

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

Final report

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The Competition and Markets Authority has excluded from this published version of the final 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 [§]. [Some numbers have been replaced by a range.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 (TEAM, known as Microlease) (the Merger) for an in-depth (phase 2) merger inquiry. The CMA is required under [section 35](#) of the Enterprise Act 2002 (the Act) 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.
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. Each company has global turnover of around £120 million.
3. Electro Rent is based in the US. In the UK, it has premises in Sunbury-on-Thames but it supplies products for sale, 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 in some cases followed up with information requests. We also received responses to an online questionnaire from an additional 55 (mostly smaller) customers. We 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.

Relevant merger situation

7. We found that a relevant merger situation had been created as a result of the Merger.

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 planning 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. Accordingly, we 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 view was 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) were likely to be close alternatives for some customers and in some circumstances. However, in our view other forms of TME provision were not sufficiently close alternatives to TME rental to be considered part of the relevant market. We considered whether the TME market should be segmented for our assessment. Given the wide variety of customer types and requirements and the lack of agreement among the Parties and third parties on what a sensible market segmentation could be, we decided that a precise market segmentation was not appropriate. We have considered the variations in customers' requirements, the extent to which each supplier within the market is able to satisfy them, and 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 substantially smaller in the UK, is its closest competitor. We recognise that, among those customers of Microlease with low levels of rental expenditure, there is a low level of awareness of Electro Rent, and that some customers are reluctant to use Electro Rent, in part due to its less established UK presence. Nevertheless, the Parties' internal documents consistently showed that Microlease and Electro Rent competed closely to supply a significant proportion of customers in the UK. This was 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 from these OEMs at discounts not available to other rental suppliers, and provide other benefits, giving the Parties a competitive advantage over other rental suppliers.
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. The evidence we received indicated that in many situations the Parties' customers would no longer have a choice between rental suppliers following the Merger.
15. We considered the impact of the Merger on different product categories, and in our view the loss of competition due to the Merger extends beyond the supply of telecommunications equipment (a segment put forward by the Parties as being the limit of any potential loss in competition).
16. 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.
17. Consequently, the Merger would lead to the removal of each Party's closest rental competitor in the UK and a substantial reduction in the alternatives available to a significant proportion of the Parties' rental customers. This was 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. The customers with no other close alternative accounted for around half of Electro Rent's and around a quarter of Microlease's UK rental revenue.
18. Since the Parties negotiate prices with customers on a case-by-case basis, they are able to price discriminate. Price discrimination makes an SLC more

likely because the 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.

19. 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' combined rental revenue.
20. 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.

Countervailing factors

21. We considered whether new entry into the UK TME rental market, or expansion of existing rental suppliers, would be timely, likely and sufficient to mitigate or prevent an SLC.
22. We considered that to be deemed sufficient to remedy or mitigate an SLC, entry (or expansion) would have to take place across the various product and customer types serviced by the Parties. This could either take the form of one player, with expertise and capability in these segments, or a number of players each with expertise and capability in a single segment.
23. Our review of the recent history of the market indicated that there have been no recent examples of significant entry.
24. Although one supplier 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, such as the need for a large stock of equipment and specialist expertise, which suggested that there was limited incentive for potential competitors to embark on a programme of sizeable entry or expansion.
25. We did not consider that such entry or expansion was likely to take place on a sufficient scale to mitigate or prevent an SLC.
26. We received no evidence that buyer power or efficiencies would offset our concerns.

Findings on SLC

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

Remedies

28. Having concluded that the merger may be expected to result in an SLC, we considered what action should be taken to remedy, mitigate or prevent the SLC or any adverse effect that may be expected to result from the SLC. The CMA generally prefers structural remedies to behavioural remedies.
29. We considered three potential structural remedies: a) divestment of the Microlease Companies, b) divestment of Electro Rent Europe, and c) divestment of Electro Rent UK. We assessed the likely effectiveness of each remedy, and the risks to which they may be subject which might limit their effectiveness in addressing the SLC, in particular through composition risk, purchaser risk and asset risk.
30. We determined that each of these remedy options could be an effective and proportionate remedy to the SLC that we have found, although subject to different levels of risk of the remedy being ineffective. We found that the divestment of Electro Rent UK to a suitable purchaser and with transitional supporting provisions would be an effective and proportionate remedy and the least onerous of the options.
31. We did not consider that any stand-alone behavioural remedy would be effective in remedying the SLC.
32. We therefore require the Parties to divest Electro Rent UK to a suitable purchaser that fulfils all the necessary requirements we have specified and includes the transitional supporting provisions set out in our report. We have defined strict criteria for the purchaser to be considered suitable, in order for this remedy to be effective.
33. The transitional supporting provisions will ensure, so far as required by the purchaser, that the divested enterprise will continue to receive an equivalent level of support to that it currently receives from the Electro Rent group, and so the duration of these transitional arrangements is dependent on the needs of the purchaser.
34. There will be a transparent and open sale process, which the CMA will oversee. The final divestiture proposed by the Parties, including the identity of the purchaser, will be subject to approval by the CMA.

35. We expect to implement the structural remedy by seeking suitable undertakings from the Parties. We will issue an Order if we are unable to obtain suitable undertakings from the Parties.

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 (TEAM, known as Microlease)¹ (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. The original statutory deadline to publish our final report was 4 April 2018. Following the decision by the Group to extend the reference period, under [section 39\(3\)](#) of the Act, we were required to publish our final report by 30 May 2018.

1.3 This document, together with its appendices, constitutes our 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 had 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.

¹ TEAM (Companies House registration number 05760974) is a UK-based holding company that owns all Microlease companies located outside of the US.

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.

