental activities in the UK and no intention of expanding its activities in the foreseeable future.

- *Interlligent*²⁹²

6.73 Interlligent is an Israel-based company. Interlligent UK was established in 2014. While Interlligent has historically sent TME to UK customers from Israel,

²⁸⁸ [REDACTED]

²⁸⁹ [REDACTED]

²⁹⁰ First Rental has not provided an estimate of its yearly rental revenue. The Parties estimated First Rental's annual rental revenues to be £1.5 million. However, we note that First Rental files Micro-entity accounts. A company is a micro-entity if at least two of the following apply: i) turnover is £632,000 or less, ii) £316,000 or less is on its balance sheet and iii) it employs 10 or fewer employees. This indicates that the Parties' estimate is a significant over-estimate.

²⁹¹ [REDACTED]

²⁹² [REDACTED]

it has recently begun to assemble a UK-based stock. It does not currently supply telecommunications testing equipment and is less familiar with the types of equipment used in this area.

6.74 Interlligent's rental revenue in the UK is approximately £[REDACTED] per annum.

- *Leasametric*

6.75 Leasametric is a company based in France which is not currently active in TME rental in the UK.²⁹³

- *MCS*²⁹⁴

6.76 MCS supplies a fairly wide range of equipment, although it does not supply TME used by network operators or by companies involved in the installation and maintenance of mobile networks, and is not active in the wired telecommunications segment. Therefore, its activities cover only a subset of the Parties' activities.

6.77 MCS submitted that it operates in more specialist areas where competition from Microlease is less intense. [REDACTED].

6.78 MCS's rental revenue in the UK amounts to approximately £[REDACTED] per year.

- *TES*²⁹⁵

6.79 TES is a UK-based company that focuses on the sale of used, refurbished TME. While it provides some TME rental services, this is done to make use of the stock of equipment that is waiting to be sold, [REDACTED].

6.80 TES estimates its rental revenue at £[REDACTED] per year²⁹⁶ and does not consider itself as competing against the Parties for TME rental.

- *TICS International*

6.81 TICS International is a UK-based company mostly active in the sale of second-hand TME, but also providing rental to UK customers. Its rental business, however, has been declining over time: it accounted for

²⁹³ [REDACTED]

²⁹⁴ [REDACTED]

²⁹⁵ [REDACTED]

²⁹⁶ TES expressed its revenues as £[REDACTED] per month ([REDACTED]).

approximately £[REDACTED] in 2016²⁹⁷ and approximately £[REDACTED] between January and November 2017.²⁹⁸

- *TRS RenTelco*²⁹⁹

6.82 TRS RenTelco is a US-based company that supplies TME for rental and purchase. While its global rental revenue is large, its presence in the UK market is minimal: it generates approximately \$[REDACTED] (around £[REDACTED]) of revenue in the UK annually, has no field sales presence in the UK and does not spend anything on marketing in the UK. [REDACTED].

Industrial and general purpose suppliers

6.83 Four of the rental suppliers we contacted are active mostly or exclusively in the 'Industrial' and 'General Purpose' product segments. These suppliers do not see themselves as competing with the Parties and appear to serve different groups of customers.

- *Caltest*³⁰⁰

6.84 Caltest is a distributor of Pacific Power Source power sources, as well as related test equipment from other manufacturers. It also has a large stock of power sources and related products available for rental.

6.85 Rental, however, constitutes only a small part of Caltest's revenue in the UK ([REDACTED]).

6.86 Caltest estimates that, of its own range of TME products, [REDACTED]% is also covered by Microlease and Electro Rent, whereas these products cover [REDACTED]% of Microlease's range in terms of product numbers, and [REDACTED]% in terms of product value.

- *Inlec*³⁰¹

6.87 Inlec is a UK-based rental company specialising in the industrial sector. While its overall rental income is significant (£[REDACTED] per year),³⁰² the majority of it is realised from products and/or customer groups which the Parties do not

297 [REDACTED]

298 [REDACTED]

299 [REDACTED]

300 [REDACTED]

301 [REDACTED]

302 [REDACTED]

supply. Inlec's customers operate mainly in the water, gas, electricity and construction markets.

6.88 Inlec estimates that Microlease's product range could overlap with at most [REDACTED]% of its own stock. It very rarely came across Microlease as a competitor.

- *Instruments4Hire*³⁰³

6.89 Instruments4Hire supplies TME with a focus on IT infrastructure and higher-end electrical testing equipment. Its customers are mainly electrical contractors and companies working in facility and infrastructure maintenance. Its annual rental revenue is approximately £1.6 million.

6.90 Instruments4Hire does not consider itself as competing with Microlease or Electro Rent.³⁰⁴ While there is some overlap between the products it supplies and those supplied by the Parties, for historical reasons the customer segments served are different.

- *Seaward/ISS Aberdeen*

6.91 In the list of rental suppliers they provided to us, the Parties included Seaward, which, in some submissions, is identified with ISS Aberdeen.³⁰⁵ These are, however, two separate firms.

6.92 Seaward is an equipment manufacturer, which is not active in the rental of testing equipment.³⁰⁶

6.93 ISS Aberdeen operates as a rental supplier. Whilst ISS Aberdeen does rent out some items of testing equipment, it considers that it has a very different customer base to the Parties and does not look at the Parties' pricing structure when setting its own prices. ISS Aberdeen's rental turnover in 2016 was approximately £90,000.³⁰⁷

Other suppliers and OEMs

6.94 The Parties included in its list of competing rental suppliers Testwall, a reseller of new and used TME which is not involved in rental.³⁰⁸

³⁰³ [REDACTED]

³⁰⁴ Instruments4Hire was not aware of Electro Rent operating in the UK.

³⁰⁵ [REDACTED]

³⁰⁶ [REDACTED]

³⁰⁷ [REDACTED]

³⁰⁸ Testwall told us that it is not involved in the rental market in any meaningful way ([REDACTED]).

- 6.95 The Parties also listed eTest Equipment as a rental competitor. However, eTest Equipment [REDACTED].³⁰⁹
- 6.96 Finally, none of the OEMs we contacted told us that it directly provided TME rental as a normal part of its business. In particular, Rohde & Schwarz does not typically provide rental in the UK, nor any other forms of leasing, deferred payments or other financial solutions.³¹⁰ While Anritsu may offer ad hoc financial packages and flexible payment terms, it does not have any formal rental program.³¹¹ Keysight and EXFO may sometimes rent some pieces of equipment to larger customers.³¹²

Evidence from customers

- 6.97 Of the 29 customers we contacted, 11 were included only in Microlease's customer list, three were included only in Electro Rent's customer list and 15 were included in both customer lists. 18 of these customers had not used any rental suppliers other than the Parties,^{313,314} while 17 viewed Microlease and Electro Rent as their only options, at least for the majority of the equipment they rent.³¹⁵ In one case the customer was unable to switch as it was bound by global contracts negotiated by its parent company.³¹⁶
- 6.98 The alternative rental suppliers which customers had either used or were aware of were described as operating in relatively small niches of the market and were viewed as more often complementary rather than substitutable to the Parties. 13 of the customers we contacted emphasised that potential alternative rental suppliers lacked a sufficient depth and/or breadth of stock to cater to the customer's requirements.³¹⁷
- 6.99 Of the specific suppliers named as possible alternatives:
- (a) EMC Hire was named by five customers,³¹⁸ and noted to specialise in electromagnetic compatibility equipment. It was used by three customers

³⁰⁹ [REDACTED]

³¹⁰ [REDACTED]

³¹¹ [REDACTED]

³¹² [REDACTED]

³¹³ One customer ceased operations and did not express views on the credibility of other sources of TME rental, although it did state the equipment could be rented from EXFO, an OEM ([REDACTED]).