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. 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 telecommunications market use TME routinely to test and evaluate the signals generated by cellular network towers in order to

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

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 satellites to safeguard against development setbacks or operational malfunctions.⁶

2.4 TME includes:⁷

- **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

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

⁷ [X]

analysers can be used to determine whether or not a wireless transmitter is working according to defined standards.

- 2.5 The global market for TME is estimated to be \$12 billion annually, of which equipment services (including rental) represent around \$600 million.⁸

Sectors using TME

- 2.6 There are three main categories of end user (see paragraph 2.55 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 TME 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

⁸ Equipment services include rental, leasing and asset management; [X].

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.

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 the Middle East and Africa in 2012. Electro Rent Europe supplied customers in the UK from its premises in Belgium before deciding to establish a physical presence in the UK. In 2015, it opened a warehouse at Sunbury-on-Thames and employed [X] staff there. It initially saw an opportunity to establish a presence following the merger between Microlease and Livingston Group (Livingston). It conducted a marketing campaign directed at customers deemed to be affected by the merger and, as set out in Appendix C, took other steps to grow awareness of its presence in the UK.
- 2.10 In August 2016, Electro Rent was acquired by Platinum Equity, a global investment firm headquartered in Beverly Hills in the US, following which Electro Rent was delisted. The expansion at Sunbury-on-Thames was paused at around this time.

Figure 1: Key milestones up to 2015 – Electro Rent



Source: Electro Rent ([X]).

Financial performance

- 2.11 For the financial year 2016, Electro Rent reported global turnover of \$175.3 million (£117.7 million) and operating profit of \$8.1 million (£5.4 million). The US is the primary market for Electro Rent, which

contributed \$142 million (81%) of its global revenues. Electro Rent's UK revenues were relatively small at \$[REDACTED] million (£[REDACTED] million), about [0-5%] [REDACTED]% of global revenues – see Figure 2.¹²

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

[REDACTED]

Source: Electro Rent.

2.12 Electro Rent has two business divisions:¹³

- (a) Test and Measurement Equipment: rental, lease and sale of new and used electronic TME; and
- (b) Data Products: sale of personal computers purchased from manufacturers.

2.13 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

2.14 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

2.15 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

¹² [Merger Notice](#), page 1 and paragraph 5.

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

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 maintained a very tight control over the European operation out of the US operations, including [REDACTED].

¹⁸ [REDACTED]

- 2.16 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

- 2.17 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 implemented.²³ Consequently, [REDACTED], and all customers continue to be supplied directly from its hub in Belgium.²⁴
- 2.18 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
- 2.19 Appendix C provides a summary of the actions taken by Electro Rent to increase its customer base in the UK following its establishment of the UK branch.
- 2.20 An Electro Rent management report dated 23 December 2015 noted that '[REDACTED]'.²⁶
- 2.21 Electro Rent's entire worldwide TME inventory, which includes approximately [REDACTED] product lines, is available for rent in the UK. The total capital cost of these

¹⁹ PRP agreements are not exclusive, and indicate an endorsement of the rental supplier by the OEM 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 had not progressed due to the purchase of Electro Rent by Platinum, the Merger, and the CMA investigation ([REDACTED]).

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

²⁵ [REDACTED]

²⁶ [REDACTED]

products is approximately £[X] million.²⁷ Electro Rent has [X] TME instruments on rent in the UK and [X] TME instruments available for rent in Europe (including the UK).²⁸ Electro Rent has [X] rental customers in the UK, of which the top 10 accounted for [50-60%] [X]% of the total sales revenue.^{29,30}

- 2.22 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 [X].³¹

Figure 3: Electro Rent UK turnover trend*

[X]

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

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

- 2.23 Approximately [80-90%] [X]% (£[X] million) of Electro Rent's 2016 UK turnover was generated from the rental and leasing of TME. The balance [10-20%] [X]% (£[X] million) 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)

Segment	Turnover (£m)	Share (%)
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).

- 2.24 Telecommunications was the largest industry sector for Electro Rent, contributing [60-70%] [X]% of its 2016 UK revenues, followed by Infotech and A&D at [20-30%] [X]% and [10-20%] [X]% respectively. Electro Rent's revenues by sector are set out in Table 2 below.

²⁷ 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.

³² Merger Notice, page 3.

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

	£m		
Sector	2014	2015	2016
Aerospace & Defence	[X]	[X]	[X]
Telecommunications	[X]	[X]	[X]
Infotech	[X]	[X]	[X]
Total	[X]	[X]	[X]

Source: Electro Rent ([X]).

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

2.26 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 [40-50%] [X]% of revenues in 2016);
- (b) RF and Microwave in England and Wales (approximately [30-40%] [X]% of revenues in 2016); and
- (c) all sectors in the North of England (approximately [10-20%] [X]% of revenues in 2016).

Microlease

Overview

2.27 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

2.28 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

³³ [Merger Notice](#), paragraph 7. (Headcount at Electro Rent's UK organisation reduced from [X] to [X] individuals since the Merger was completed.)

³⁴ [Merger Notice](#), paragraph 8.

³⁵ [Merger Notice](#), page 1.

³⁶ See [Microlease website](#).

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

2.29 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.

2.30 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 helps drive business across other segments.

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

Figure 4: Microlease global operations

[✂]

Source: Microlease ([✂]).

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

Figure 5: Microlease global strategy

[✂]

Source: Microlease ([✂]).

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 ([✂]).

- 2.33 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

[X]

Source: Microlease ([X]).

- 2.34 Microlease has a diversified customer base with its top ten customers representing around [10-20%] [X]% of total billings.⁴¹

History and key milestones

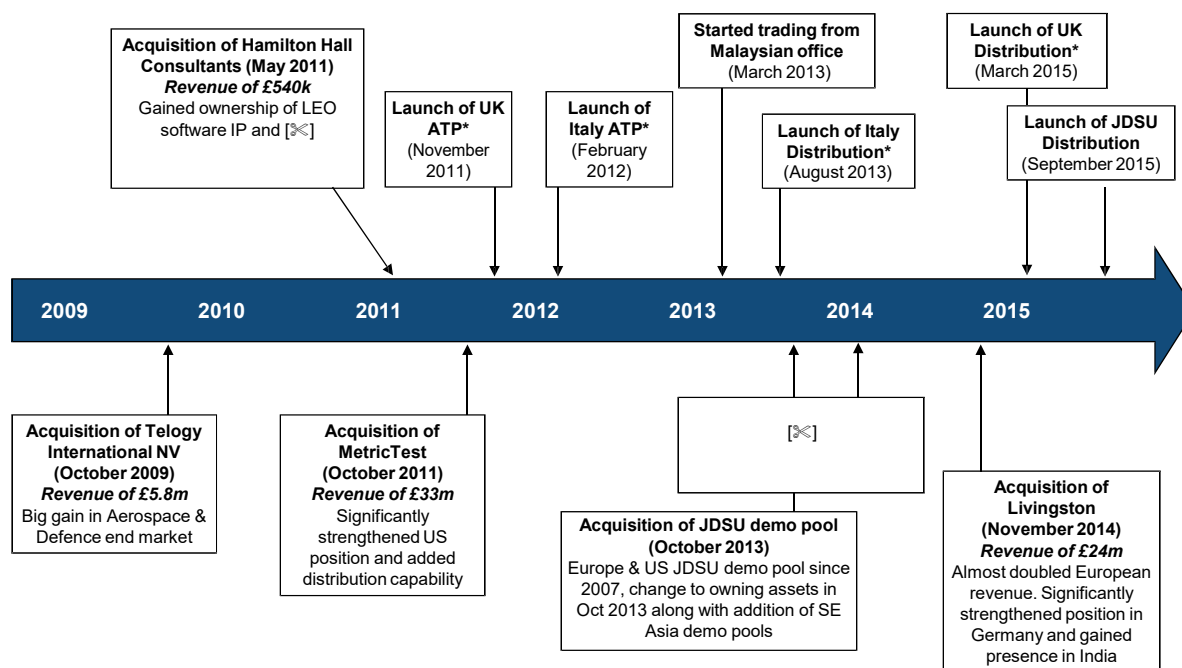
- 2.35 Microlease was founded in 1979, and focused on providing TME on a rental basis to the telecommunications sector. The business was originally established in the UK, but over time expanded into Europe, most notably France, Italy and Spain.⁴²
- 2.36 In 2006, Lloyds Development Capital (LDC) backed 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 Telecommunications, 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 the business both through mergers and acquisitions and organic investments.⁴³
- 2.37 Figure 7 provides a summary of Microlease's key activities and acquisitions during 2009-2015.

⁴¹ [X]

⁴² [X]

⁴³ [X]

Figure 7: Microlease's key activities and acquisitions



Source: Microlease ([X]).

2.38 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

2.39 Table 3 sets out financial performance metrics for Microlease between 2012/13 and 2015/16. This shows that while revenues, gross profits and gross margins have increased over the period, operating profit has remained relatively stable while operating margins have decreased.

⁴⁴ [X]

⁴⁵ [X]

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

⁴⁷ [X]

Table 3: Microlease summary financial information (Group)

<i>Group consolidated £'000</i>	<i>2012/13</i>	<i>2013/14</i>	<i>2014/15</i>	<i>2015/16**</i>
Turnover	84,339	83,213	88,402	116,492
Gross profit	17,704	17,493	22,299	38,870
Gross margin	21.0%	21.0%	25.2%	33.4%
Operating profit	4,461	3,754	65*	4,520
Operating margin	5.3%	4.5%	0.0%	3.9%

Source: Microlease.

* Includes 'exceptional' restructuring charges following the acquisition of Livingston.

** 2015/16 first full year of Livingston acquisition.

2.40 In 2016, Microlease reported global turnover of £116.5 million,^{48,49} and operating profit of £4.5 million.

2.41 The UK and the rest of the European Economic Area accounted for £[REDACTED] million ([10-20%] [REDACTED]%) and £[REDACTED] million ([40-50%] [REDACTED]%) of Microlease's 2016 global revenues respectively, with rest of the world contributing the balance of £[REDACTED] million ([30-40%] [REDACTED]%).⁵⁰

2.42 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

2.43 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.

2.44 Microlease's sales activities in the UK are organised around the following teams:⁵²

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 [REDACTED]

- (a) UK Rental (non-exclusive rental contracts with UK customers): [REDACTED] external sales staff organised regionally plus [REDACTED] internal sales staff. This 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.

2.45 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

2.46 Figure 8 shows that Microlease's UK turnover has increased during the period 2010 to 2016.⁵⁵

Figure 8: Microlease UK turnover (2010-2016)

[REDACTED]

Source: Microlease ([REDACTED]).

* Revenue from Livingston accounted for in the last four months of FY to February 2015.

** FY to February 2016 first full year of Livingston acquisition.

2.47 TME rental is Microlease's largest business segment, which accounted for [50-60%] [REDACTED]% of its 2016 turnover – see Table 4.

⁵³ [REDACTED]

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

⁵⁵ In interpreting Microlease's turnover in Figure 8 and Tables 4 to 6, it should be noted that revenue from Livingston has been included for the last four months of FY to February 2015 and for all the subsequent periods.