³¹⁴ [REDACTED]

³¹⁵ [REDACTED]

³¹⁶ [REDACTED]

³¹⁷ [REDACTED]

³¹⁸ [REDACTED]

for only this part of their rental requirements³¹⁹ whilst another noted that the equipment supplied by EMC Hire was highly specialised.³²⁰

- (b) MCS was noted by three customers to focus on high-end, specialist equipment,³²¹ and was usually mentioned as either a supplementary source of high-end TME rental by firms who mainly rented from the Parties,³²² or as a provider of equipment for purchase.³²³
- (c) Moreover, customers noted that the stocks of EMC Hire³²⁴ and MCS³²⁵ do not fully overlap with the stocks of Microlease and Electro Rent, and it was noted by one customer that the specialist equipment rented from EMC Hire and MCS is not generally available through Microlease or Electro Rent.³²⁶
- (d) TES has supplied equipment to four of the customers we contacted,³²⁷ although for one of these this was more often for purchase,³²⁸ while another customer had used TES to supplement a larger rental order from the Parties with specialist equipment.³²⁹ Another customer told us that TES offers a similar range of equipment to Microlease and Electro Rent, but on a much smaller scale.³³⁰ Only one customer noted that TES would stock 'a large percentage' of its TME requirements.³³¹
- (e) TRS RenTelco was mentioned by only one customer, but the customer was deterred by transit costs and its understanding that TRS RenTelco was unable to supply equipment adapted to European frequencies.³³²
- (f) Interlligent was mentioned by only two customers. One of these customers was deterred by the long lead time required to supply the equipment,³³³ and the other customer did not think that Interlligent was primarily a rental supplier.³³⁴

319 [REDACTED]
320 [REDACTED]
321 [REDACTED]
322 [REDACTED]
323 [REDACTED]
324 [REDACTED]
325 [REDACTED]
326 [REDACTED]
327 [REDACTED]
328 [REDACTED]
329 [REDACTED]
330 [REDACTED]
331 [REDACTED]
332 [REDACTED]
333 [REDACTED]
334 [REDACTED]

6.100 Only four customers said that they had been in contact with OEMs about renting TME directly from them.³³⁵ One of these has gone out of business.³³⁶ Of the remaining three customers, one was able to borrow equipment from manufacturers for short periods of time because it is a large customer,³³⁷ and another was directed by the manufacturers to rent from Microlease.^{338,339}

Our provisional assessment of the evidence regarding competition between rental suppliers

6.101 The evidence indicates that there are a number of different TME rental suppliers who offer a differentiated service, for example focusing on different product or customer groups. Our assessment focuses on the competitive constraints faced by the Parties in renting TME to their customers.

6.102 Microlease is the largest TME rental player in the UK and is a significantly larger supplier than Electro Rent in the UK. This is reflected in the following:

- (a) In 2015 Microlease's annual UK rental revenue was approximately [REDACTED] times as large as Electro Rent's annual UK rental revenue.³⁴⁰
- (b) Some customers showed a low awareness of or a reluctance to use Electro Rent. Specifically, only four of 44 Microlease customers responding to our online questionnaire had used Electro Rent in the last two years and only two of those respondents saw Electro Rent as their next best alternative to renting from Microlease. Seven of 29 customers we called indicated that Electro Rent was not a credible supplier for them in the UK.³⁴¹ In contrast, the evidence has consistently illustrated that customers view Microlease as a close alternative to Electro Rent.
- (c) Electro Rent's internal documents prepared for the establishment of UK premises describe Microlease as the only rental supplier in the UK and state that customers have '[REDACTED]'. This reflects that Microlease is the main TME rental supplier in the UK.

6.103 However, in the context where Microlease does not face many sources of strong rental competition, the evidence illustrates that Electro Rent is an important competitive constraint on Microlease and that the Parties are each

³³⁵ [REDACTED]

³³⁶ [REDACTED]

³³⁷ [REDACTED]

³³⁸ [REDACTED]

³³⁹ The additional customer discussed the possibility of using a suppliers' demo stock ([REDACTED]). This issue is discussed in Chapter 5.

³⁴⁰ Based on a comparison of Microlease's FY15-16 and Electro Rent's 2015 UK revenues.

³⁴¹ [REDACTED]

other's closest rental competitors in the UK. The evidence we have received indicates that the competitive constraint on the Parties from other rental suppliers is limited. In particular:

- (a) Microlease's internal documents with a UK focus pay particular attention to Electro Rent and competition with Electro Rent is referred to in these documents significantly more than competition with all other rental suppliers. For example, Microlease's monthly sales reports make over [REDACTED] separate references to competition with Electro Rent in the UK whilst there are fewer than [REDACTED] references to all other rental suppliers in these reports.³⁴² [REDACTED] (see paragraph 6.38).
- (b) 20 of the 29 customers we spoke to considered both of the Parties as credible competitors,³⁴³ having used or actively considered using both Parties for their rental requirements (see paragraph 6.44(a)). 17 of these 20 customers also viewed Microlease and Electro Rent as their only options, at least for the majority of the equipment they rent (see paragraph 6.97).³⁴⁴ These 17 customers accounted for 50-60% [REDACTED] of Electro Rent's 2016 UK revenue and 20-30% [REDACTED] of Microlease's 2016 UK revenue.³⁴⁵
- (c) The Parties are the only two UK rental partners of some of the largest OEMs (Keysight, Viavi and EXFO); they are also both rental partners of the OEM Rohde & Schwarz. These partnerships allow the Parties to purchase OEMs' equipment at discounts not available to other rental suppliers, use the OEMs' logos in their communications with customers, and/or get visibility of the OEMs' product pipelines. This implies that other TME rental suppliers face higher equipment costs and the competitive constraint they can impose on the Parties is reduced.
- (d) The evidence consistently indicates that the competitive interaction between the Parties and the other rental suppliers, described by the Parties as competitors, is limited. This evidence shows that these other rental suppliers either do not supply the same product/customer segments as the Parties (eg Inlec and Instruments4Hire) or focus on particular

³⁴² As described in Appendix G some of these references to alternative suppliers indicated that Microlease considered these suppliers to be a limited threat.

³⁴³ [REDACTED]. Note that one customer ([REDACTED]) told us that it did not consider Electro Rent as a supplier only because it had the impression that the merger with Microlease had already been completed ([REDACTED]).

³⁴⁴ [REDACTED]

³⁴⁵ These figures include only customers who considered both Electro Rent and Microlease as rental alternatives and does not include customers who did not consider Electro Rent. Additionally, as noted at paragraph 6.103(d)(ii), although other customers were aware of other rental suppliers they generally viewed these suppliers as specialists and more complementary than substitutable to the Parties.

niches of the market with only a partial overlap with the Parties (eg EMC Hire, Interlligent and MCS). In particular:

- (i) There are relatively few references to other rental suppliers in the Parties' internal documents and no references at all to the majority of the suppliers listed by the Parties in their submissions.³⁴⁶
- (ii) Customers have low awareness of other suppliers. This applies both to the customers we called and to respondents to our online questionnaire (see Appendix E). During the customer calls, eight customers told us that they had used other rental suppliers. However, as explained above, these customers generally used these suppliers for specialist equipment and viewed them as more complementary than substitutable to the Parties.
- (iii) As described above, the larger rental suppliers identified by the Parties (eg Inlec and Instruments4Hire) do not see themselves as in competition with the Parties (since they serve distinct customer groups).
- (iv) As discussed above, MCS, Interlligent and EMC Hire supply equipment which overlaps to some extent with that supplied by the Parties. However, MCS and EMC Hire have both stated that they operate in more specialist areas than the Parties, such that direct competition with them is limited. Interlligent is focused on the RF and microwave testing segment of the market and its UK rental revenue is currently [REDACTED] of Electro Rent's.
- (v) The remaining suppliers identified by the Parties are either not active in TME rental to a material extent (eg TES, TICS International) and/or are not active in the UK to a material extent (eg TRS RenTelco, Instrumex and Leasametric).
- (vi) None of the rental suppliers identified by the Parties supply [REDACTED] for rental in the UK to a material extent. As Table 9 shows, this is the main customer group of both Parties.
- (vii) There is no evidence that OEMs supply TME rental services to a material extent in the UK.
- (viii) Four of the five OEMs and the TME re-seller we contacted (EXFO, Anritsu, Keysight and Viavi; Link Microtek) told us that the Parties

³⁴⁶ [REDACTED]

are the only two significant rental companies in the UK. Rohde & Schwarz was aware of three rental suppliers active in the UK in addition to the Parties: EMC Hire, MCS and Interlligent.

- (e) With the exception of Interlligent, the rental suppliers who are materially active in the UK are only active (to any material extent) in the UK and not in any other geographic region. Interlligent's UK rental revenue is low (£[REDACTED] per annum) and Interlligent's total global annual revenue (including activities other than rental) is £[REDACTED]. By contrast, Electro Rent is a large, established global supplier with a significant depth and breadth of stock, as is Microlease.³⁴⁷ Therefore, other rental suppliers who make material sales in the UK do not have a breadth or depth of stock which is comparable to that held by the Parties.

6.104 We acknowledge that awareness of Electro Rent differs significantly between the customers we spoke to (who generally viewed Electro Rent as a close alternative to Microlease) and those who responded to our online questionnaire (who generally did not view Electro Rent as a close alternative to Microlease).

6.105 The calls focused on the Parties' largest customers, who accounted for 50-60% [REDACTED] of Microlease's and 60-70% [REDACTED] of Electro Rent's rental revenue. Respondents to the online questionnaire typically spent less than £5,000 per annum on rental equipment.³⁴⁸ Customers spending less than £5,000 per annum account for 0-5% [REDACTED] of Microlease's and 5-10% [REDACTED] of Electro Rent's 2016 UK rental revenue.³⁴⁹

6.106 In our view, the contrast in customer views is likely to be due to differences in the groups of customers contacted through our calls and through the online questionnaire. In combination, these two pieces of evidence illustrate that awareness of Electro Rent (and the corresponding competitive constraint imposed by Electro Rent on Microlease) is much lower among customers with low levels of rental expenditure. This is consistent with Electro Rent's description of its UK strategy which has involved targeting [REDACTED] customers and customers with the largest rental expenditures.³⁵⁰

6.107 Given the significant proportion of the Parties' rental revenues accounted for by the customers we called, and the detailed conversations we had with them,

³⁴⁷ As noted in Chapter 2, Electro Rent's 2016 global turnover was £[REDACTED] million whilst Microlease's was £[REDACTED] million.

³⁴⁸ 35 of the 48 respondents to the question had rental expenditure of less than £10,000 in the last two years. Only four respondents had rental expenditure of £50,000 or more over the last two years.

³⁴⁹ Even if the threshold is increased to £20,000, such customers accounted for only [REDACTED]% of Electro Rent's and [REDACTED]% of Microlease's 2016 UK rental revenue.

³⁵⁰ [REDACTED]

we consider that particular weight should be given to this evidence. We also note that Microlease's monthly sales reports, which appear to focus on higher value opportunities and customers with larger rental expenditures, make frequent references to Electro Rent and few references to alternative rental suppliers. This also suggests a high level of awareness of Electro Rent amongst customers with larger rental expenditures (at least in comparison to other rental suppliers).

6.108 Consequently, in our view the Merger would lead to the removal of each of the Parties' closest rental competitor in the UK and in many situations customers would no longer have a choice between rental suppliers. As described at paragraphs 6.17 to 6.26, the Parties individually negotiate prices with customers and have the ability to price discriminate. Therefore, the Parties have the ability to increase prices selectively for those customers whose rental options are significantly reduced as a result of the Merger.

6.109 The Parties submitted that Electro Rent is over-represented in Microlease's internal documents because:

(a) Electro Rent is a global competitor, whereas many alternative suppliers are not, and many documents are not focused on the UK; and

(b) [REDACTED].

6.110 The evidence we have received supports neither explanation. Many of the documents, in particular Microlease's monthly sales reports, have a clear UK focus and many of the references to Electro Rent are explicitly in reference to the UK. We have not received any contemporaneous evidence of a strategy to [REDACTED] being pursued by Microlease in relation to customers in the UK. This absence of contemporaneous evidence is in contrast to Microlease's [REDACTED], which was documented on a monthly basis in Microlease's board reports.³⁵¹ Regardless, we note that for such a strategy to be successful, Microlease and Electro Rent would have to have at least the potential to be close competitors.

6.111 There is also reason to consider that Electro Rent may have become a stronger competitor in the UK absent the Merger. This is because Electro Rent had decided [REDACTED].³⁵²

6.112 As a result, customers' awareness of Electro Rent and willingness to use it, and therefore competition between Electro Rent and Microlease in UK, may have increased over time absent the Merger. In this regard, we note that three

³⁵¹ [REDACTED]

³⁵² [REDACTED]

of the seven customers who did not view Electro Rent as a credible UK supplier said that this was specifically because Electro Rent lacked a more developed UK presence.

6.113 We do not consider that our view regarding competition between the Parties and competition between the Parties and other rental suppliers is contradicted by the Parties' lost opportunities analysis or mystery shopping exercises.

(a) In the lost opportunities analysis, Electro Rent was the most commonly chosen supplier. That said, we have doubts on the accuracy of some of the information recorded in the lost opportunities dataset. In particular, the value of the opportunities indicated to have been lost to [REDACTED] in 2016 is slightly above £[REDACTED] which is grossly disproportionate to [REDACTED] overall rental revenue of £[REDACTED] per month on average (£[REDACTED] per annum) (see Appendix F).