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	[X]	[X]	[X]
Leasing	[X]	[X]	[X]
Sale – New equipment	[X]	[X]	[X]
Sale – Used equipment	[X]	[X]	[X]
Total	[X]	[X]	[X]

Source: Microlease ([X]).

* Revenue from Livingston accounted for in the last four months of FY to February 2015.

** FY to February 2016 first full year of Livingston acquisition.

2.48 Microlease has [X] rental customers in the UK.⁵⁶ During 2016, Microlease made sales to [X] customers in the UK, of which the top 10 accounted for [40-50%] [X]% of the total revenue from sales.⁵⁷

2.49 Telecommunications was the largest single industry sector for Microlease, contributing [20-30%] [X]% of its 2016 revenues, with A&D contributing [0-10%] [X]%. Other and Uncategorised contributed the balance, with [30-40%] [X]% and [20-30%] [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]
Telecommunications	[X]	[X]	[X]
Other	[X]	[X]	[X]
Uncategorised	[X]	[X]	[X]
Total	[X]	[X]	[X]

Source: Microlease ([X]).

* Revenue from Livingston accounted for in the last four months of FY to February 2015.

** FY to February 2016 first full year of Livingston acquisition.

2.50 Telecommunications contributed [40-50%] [X]% of Microlease's 2016 rental revenues – see Table 6.

⁵⁶ Merger Notice, paragraph 134.

⁵⁷ CMA analysis of customer sales data provided by the Parties for 2016 (calendar year).

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]
Telecommunications	[X]	[X]	[X]
Other	[X]	[X]	[X]
Uncategorised	[X]	[X]	[X]
Total	[X]	[X]	[X]

Source: Microlease ([X]).

* Revenue from Livingston accounted for in the last four months of FY to February 2015.

** FY to February 2016 first full year of Livingston acquisition.

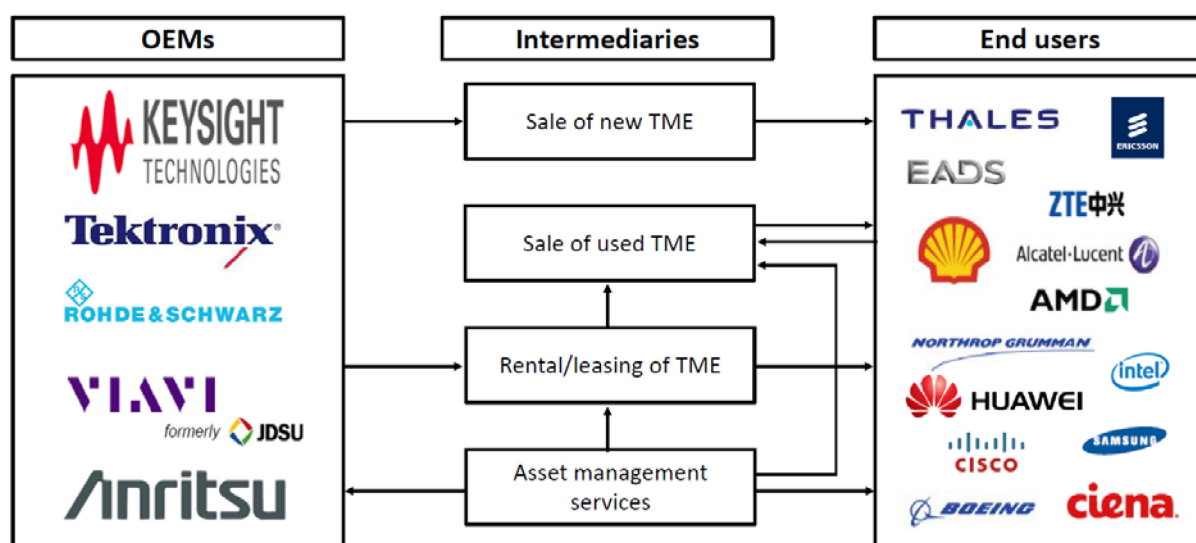
The industry in which the Parties operate

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

The supply chain

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

Figure 9: TME supply chain



Source: Merger Notice, Figure 2.

2.53 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 60% of global TME supply, and are also the top five TME OEMs in the UK.⁵⁸

2.54 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.⁵⁹

2.55 TME is used by all electronics related industry sectors, but the Parties submitted there are three main categories of end users:⁶⁰

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

2.56 Globally, the largest end-user sector is A&D with a volume share of approximately 44%, with telecommunications and Infotech accounting for 34% and 22%, respectively. The relative size of the end-user sectors is similar in the UK TME market.⁶¹

Forms of TME provision

2.57 A customer requiring TME can obtain it in a number of different ways. The main alternatives are TME purchase (either new or used), lease (either

⁵⁸ [Merger Notice](#), page 2.

⁵⁹ [Merger Notice](#), pages 2-3.

⁶⁰ [Merger Notice](#), page 3.

⁶¹ [Merger Notice](#), page 3.

operating or finance) or rental. Table 7 summarises the differences between these forms of TME provision.⁶²

Table 7: Main TME provision options

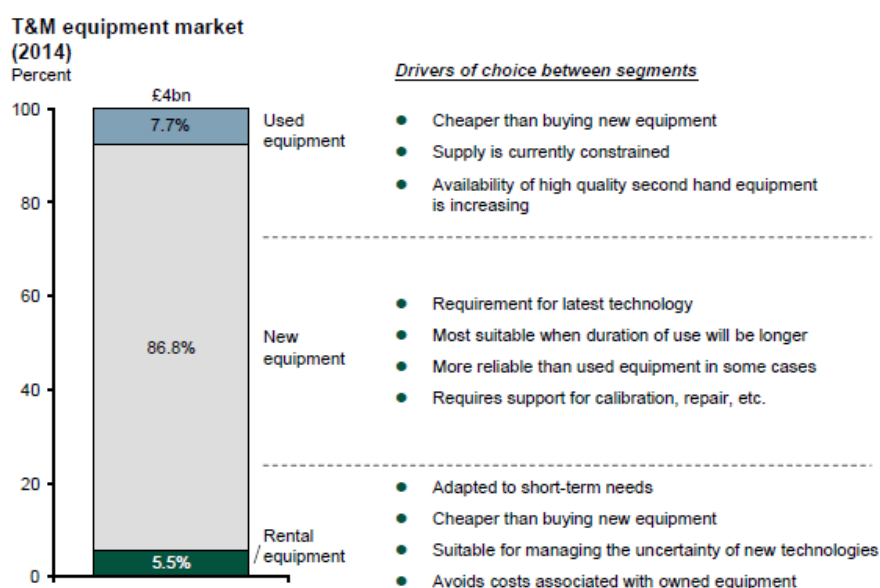
<i>TME provision</i>	<i>Flexible/Fixed term</i>	<i>Minimum term</i>	<i>Ownership transfer</i>	<i>Finance</i>
Rental	Flexible	1 week	×	×
Operating lease	Fixed term	2 years	×	✓
Finance lease	Fixed term	2 years	✓	✓
Purchase	N/A	N/A	✓	N/A

Source: The Parties and CMA analysis.

2.58 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.

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 ([§§]).

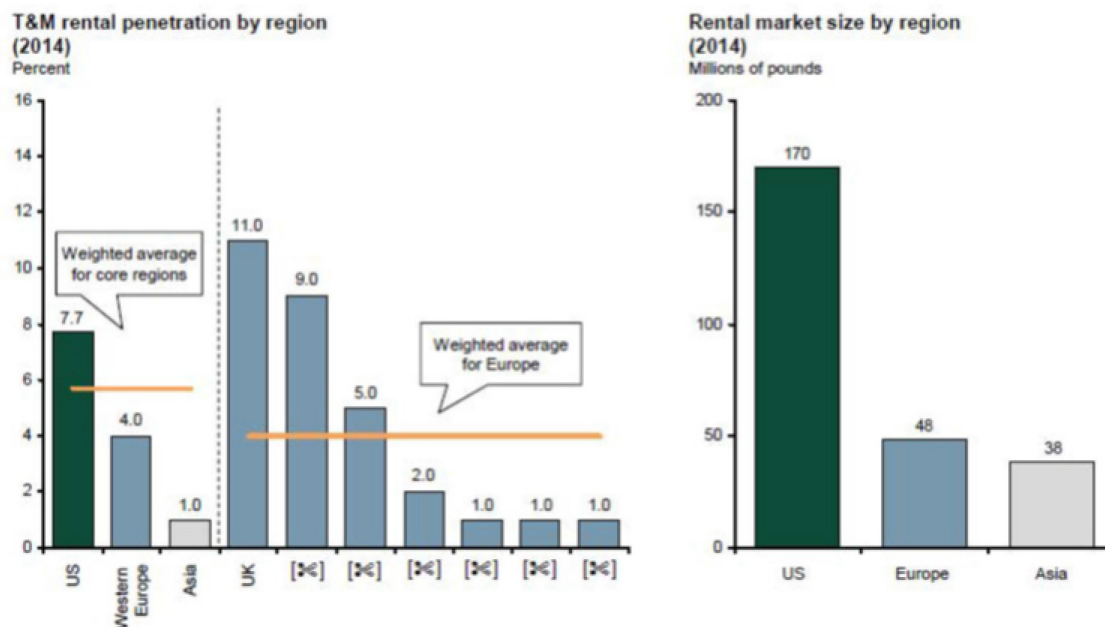
2.59 Figure 11 shows how the TME rental penetration varies by region. From this it can be seen that Europe, at 4%, is below average, but within Europe there is

⁶² In addition to these main forms of TME provision, the Parties also submitted that, rather than renting, customers could 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)

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]).

2.60 The Parties told us that the trend toward renting and/or leasing TME versus buying TME has increased in recent years.⁶³

2.61 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

2.62 The Parties told us that the underlying trends in end markets worldwide that will support future growth opportunities include:⁶⁴

- modernisation of legacy defence systems and platforms and renewed expansion of government defence spending;

⁶³ [REDACTED]

⁶⁴ [REDACTED]

- continued development, launch and production of new commercial aerospace platforms;
- growth in the rapidly expanding commercial aerospace industry;
- rapid increases in demand for mobile data services;
- new technologies driving telecommunication 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).

2.63 Further, a [REDACTED] Microlease Vendor Due Diligence report from 2015 provided to us by the Parties states that:⁶⁵

Rental penetration has been increasing gradually due to capex constraints amongst telecommunications 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.

2.64 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]).

⁶⁵ [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 by its owners, LDC,⁶⁶ in late 2015 – [REDACTED].⁶⁷ Microlease ran a full sale side process with the preferred bidder being [REDACTED].⁶⁸ 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.⁶⁹
- 3.3 Platinum Equity Advisors, LLC (Platinum) had also expressed an interest in acquiring Microlease but [REDACTED].⁷⁰ In July 2016 Platinum was approached to re-engage in the sale process.
- 3.4 In the meantime, Platinum had been negotiating to purchase Electro Rent Corporation. The purchase was completed on 10 August 2016 for \$382 million, at which point Electro Rent Corporation delisted from Nasdaq.
- 3.5 In terms of the Microlease transaction, Platinum met with LDC on [REDACTED]. The Sale and Purchase Agreement (SPA) was signed on 15 November 2016 with completion on 31 January 2017.⁷¹
- 3.6 Electro Rent Corporation acquired the whole of the issued share capital of Microlease (ie TEAM) and its US subsidiary, Microlease, Inc.
- 3.7 The transaction was [REDACTED]:
- (a) [REDACTED]
- (b) [REDACTED]
- 3.8 [REDACTED]
- 3.9 The transaction value was £[REDACTED] million split⁷² in the SPA:

⁶⁶ Lloyds Development Capital and Microlease management.