(b) Appendix I explains the significant limitations of the mystery shopping exercises and why in our view little weight can be placed on the results of these exercises: it is unclear to what extent the items ordered were representative of Microlease's overall rental business in the UK; it is difficult to judge whether the quotations obtained were 'competitive'; and only one unit was requested for each of the items, although larger customers may need multiple units.

6.114 During our inquiry, we have gathered information regarding the UK rental revenue of the Parties and the other rental suppliers which the Parties have indicated compete with them in the UK (summarised in Table 10).³⁵³ In principle, this information could be used to calculate market shares of overall supply. However, we do not consider that such market shares would be reflective of the competitive interactions between the suppliers and we place little weight on it in our assessment. This is because, as described at paragraph 6.103, the evidence indicates that other rental suppliers either do not supply the same product/customer segments as the Parties or focus on particular niches of the market with only a partial overlap with the Parties. For example, the revenue figures in Table 10 for [REDACTED] give a misleadingly high indication of their activities in the context of our assessment of the competition lost as a result of the Merger, as explained in the 'comments' column of the table.

³⁵³ We did not discover any competitors other than those indicated by the Parties.

Table 10: UK TME rental revenues

<i>Rental supplier</i>	<i>Annual UK rental revenue (£m)</i>	<i>Comments</i>
[REDACTED]		

Source: Parties and third parties.

[REDACTED]

Evidence regarding competition between the Parties and other forms of TME provision

6.115 The evidence relevant for assessing competition between the Parties and other forms of TME provision is presented in Chapter 5. To summarise that evidence:

- (a) There are several factors that limit demand substitutability between TME rental and purchase: rental allows more flexibility to respond to requirements of short or uncertain duration; rental rates often include repair and calibration services which may need to be organised separately when purchasing; capital expenditure constraints and the risk of equipment obsolescence make purchase an unattractive alternative to rental for some customers. These factors are recognised in the Parties' internal documents (see paragraph 5.13) and have been indicated by the customers we called (see paragraph 5.33) and by TME intermediaries and OEMs (see paragraph 5.42).
- (b) For 22 of the 29 rental customers we spoke to purchase was not a close alternative to rental (see paragraph 5.36). For six of the remaining seven customers, purchase appears to be a close alternative to rental for at least part of their requirements. Internal supply is also unlikely to be a close alternative for the majority of rented items for most of the customers we talked to (see paragraph 5.39). Two customers said that demonstration equipment was an alternative to rental; however, both customers noted that this was only possible for short periods of time (see paragraph 5.38).
- (c) Seven out of 55 respondents to our online questionnaire said that purchasing equipment was their next best option had they not been able to rent the equipment they needed from the Parties; no customers indicated leasing equipment as their best alternative, while seven respondents said that they would have used TME which they already owned (see paragraph 5.41).

- (d) As discussed in paragraphs 5.15 to 5.22, the Parties' internal documents do make a number of references to competition between TME rental and TME purchase. However, they suggest a limit to the extent to which purchase is an alternative to TME rental. For example, in Microlease's monthly sales report, there are only [X] references to competition from purchase, and [X] references to other forms of supply. In contrast, there are over [X] references to competition from Electro Rent. The Parties' internal documents do not refer to competition with other forms of TME provision to any material extent.
- (e) Microlease's UK rental revenue is, approximately, [X] split between contracts with an actual duration of i) less than 12 months, ii) 12-36 months and iii) 36 months or more. The Parties noted that [X] of Microlease's revenue is accounted for by contracts with an actual duration of 36 months or more (see paragraph 5.27) and submitted that purchase is a natural alternative to rental for customers renting for this length of time. Since contracts are regularly extended, a significantly smaller proportion of the Parties' revenue is derived from longer term contracts when initially requested rather than actual duration is considered. For example, [X]% of Microlease's revenue is derived from contracts with an initial duration of 12 months or less (see paragraph 5.60).
- (f) Microlease's lost opportunities analysis shows that, for opportunities where the relevant information is available, [X]% of opportunities by value were lost to purchase and [X]% of opportunities by value were lost to internal supply (see paragraph 5.29(a)).
- (g) Microlease's rental yields [X] from [X], followed by [X] from [X], since when Microlease's rental yield has been [X] (see paragraph 5.23). The Parties' submitted that the evolution of Microlease's rental yields is evidence of the competitive constraint from purchase.

Our provisional assessment of the evidence regarding competition between the Parties and other forms of TME provision

- 6.116 In our view, the evidence discussed in Chapter 5 and summarised above shows that, for many of the Parties' customers, other forms of TME provision are not close alternatives to rental from the Parties.
- 6.117 As discussed in Chapter 5, the Parties' internal documents and our calls with customers, OEMs and intermediaries indicate that purchase is not a close alternative to rental in many situations. Furthermore, as discussed in paragraphs 6.17 to 6.26, the Parties have the ability to price discriminate across customers and can therefore increase prices for some customers

without doing so for others. Consequently, although other forms of TME provision may be close alternatives to rental from the Parties for some customers in certain circumstances, this does not prevent the Parties increasing prices selectively for customers for whom other forms of TME provision are less likely to be a close alternative.

6.118 As we describe in Chapter 5, we consider that there are good reasons to expect that the circumstances in which internal supply is a close alternative to rental for the Parties' current rental customers are limited since these customers will often be renting because internal supply is not an option.

6.119 That the competitive constraint on the Parties from other forms of TME provision is limited is reflected in the direct evidence from the Parties' internal documents and provided by third parties. In particular:

- (a) Customers accounting for a significant proportion of the Parties' rental revenues do not view other forms of TME provision as a close alternative to rental from the Parties. In particular:
 - (i) The 22 customers we spoke to for whom purchase was not a close alternative to rental accounted for 50-60% [REDACTED] of Electro Rent's 2016 UK rental revenue and 40-50% [REDACTED] of Microlease's 2016 UK rental revenue. Notably, 13 customers explicitly told us that they do not consider purchase as a close alternative for all, or the vast majority, of their rental requirements.³⁵⁴
 - (ii) The customers we spoke to for whom internal supply was not an alternative to rental accounted for 50-60% [REDACTED] of Microlease's 2016 UK rental revenue and 60-70% [REDACTED] of Electro Rent's. For 15 of those customers, internal supply was not an option for any proportion of their requirements, as they owned no or very few items of the types of equipment which they rented.³⁵⁵
 - (iii) Very few customers viewed leasing or the use of demonstration equipment as an alternative to renting from the Parties and those who did explained that the circumstances in which this was possible were limited.
- (b) Similarly, only seven of 55 respondents to the online questionnaire viewed purchase as the next best alternative to rental from one of the Parties and

³⁵⁴ [REDACTED]

³⁵⁵ [REDACTED]

only seven of 55 respondents viewed internal supply as the next best alternative.

- (c) When discussing competitive threats to their existing rental business, the Parties' internal documents focus much less on competition from purchase than on competition from other rental suppliers. For example, Microlease's monthly sales reports (which focus predominately on the UK) contain only [REDACTED] references to a rental customer considering purchase instead of rental, to a rental deal being lost to purchase or to purchase being attractive for a specific piece of equipment. In contrast, there are over [REDACTED] references to Electro Rent in these reports, most of which are UK specific. The Parties' internal documents do not refer to leasing, internal supply or the use of demonstration equipment as meaningful competitive alternatives to TME rental.