⁶⁷ [REDACTED]

⁶⁸ [REDACTED]

⁶⁹ [REDACTED]

⁷⁰ [REDACTED]

⁷¹ Period between signing and completion – Platinum putting together debt finance for the transaction.

⁷² [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 was 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 could supply TME products and services to customers on an international basis and compete against the OEMs that were increasingly active in the rental/leasing of TME; and
- the substantial synergies resulting from the Transaction, which were estimated to be approximately £[REDACTED] million (around \$[REDACTED] million).⁷³

3.12 The Parties submitted that internal documents supported the fact that there is no UK element to the deal rationale, given the negligible size of Electro Rent’s UK business.⁷⁴

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.

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

⁷⁴ [Response to phase 1 decision](#), paragraph 3.1.

- 3.15 Section 24 of the Act provides that a RMS has been created if two or more enterprises have ceased to be distinct within the statutory period for reference⁷⁵ and either the turnover test or the share of supply test is satisfied.⁷⁶
- 3.16 We found that 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.⁷⁷
- 3.17 As a result of the Merger, Electro Rent and Microlease have been brought under common ownership and control and thus have 'ceased to be distinct' for the purposes of the Act.⁷⁸
- 3.18 The Merger completed on 31 January 2017 and the phase 1 investigation commenced on the next day. On 14 June 2017, following extensions, Electro Rent was given the opportunity to offer undertakings in lieu (UIL) of a reference to phase 2.⁷⁹ Electro Rent notified us that it would be unable to offer UIL by the due date. Consequently, the Merger was referred for a phase 2 investigation on 19 October 2017.
- 3.19 Accordingly, we conclude that Electro Rent and Microlease have ceased to be distinct within the statutory time frame.
- 3.20 The value of turnover of the Parties in the UK did not exceed £70 million, so the turnover test in the Act is not met. The share of supply test is met if a merger creates or enhances a share of supply of goods or services of any description in the UK of at least 25%. The Parties submitted that the Merger resulted in an increment of [0-5%] [X]% and their combined share of supply is approximately [40-50%] [X]% (by total revenues). 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.

⁷⁵ [Section 23](#) and [section 24](#) of the Act.

⁷⁶ [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 that are supplied or acquired in the UK or a substantial part of the UK are supplied by or to one and the same person.

⁷⁷ [Section 129\(1\)](#) and [\(3\)](#) of the Act.

⁷⁸ [Section 26](#) of the Act.

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

Conclusion on the relevant merger situation

- 3.21 We therefore 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’.⁸⁰
- 4.2 The counterfactual is an analytical tool used to help answer the question of whether a merger has or may be expected to result in an SLC.⁸¹ 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.⁸² The CMA’s approach to the counterfactual is set out in our Merger Assessment Guidelines.⁸³
- 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.⁸⁴

Our assessment

- 4.5 As explained in Chapter 2, Electro Rent was planning to develop its presence in the UK market by establishing a physical presence through opening its Sunbury-on-Thames branch in 2015. This would have allowed it to supplement its supply of the UK market from its European headquarters in Mechelen in Belgium, which is used to supply its entire European business. However, following the change of ownership of Electro Rent in 2016 prior to the merger with Microlease, Electro Rent’s plans for the UK were paused.⁸⁵

⁸⁰ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraph 4.3.1.

⁸¹ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraph 4.3.1.

⁸² [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraphs 4.3.1 and 4.3.6.

⁸³ [Merger Assessment Guidelines \(CC 2 Revised\)](#), Section 4.3.

⁸⁴ [Merger Notice](#), paragraph 87.

⁸⁵ 

- 4.6 Based on the evidence of Electro Rent's strategy for the UK, in our view, it was likely that, absent the Merger, Electro Rent would have developed its presence in the UK. The presence of Electro Rent in the UK would potentially have increased competitive pressures in the supply of TME for rental in the UK. However, Electro Rent's UK expansion was paused shortly after it had started, and it had not yet established full operations from its UK premises (it was and continues to supply all UK customers directly from its Belgian hub, and did not increase its sales staff to the level planned), so the extent to which it would have grown, and the likely consequent impact on competitive conditions is speculative and uncertain.

Our view on the counterfactual

- 4.7 While there is evidence that Electro Rent was planning to grow its presence in the UK, the extent of this expansion, and the consequent effect on competitive conditions, is uncertain. Accordingly, we 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.⁸⁶

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 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, segmentations within the market, or other ways in which some constraints are more important than others.⁸⁷
- 5.2 As described in Chapter 2, the Parties' activities primarily overlap in the rental supply of TME. In this chapter we examine two dimensions of market

⁸⁶ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraph 4.3.2.

⁸⁷ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraphs 5.2.1 and 5.2.2.

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 suppliers 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), and analysis of rental yield (Appendix H).
- 5.4 As we explain below, we concluded that the relevant market is the rental supply of TME in the UK.
- 5.5 We found that other forms of TME provision – purchase, leasing, internal supply,⁸⁸ demonstration equipment⁸⁹ and professional services⁹⁰ – are not part of the relevant market. We found that these forms of TME provision are not sufficiently close alternatives to TME rental for a significant proportion of rental customers. This is because the evidence we received from customers indicated that, in most circumstances, the other forms of TME provision are either not available or are not suitable.⁹¹ This view is also supported by the evidence in the Parties' internal documents, in which references to competition between TME purchase and rental were limited. These documents did 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 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 argued that the evidence submitted showed 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 relevant geographic market is the UK. The evidence indicated that market conditions varied 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

⁸⁸ The use of equipment already owned by a customer.