6.120 As we explained in Chapter 5, the extent to which an analysis of rental duration can inform an assessment of the competitive constraints on the Parties from purchase is limited because:

- (a) a number of factors other than duration affect the decision of whether to purchase or rent; and
- (b) neither actual nor initially requested duration are perfect measures of the duration which a customer might have had in mind when deciding whether to rent an item.

6.121 However, we consider that an analysis of rental duration further supports our view that purchase is not a close alternative for a significant proportion of the Parties' customers. This is because:

- (d) Purchase is less likely to be a close alternative, all else being equal, to short rentals than to long ones.
- (e) The evidence indicates that, as a rule of thumb, the costs of rental and purchase become equivalent after 36 months and [REDACTED]% of Microlease's rental revenue is derived from contracts with an initial duration of less than 36 months and around [REDACTED] of Microlease's rental revenue is derived from contracts with an actual duration of less than 36 months.

6.122 Regarding Microlease's lost opportunities analysis, the most relevant evidence for our competitive assessment is evidence of the options available to customers in circumstances where they decided to rent from the Parties. This is because it is the options available to customers in those circumstances which determine the incentives of the Parties to raise prices following the Merger.

6.123 However, as discussed in paragraphs 5.67 and 5.68, Microlease's lost opportunities analysis analyses the options considered by customers in where they decided not to rent from Microlease. Therefore, the lost opportunities analysis is informative for our assessment only to the extent that it allows us to infer information about the alternatives available in circumstances where customers currently rent from the Parties. The most important step when making such inferences is to accept that the options used by customers when they decided not to rent from Microlease are also close alternatives in circumstances where customers decided to rent from Microlease. As explained in paragraph 5.69, we do not consider that it is reasonable to draw such an inference in light of the available evidence, which shows that rental and purchase are often used to respond to different requirements. Moreover, as we explain in Appendix F we have doubts about the accuracy and plausibility of some of the information recorded in the database in light of the other evidence available to us.³⁵⁶

6.124 As discussed in paragraphs 5.72 to 5.76, in our view the evidence on Microlease's rental yields and Microlease's growth strategy do not contradict our view that other forms of TME provision are not close alternatives to rental from the Parties. As explained there:

- (a) A range of factors affect rental yields and our view is that it would be inappropriate to attribute the evolution of Microlease's rental yields to any specific factor given the available evidence. Consequently, an analysis of the evolution of Microlease's rental yields is not informative for our competitive assessment.
- (b) The need for Microlease to be competitive with purchase to attract customers currently purchasing equipment does not imply that the constraint from purchase is binding in relation to those customers who are currently renting, for many of whom, as seen in paragraph 6.118, purchase does not appear to be a close alternative.

Third party views on the Merger

6.125 We asked the customers, OEMs and other rental suppliers we contacted whether they had any views on the Merger.

6.126 Of the 29 customers contacted by telephone, 20 explicitly expressed a concern with the Merger. Two other customers told us that they had previously used quotations from one Party to negotiate better terms with the

³⁵⁶ Specifically, the rental revenue associated with opportunities lost to [X] appears grossly disproportionate relative to [X] actual annual rental revenues.

other. The same customers also said that the Parties were their only two potential rental suppliers. On this basis, we consider that it is reasonable to infer that these customers would also be concerned about the effect of the Merger on their options. Only six customers told us that they had no concerns.³⁵⁷ Overall, the concerned customers account for at least 30-40% [X%] of Microlease's rental revenue in 2016 and 50-60% [X%] of Electro Rent's. If the two customers where concerns are inferred are included, these figures increase to 40-50% [X%] and 50-60% [X%] respectively.

- 6.127 The customers who responded to our online questionnaire were less concerned about the Merger. Of the 49 customers who responded to the relevant question,³⁵⁸ 15 expressed concerns about the Merger,³⁵⁹ against 26 who were unconcerned.³⁶⁰
- 6.128 Those customers who expressed concerns about the Merger generally told us that the Merger would reduce, and in many cases eliminate, competition from their supply chain, leaving the customer with just a single supplier.
- 6.129 Two rental suppliers and an OEM noted that the Merger would leave customers with only a single supplier. Two other OEMs also expressed concerns that the Merger, in the context of the Parties' agreements with competing OEMs, would make it more difficult for competing manufacturers to access the UK rental market and would therefore reduce customer choice.
- 6.130 One rental supplier and three manufacturers and TME resellers expressed concerns about issues which were likely to produce benefits for customers. Specifically, one rental supplier expressed the concern that the Parties may expand into new product segments in which they are not already active and may begin to compete directly with that rental supplier. Three manufacturers and TME resellers expressed concerns that the Parties will have greater ability to negotiate lower equipment prices with OEMs as a result of the Merger.

Provisional conclusions on the effects of the Merger

- 6.131 In our provisional view, the evidence shows that Microlease is the leading supplier of TME rental in the UK and that Electro Rent, although smaller than Microlease in the UK, is its closest competitor. The evidence indicates a low level of awareness of Electro Rent amongst customers with low levels of

³⁵⁷ The final rental customer we spoke to had ceased operations and did not express a view ([X]).

³⁵⁸ Question 23 of the online questionnaire (see Appendix E).

³⁵⁹ One of the concerned respondents was only concerned that the current Microlease sales representative, with whom the respondent has a good relationship, might be replaced after the Merger.

³⁶⁰ 8 respondents chose the option 'Don't know'.

rental expenditure and there is a reluctance on the part of some Microlease customers to use Electro Rent, in part due to its less established UK presence. However, the Parties' internal documents and the evidence received from third parties consistently show that Microlease and Electro Rent compete closely to supply a significant proportion of customers in the UK.

6.132 The other rental suppliers put forward as competitors by the Parties either do not supply the same product/customer groups as the Parties or focus on narrow product segments. None of the other suppliers offers TME rental across all of the sectors supplied by the Parties and none of these suppliers supply equipment in the [REDACTED] segment (the Parties' largest customer group in the UK) to a material extent within the UK. The Parties are also the only two UK rental partners of some of the largest OEMs. These arrangements provide the Parties with discounts, and other benefits, which are not available to other UK rental suppliers.

6.133 Consequently, the Merger would lead to the removal of each of the Parties' closest rental competitor in the UK. The evidence we have received indicates that in many situations customers would no longer have a choice between rental suppliers. This is most clearly illustrated in the responses of 17 of the customers we called who viewed Microlease and Electro Rent as their only rental options, at least for the majority of the equipment they rent (paragraph 6.97). These 17 customers accounted for 20-30% [REDACTED] of Microlease's 2016 UK rental revenue and 50-60% [REDACTED] of Electro Rent's 2016 UK rental revenue.³⁶¹

6.134 In some circumstances, other forms of TME provision (such as purchase) are likely to be a close alternative to rental from the Parties. However, in our view this is not the case in a significant proportion of situations. This is particularly reflected in the Parties' internal documents and in the evidence we received from customers (both from our calls and from the online questionnaire). For example, 22 of the 29 customers we spoke to indicated that purchase was not a close alternative to rental. These customers accounted for 40-50% [REDACTED] of Microlease's and 50-60% [REDACTED] of Electro Rent's 2016 UK rental revenue.