⁸⁹ A manufacturer's demonstration equipment is essentially free rental equipment supplied by the OEM.

⁹⁰ Professional services are services provided by OEMs which can involve the provision, for a limited period of time, of TME hardware and software, alongside personnel to support their use.

⁹¹ For the same reasons, we found that the provision of time-based software licences was not part of the relevant market.

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 relevant market definition was the supply of TME, regardless of the form of provision (eg rental, leasing or purchase of new or used equipment⁹²), and that the narrowest plausible candidate product market was the rental of TME.⁹³
- 5.9 The Parties submitted that this was the case because there was:
- (a) A high degree of demand-side substitutability between alternative forms of TME provision. In particular, the Parties submitted that customers were primarily concerned with acquiring the correct item of equipment in the most cost-effective manner and were less interested in whether that equipment was acquired through rental, purchase or leasing.⁹⁴
 - (b) A high degree of supply-side substitutability, with many intermediaries who offered TME rental also offering other forms of TME provision.⁹⁵
- 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 made up the majority of customer equipment requirements and accounted for a significantly higher value of revenue than TME rental.⁹⁶
 - (b) Customers used a combination of different forms of TME provision to satisfy their requirements.⁹⁷

⁹² In what follows we do not distinguish between the purchase of new equipment and of used equipment and consider both as 'purchase'.

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

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

⁹⁵ [Response to phase 1 decision](#), paragraph 4.4(b).

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

⁹⁷ [Response to phase 1 decision](#), paragraph 7.1.

- (c) The analysis of Microlease's lost opportunities showed that Microlease lost the largest share of its rentals to OEMs and internal supply⁹⁸ (ie the use of equipment already owned by a customer).⁹⁹
- (d) The Parties' internal documents (in particular Microlease's deal management guides¹⁰⁰ and monthly sales reports) provided evidence of a constraint from non-rental alternatives.¹⁰¹
- (e) The majority of the Parties' rentals were long-term and were derived from frequent users, for whom purchase was a natural alternative to TME rental.¹⁰²
- (f) Microlease's strategy was to [REDACTED] and the only way in which a significant increase in revenue can be generated was by encouraging customers to switch away from TME purchase. Consequently, Microlease must continue to be competitive against these alternatives.¹⁰³
- (g) Microlease's rental yields had declined over time and this was due to competition from TME purchase.¹⁰⁴
- (h) The ease with which TME functionality can be upgraded by using software fundamentally changed the competitive dynamic between rental and purchase, making purchase a more attractive option.¹⁰⁵
- (i) Internal supply was also a close alternative to TME rental;¹⁰⁶ moreover, the availability of software licences to enhance the functionality of equipment already owned extended the benefits of internal supply as an alternative to rental.¹⁰⁷

5.11 The Parties also submitted that the relevant market – even if restricted to the rental supply of TME – should include the supply by OEMs of time-based software licences¹⁰⁸ and of professional services.¹⁰⁹ Time-based software licences made certain measurement functionalities available to end-customers on a temporary basis, while 'professional services' could involve

⁹⁸ Also referred to as 'self-supply'.

⁹⁹ [Response to phase 1 decision](#), paragraph 7.1.

¹⁰⁰ Microlease used deal management guides for enquiries with a value in excess of €[REDACTED] and submitted [REDACTED] such guides relating to the UK covering the period since July 2016 ([Merger Notice](#), paragraph 116).

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

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

¹⁰³ [Response to phase 1 decision](#), paragraph 7.1.

¹⁰⁴ [REDACTED]

¹⁰⁵ [REDACTED]

¹⁰⁶ [REDACTED]

¹⁰⁷ [REDACTED]

¹⁰⁸ [Response to provisional findings](#), paragraph 12.

¹⁰⁹ [REDACTED]

the provision of both hardware and software on time-based licences, alongside personnel to support their use. In support, the Parties submitted that:

- (a) The increasing analytical power of TME enabled complex capabilities to be delivered through software, while previously customers would have needed to rent specific pieces of equipment.¹¹⁰
- (b) Professional services provided by OEMs gave customers access to hardware and software for a limited time in a way equivalent to rental.¹¹¹

5.12 Finally, the Parties noted that TME designed for different sectors was not substitutable from a demand-side perspective, eg TME designed for use in telecommunications was not a substitute for TME designed for the aerospace sector. However, the Parties submitted that the important competitive dynamics that were relevant to the TME sector applied across all end-user segments.¹¹²

Evidence from the Parties' internal documents

5.13 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

5.14 The Parties' internal documents described a number of advantages of rental over purchase, including:

- (a) The ability 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 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.

¹¹⁰ [REDACTED]

¹¹¹ [REDACTED]

¹¹² [Response to phase 1 decision](#), paragraph 4.3.

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

Of these factors, the flexibility provided by renting was particularly prominent.¹¹³

5.15 In particular, an Electro Rent confidential information memorandum dated 9 January 2017 stated 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].¹¹⁴

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

5.16 The Parties' internal documents made a number of references to competition between TME rental and TME purchase. For example, deal management guides, which summarised the relevant considerations for enquiries with a value of €[REDACTED] or more and could be used by sales teams to obtain additional support for large rental opportunities, described Microlease's understanding of the options, other than rental from Microlease, being considered by a customer.¹¹⁵ [REDACTED] of the [REDACTED] deal management guides submitted made it clear that Microlease believed that a customer may be considering purchasing rather than renting for at least some of their requirements.