6.135 Therefore, in our view the Merger is likely to result in a significant reduction in the alternatives available to a significant proportion of the Parties' rental customers. This is particularly reflected in the evidence we received in our customer calls, where 14 customers stated that purchase was not a close

³⁶¹ These figures include only customers who considered both Electro Rent and Microlease as rental alternatives and does not include customers who did not consider Electro Rent. Additionally, as noted at paragraph 6.103(d)(ii), although other customers were aware of other rental suppliers, they generally viewed these suppliers as specialists and more complementary than substitutable to the Parties.

alternative to rental for them and viewed the Parties as their only rental options. These customers accounted for 40-50% [X%] of Electro Rent's and 20-30% [X%] of Microlease's 2016 UK rental revenue.

- 6.136 This assessment is also consistent with the views on the Merger expressed by customers (paragraphs 6.125 to 6.128). In particular, 20 of the 29 customers we called expressed concerns about the Merger and in two other cases concerns could be inferred because they have previously sought quotations from both Parties and used them to negotiate better terms and that they have not indicated any alternative rental supplier. These customers accounted for 40-50% [X%] of Microlease's 2016 rental revenue and 50-60% [X%] of Electro Rent's 2016 rental revenue.
- 6.137 As explained in paragraphs 6.20 to 6.26, the Parties negotiate prices with customers on a case-by-case basis and are able to price discriminate across customers. As explained in paragraph 6.26, price discrimination makes an SLC more likely because the merging parties are able to increase prices selectively for those customers whose options are likely to be significantly reduced as a result of the Merger. The evidence indicates that these customers account for a significant proportion of the Parties' rental revenues.
- 6.138 Furthermore, there is evidence that, absent the Merger, Electro Rent's decision to establish a physical UK presence may have led to it becoming a stronger competitor in the UK. This is consistent with both Electro Rent's objectives for its expansion (see paragraph 5.98 and paragraphs 6.50 to 6.53) and the evidence from customers who, in some cases, indicated that Electro Rent's less established UK presence was a reason why they did not consider Electro Rent to be a credible supplier in the UK (paragraph 6.44(c)).

7. Countervailing factors

- 7.1 The Merger Assessment Guidelines indicate that, in considering whether a merger may be expected to result in an SLC, the CMA will consider factors that may mitigate the initial effect of a merger on competition ('countervailing factors'), which in some cases may mean that there is no SLC. These factors include:
- (a) the responses of others in the market (rivals, customers, potential new entrants) to the merger, for instance the entry into the relevant market of new providers or expansion by existing providers;
 - (b) the ability of customers to exercise buyer power; and

- (c) the effect of any rivalry-enhancing efficiencies arising as a result of the Merger.³⁶²

Entry and expansion

Introduction

7.2 The Merger Assessment Guidelines explain that as part of the assessment of the effect of a merger on competition, we look at whether entry by new firms or expansion by existing firms may mitigate or prevent an SLC.³⁶³

7.3 The Merger Assessment Guidelines state that:

In assessing whether entry or expansion might prevent an SLC, the Authorities will consider whether such entry or expansion would be:

- a) timely;
- b) likely; and
- c) sufficient.

Potential (or actual) competitors may encounter barriers which adversely affect the timeliness, likelihood and sufficiency of their ability to enter (or expand in) the market. Barriers to entry are thus specific features of the market that give incumbent firms advantages over potential competitors. Where entry barriers are low, the merged firm is more likely to be constrained by entry; conversely, this is less likely where barriers are high. The strength of any given set of barriers to entry or expansion will to some extent depend on conditions in the market, such as a growing level of demand.³⁶⁴

7.4 This section discusses the evidence for barriers to entry and expansion for the provision of TME rental services in the UK in the sectors served by the Parties.

³⁶² [Merger Assessment Guidelines \(CC 2 Revised\)](#).

³⁶³ [Merger Assessment Guidelines \(CC 2 Revised\)](#).

³⁶⁴ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraphs 5.8.3 and 5.8.4.

Recent history of entry and expansion

- 7.5 There are very few recent examples of entry or expansion. Interlligent, an Israel-based firm, entered the UK market in 2014 and Electro Rent, which had been present in the market, established a physical presence in the UK in 2015. We have not found evidence of any other recent entry.³⁶⁵ The Parties estimated that, since their recent entry, each of Electro Rent and Interlligent had established a UK share of supply of approximately [X]%.³⁶⁶
- 7.6 Prior to opening its UK premises in Sunbury-on-Thames, Electro Rent was already an established player in the UK market servicing its UK clients from Belgium (and, indeed, it continues to supply its UK customers from its Mechelen warehouse). We note that Electro Rent has earned a similar level of revenue in the UK for many years, before as well as after opening its UK office and [X]. We therefore do not consider the Electro Rent example to be one of meaningful recent entry or expansion into the UK market.
- 7.7 Interlligent's presence in the UK is relatively small and highly specialised.³⁶⁷ Combined with the evidence that Interlligent is not a strong alternative to the Parties (see paragraph 6.102), we consider that the Interlligent example does not represent entry on a sufficient scale to act as a significant constraint on the Parties, and so should not be considered as strong evidence that barriers to entry and expansion are low.

Barriers to entry and expansion

Views of the Parties

- 7.8 The Parties submitted that the barriers to entry and expansion were low. They told us that in order to compete in the market, new suppliers just needed to build up a pool of equipment. Equipment could be purchased from numerous OEMs, with a lead time of between two and 20 weeks. They told us the capital investment to capture a [X]% share of the UK TME rental market would be £[X] million for a new TME rental entrant and approximately £[X] million for an OEM who wished to expand into rental, as the latter would obtain TME at manufacturing cost. The advertising expense required would be minimal.³⁶⁸
- 7.9 Microlease assumed that Electro Rent services its UK operations with an inventory worth around £[X] million, and that this is the level of investment

³⁶⁵ See paragraph 7.25 for other attempted entry/expansion mentioned by third parties.

³⁶⁶ [Merger Notice](#), paragraph 174; Interlligent's own data indicates a significantly lower market share, see paragraph 6.74 for details.

³⁶⁷ [X]

³⁶⁸ [Merger Notice](#), paragraphs 171&172.

which would be required to replicate the level of constraint lost as a result of the Merger. This was on the basis that, assuming 70-75% utilisation and a return period of around three years, £[REDACTED] million of stock would drive an income stream equivalent to Electro Rent's current levels. They also stated that it is not strictly necessary to own the stock directly, as it is possible to sub-rent stock from other TME leasing companies.³⁶⁹

- 7.10 The Parties told us that it was not necessary to have stock or a physical presence in the UK to start competing in the market and it was possible to run a competitive operation with very few staff.³⁷⁰ They further told us that expansion into the UK market would be easier for an entity which was already established overseas, or was active in niche or adjacent segments in the UK (eg specialised TME suppliers, calibration companies, or general leasing firms).³⁷¹

Views of third parties

- 7.11 In this section we summarise the views expressed to us by other TME rental suppliers and OEMs on barriers to entry and expansion.³⁷² The evidence is organised into four sections:

- (a) the stock of equipment required, and any barriers to sourcing this equipment;
- (b) the level of specialist knowledge required;
- (c) other barriers to entry; and
- (d) past entry and expansion attempts, and any current plans.

Stock requirements

- 7.12 Several third parties have emphasised the crucial importance of holding a large stock of equipment in order to be a competitive rental supplier and have cited the need to build up such a stock as a particularly significant barrier to entry. One supplier told us that having a depth of stock so that customer requirements can be fulfilled is a key feature of competition between rental providers.³⁷³

³⁶⁹ [REDACTED]

³⁷⁰ [Response to phase 1 decision](#), paragraph 8.2.

³⁷¹ [REDACTED]

³⁷² For more details of the evidence from third parties, see Appendix D.

³⁷³ [REDACTED]

- 7.13 The amount of stock required depends on the range of equipment a supplier wants to make available. To compete, as the Parties do, in most TME segments at European level, stock requirements appear very significant. Other TME suppliers estimated this necessary stock as being worth at least \$50 million (£35 million).³⁷⁴
- 7.14 On the other hand, a company can be active in a niche with a relatively small inventory, but this restricts its competitiveness since some customers need a broader range of TME equipment and prefer rental suppliers that can cover all their requirements.³⁷⁵
- 7.15 The length of the repayment period on rental stock may discourage new entrants with limited capital availability.³⁷⁶ Responses from third parties indicated that it takes around three years for rental revenues to cover the initial investment in equipment.³⁷⁷ This is consistent with data in Microlease's Due Diligence report.³⁷⁸
- 7.16 For existing rental suppliers, it could be possible to grow the business and expand into new segments by growing the stock gradually using its own cashflow. However, the evidence we have received suggests that this would not happen in a timely manner. For example, one existing supplier considered that building up a competitive UK business using this approach would take more than a decade.³⁷⁹
- 7.17 Acquiring the necessary stock may also present a barrier to new entrants or smaller rental suppliers. The rental partnerships that the Parties have with some of the major equipment manufacturers, and the discounts they are able to obtain, place smaller competitors at a disadvantage unless they can agree similar terms.³⁸⁰ For example, the Parties have agreements with OEMs such as Keysight (the largest global TME OEM) which can provide the Parties with advantages such as access to discounts not available to other suppliers, and advance information on new products.³⁸¹
- 7.18 Finally, while the Parties argued that OEMs could obtain the equipment to be rented at much lower cost (see paragraph 7.8, above), OEMs face their own barrier to entering the rental market. Anritsu told us that the TME rental

³⁷⁴ [REDACTED]

³⁷⁵ [REDACTED]

³⁷⁶ [REDACTED]

³⁷⁷ [REDACTED]

³⁷⁸ In the period between [REDACTED], the ratio between monthly earnings and the cost of the assets oscillated between [REDACTED]% and [REDACTED]%, which corresponds to [REDACTED]% yearly ([REDACTED]).

³⁷⁹ [REDACTED]

³⁸⁰ [REDACTED]

³⁸¹ [REDACTED]

business has traditionally been multi-vendor and that customers expect this to be the case. As a result, it is difficult for OEMs to expand into rental, since they are unlikely to want to offer alternative products from a range of different manufacturers.³⁸² Moreover, OEMs may lack the logistics and inventory managing expertise required to run a rental business. This is one of the reasons why Keysight prefers to rely on rental partners.³⁸³

Specialist knowledge

- 7.19 Different types of TME equipment require different specialist knowledge. For example, EMC Hire told us that they have specialist expertise in EMC equipment, but not on other types of TME. The unwillingness to enter segments where it does not have specialist knowledge was one of the reasons why it was not planning to expand beyond its existing segment.³⁸⁴ Inlec told us that expertise is necessary for [REDACTED] for a customer's requirements, and for [REDACTED].³⁸⁵
- 7.20 Focusing on a niche in which a provider has specialist knowledge is also a strategy adopted to compete against larger providers like the Parties. [REDACTED], for example, told us that it [REDACTED] in such niches. It considers that [REDACTED].³⁸⁶

Other barriers

- 7.21 Another requirement is customer relationships, which take time to build up. According to TRS RenTelco, this exacerbates the substantial investment required in stock since it may take some time before a supplier has sufficient business to effectively utilise that stock, reducing the likelihood that an attractive return is made on that investment.³⁸⁷
- 7.22 The importance of sufficiency of scale, in particular in driving sufficient utilisation of assets, was also raised by an OEM.³⁸⁸ This was also described by Microlease as being one of the most important considerations driving the [REDACTED] acquisition,³⁸⁹ as well as the large estimated capital synergies available from the Transaction.³⁹⁰

³⁸² [REDACTED]

³⁸³ [REDACTED]

³⁸⁴ [REDACTED]

³⁸⁵ [REDACTED]

³⁸⁶ [REDACTED]

³⁸⁷ [REDACTED]

³⁸⁸ [REDACTED]

³⁸⁹ [REDACTED]

³⁹⁰ Estimated as '\$[REDACTED]' ([REDACTED]).

- 7.23 TME equipment needs to be calibrated periodically. There is a perception amongst some suppliers that any rental competitor must be able to provide calibration services for its equipment. This can be either done in-house, or through external suppliers. The cost of calibration services was specifically mentioned as a concern by one supplier when considering expansion in the UK.³⁹¹
- 7.24 The complexities of European markets and the presence of an entrenched competitor may be further barriers faced by TME rental companies operating in other geographies who want to expand their operations in Europe (and in the UK). [REDACTED]:
- (a) [REDACTED]
- (b) [REDACTED]³⁹²

Past entry attempts and third parties' expansion plans

- 7.25 The existence of high barriers to entry can be further corroborated if there are examples of past failed entry. Third-party rental providers stated:
- (a) [REDACTED]³⁹³
- (b) [REDACTED]³⁹⁴
- (c) First Rental told us that Hire Intelligence, an IT equipment rental supplier, tried to expand into test equipment rental, but it could not compete with Microlease and decided to exit from the sector.³⁹⁵
- 7.26 None of the rental suppliers (or other intermediaries in the TME sector) which we contacted told us that they had plans to expand beyond the product segments and geographies in which they currently operated.
- 7.27 Anritsu told us that it had conducted some initial research to see whether rental companies currently operating in other sectors might have been interested in expanding into TME, in particular those with the necessary logistics expertise. However, this research quickly ruled out these companies as potential TME rental suppliers as it did not see any way in which these

³⁹¹ [REDACTED]

³⁹² [REDACTED]

³⁹³ [REDACTED]

³⁹⁴ [REDACTED]

³⁹⁵ [REDACTED]

companies would be able to compete with Electro Rent and Microlease from a standing start.³⁹⁶

Parties' internal documents

- 7.28 Internal documents from both Microlease and Electro Rent indicate that it would be difficult for a new competitor to replicate the services provided by the Parties. We recognise that most of these documents were produced to support the sale process, and so are likely to emphasise the strength of Microlease's position. In addition, different geographies are discussed, and so some points are made with reference to situations globally or outside the UK. Nevertheless, the points they highlight are consistent with the observations made by third parties above.
- 7.29 A Microlease Management presentation about the acquisition, for example, lists seven '[REDACTED]':³⁹⁷
- (a) Leading market position;
 - (b) £[REDACTED] rental asset pool;
 - (c) >30 years industry experience;
 - (d) Long term customer relationships;
 - (e) Unique OEM relationships;
 - (f) Local presence in all core markets; and
 - (g) Fully integrated service offering.
- 7.30 Documents produced by third parties on Microlease's behalf make similar claims which imply that the TME market exhibits high entry barriers. [REDACTED] Microlease Information Memorandum of [REDACTED] states that Microlease's 'broad geographic footprint, large asset pool and strong service levels and reliability provide strong competitive advantages and [REDACTED]'.³⁹⁸
- 7.31 This memorandum further emphasises that Microlease has a 'robust business model with [REDACTED]' on a global scale. The memorandum notes that 'Microlease has over 30 years of experience, high levels of repeat business, a large and diverse asset pool (c.£ [REDACTED] at cost) and a [REDACTED] European position (c. [REDACTED])%

³⁹⁶ [REDACTED]

³⁹⁷ [REDACTED]

³⁹⁸ [REDACTED]

market share)', and argues that 'these factors are [REDACTED], and consequently there are [REDACTED] providers that can compete with Microlease on a global scale'.³⁹⁹

7.32 Similarly, a number of Electro Rent's internal documents emphasise the difficulties facing a new competitor in trying to replicate Electro Rent's services. An information memorandum produced by [REDACTED] for Electro Rent notes that 'The Company's hard-to-replicate service offering, footprint and equipment portfolio has resulted in the Company becoming a critical and trusted partner of its customers and positions Electro Rent to capitalize on numerous favorable secular and end market trends to drive future growth'.⁴⁰⁰

7.33 This memorandum also notes the importance of a large product stock in competing in the TME rental market, noting that:

the technological complexity and high cost of downtime/delays in the end markets served by Electro Rent typically require customers to procure multiple products from the Company to meet their various needs and ensure continuity. This dynamic stresses the importance of having a comprehensive service suite and equipment portfolio in order to meet customer needs. Electro Rent's proven ability to offer complete solutions is highly valued by its customers and represents a distinct competitive advantage relative to other providers of T&M equipment.⁴⁰¹

7.34 Moreover, concerning the European market, it is stated in Microlease's due diligence report that '[t]here appears to be no logical rationale for [REDACTED] to try and substantially take share in Europe given: [REDACTED]'.⁴⁰²

Assessment of likelihood, timeliness and sufficiency of entry and expansion

Introduction

7.35 In this section, we assess whether new entry or expansion would be, timely, likely and sufficient to mitigate or prevent any SLC.

Timeliness

7.36 Based on the Merger Assessment Guidelines, new entry (or expansion) must be sufficiently timely and sustained to constrain the merging parties. The


³⁹⁹ [REDACTED]

⁴⁰⁰ [REDACTED]

⁴⁰¹ [REDACTED]

⁴⁰² [REDACTED]

CMA's practice usually considers two years to be timely, although a shorter period is possible, assessed on a case-by-case basis, depending on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants.⁴⁰³ In these circumstances, we are not aware of any reason to depart from the usual approach of using two years.

- 7.37 The evidence we have seen on the level of stock required to compete successfully on a scale that would act as a constraint on the Parties varies substantially. This may be partly as a result of third parties considering that a competing supplier would likely need to serve non-UK geographies as well, in order to reach sufficient scale to be competitive. This is likely to be a result of the need to maximise utilisation from the stock itself, which, as the Parties indicated, is highly scale sensitive, and is assumed to be 70-75% by the Parties in their calculation⁴⁰⁴ ([]).⁴⁰⁵
- 7.38 A sufficiently large customer base is required to generate the high levels of utilisation required to support the investment in purchasing stock. We consider it unlikely that a new entrant would be able to develop customer relationships sufficient to generate enough business to justify investing in such a level of stock within a two-year period.
- 7.39 The situation could be different for an established international player with a good level of worldwide stock which decided to enter the UK market and make its worldwide stock available to UK customers. However, we have seen no evidence of any such player planning to enter the UK market within the next two years.

Likelihood

- 7.40 We noted that, although one supplier had told us it intended to continue to expand in the UK at a modest pace, none of the other TME rental suppliers we spoke to had any plans to enter the UK market or significantly expand their presence there. We also noted the leading position of the Parties and the existence of various barriers to entry discussed above, which suggested that there is limited incentive for operators to embark on a programme of sizeable entry or expansion.
- 7.41 Despite raising them as a possibility, the Parties did not provide details of any calibration companies or general leasing firms which may have plans to expand into the TME sector in the UK. In addition, we not aware of any

⁴⁰³ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraph 5.8.11.

⁴⁰⁴ See paragraphs 7.9 and 7.22 above.

⁴⁰⁵ []

examples of these companies entering in the past. This is also consistent with the initial research conducted by Anritsu which found that existing rental operators in other sectors were not interested in expanding into TME rental services.

- 7.42 Based on this evidence, we consider that entry or expansion on a significant scale is unlikely.

Sufficiency

- 7.43 Our review of the recent history of entry into the market indicates that there have been very few (if any) recent examples of entry.
- 7.44 We currently consider that, to be deemed sufficient to remedy or mitigate an SLC, entry (or expansion) would have to take place in all the various sectors serviced by the Parties. This could either take the form of one player, with expertise and capability in all these sectors, or possibly a number of players each with expertise and capability in a single market sector.
- 7.45 The perception (from both potential entrants and/or customers) of a need for specialist expertise⁴⁰⁶ appears to limit the ability for a supplier to expand across multiple sectors, even if it had the level of stock to do so.
- 7.46 We found no evidence of any plans for entry or expansion, nor did we consider it likely that such entry or expansion was likely to take place on a sufficient scale to mitigate or prevent an SLC.

Provisional conclusion on likelihood of entry or expansion in the UK

- 7.47 We currently consider that the barriers to entering the UK TME rental market, on a scale sufficient to deter or defeat any attempt by the merged entity to exploit any lessening of competition resulting from the Merger, are reasonably high. We therefore provisionally conclude that entry or expansion is unlikely to be timely, likely, or sufficient such as to mitigate or prevent an SLC arising in the UK.

⁴⁰⁶ See paragraph 7.19 for examples of evidence provided by third parties on specialist expertise required for rental of TME

Buyer power

- 7.48 The Parties have not submitted any arguments, and we have not seen evidence to suggest that TME rental customers have buyer power sufficient such as to mitigate or prevent an SLC arising in the UK.

Efficiencies

- 7.49 The Parties have identified a number of efficiencies from the global transaction. However, we have not been provided with any evidence that any such efficiencies will be passed on to UK customers, or would be timely, likely and sufficient such as to mitigate or prevent an SLC arising in the UK.

8. Provisional conclusions

- 8.1 As a result of our assessment we have provisionally found:
- (a) that the Merger has resulted in the creation of a relevant merger situation; and
 - (b) that the Merger has resulted, or may be expected to result, in an SLC in the market for the rental supply of TME in the UK.