5.17 Similarly, Microlease's FY2016-17 European Business Plan stated 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'.¹¹⁶

5.18 An email from Microlease's [REDACTED] dated 20 February 2016 stated that '[REDACTED]'. The reason given for this view was that '[REDACTED]'.¹¹⁷

¹¹³ For example, flexibility to respond to short term needs was referred to in the Parties: [REDACTED].

¹¹⁴ [REDACTED]

¹¹⁵ [Merger Notice](#), paragraph 116.

¹¹⁶ [REDACTED]

¹¹⁷ [REDACTED]

- 5.19 However, as we discuss further in Chapter 6, overall, the main references to competitors in the Parties' internal documents were to other rental suppliers. Additionally, several documents suggested a limit to the extent to which purchase is an alternative to TME rental.
- 5.20 For example, there were relatively few occasions in Microlease's monthly sales reports in which purchase was discussed as a threat to Microlease's rental business. There were 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. By contrast, there were over [REDACTED] references to Electro Rent in these reports.
- 5.21 Each monthly sales report between March and October 2015 dedicated a short section to discussing attempts to convert buyers into renters.¹¹⁸ While most of the points discussed in these sections were in relation to Microlease's marketing efforts around this strategy, there were a [REDACTED] number of successes recorded in these reports, such as: '[REDACTED]'.¹¹⁹
- 5.22 Additionally, when discussing Microlease's EasyRent programme, which allowed customers to convert a rental into a purchase after a certain period of time, Microlease's CEO stated in an email that EasyRent '[REDACTED]'.¹²⁰ Similarly, the Parties' internal documents referred 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'.¹²¹
- 5.23 We found that the Parties' internal documents did not refer to leasing, internal supply, time-based software licences, professional services or the use of demonstration equipment as meaningful competitive alternatives to TME rental.^{122, 123, 124, 125}

¹¹⁸ The format of the sales reports changed in November 2015, and they were no longer structured around Microlease's objectives. As such, the dedicated sub-section no longer appeared, although the reports continued to discuss converting buyers into renters after this time.

¹¹⁹ [REDACTED]

¹²⁰ [REDACTED]

¹²¹ [REDACTED]

¹²² One of the [REDACTED] Microlease deal management guides did refer to [REDACTED].

¹²³ The only document submitted to the CMA that discussed competition with time-based software licences was the Microlease Vendor Due Diligence Report ([REDACTED]), which concluded that 'the trend [towards greater use of software] did not represent a significant threat and could represent an opportunity for Microlease'.

¹²⁴ Discussion of professional services appeared only once in the Parties' internal documents, in the Terms & Conditions of a quotation provided by Microlease to Siemens for some Ixia Equipment ([REDACTED]).

¹²⁵ 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 (often to cover periods where equipment owned by a customer was repaired by the OEM) and did not evidence a meaningful competitive interaction between TME rental and demonstration equipment.

Evidence regarding rental yield

5.24 The Parties provided data showing the evolution of Microlease's rental yields¹²⁶ between March 2012 and October 2017 and of Livingston's rental yields between January 2014 and October 2017. The Parties submitted that this data indicated that Microlease's yields had been [REDACTED] over time as a result of competitive pressures from, amongst other things, OEM pricing on TME purchase.¹²⁷ This data is analysed in Appendix H and as discussed there:

- (a) Livingston's rental yields were [REDACTED] once a transitory period was accounted for between September 2015 and March 2016, when the Microlease and Livingston systems were combined; and
- (b) Microlease's rental yields [REDACTED] from March 2012 to mid-2014, followed by [REDACTED] from mid- to late-2014, since when Microlease's rental yield had been [REDACTED].

5.25 As explained in Appendix H, 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 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 discussed the evolution of rental yields in factual terms rather than the causes of any fluctuations in rental yields. In contrast, the Microlease Vendor Due Diligence Report prepared by [REDACTED], which considered the evolution of Microlease's rental yields in Europe over the period February 2012 to June 2015, stated that:¹²⁸

[REDACTED]

5.26 The report went on to state that rental yields in Europe were expected to stabilise '[REDACTED]'.¹²⁹ Statements elsewhere in the report suggested that this was a reference to a reduction in competition following the acquisition of Livingston by Microlease. For example, the report stated that '[REDACTED]'.^{130, 131}

¹²⁶ Rental yield refers to gross rental yield, which is the rental revenue earned in a given month on assets that are currently on rent, relative to the original acquisition cost of those assets.

¹²⁷ [REDACTED]

¹²⁸ [REDACTED]

¹²⁹ [REDACTED]

¹³⁰ [REDACTED]

¹³¹ It appeared that from February 2014 Microlease specifically [REDACTED].

Evidence regarding rental duration

5.27 The Parties made a number of submissions regarding rental duration, and rental duration was referred to in a number of internal documents. The Parties submitted that a significant proportion of their rental revenue was generated from long-term rentals and that this supported their argument that other forms of TME provision, specifically purchase, were close alternatives to TME rental.¹³² Given that the submission¹³³ regarding Microlease's rental duration was the most detailed of these submissions, and since the evidence was broadly consistent across the Parties' various submissions, we focused on the results of the analysis of Microlease's rental duration.

5.28 Microlease provided data showing the proportion of UK rental revenue derived from contracts of different lengths over the period November 2015 to October 2017.¹³⁴ The evidence we received is analysed in Appendix H, and shows that:

- (a) The average actual rental duration was in excess of [X] months.
- (b) 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 each accounted for around [30-40%] [X] of Microlease's rental income.
- (c) Contracts were often extended significantly beyond their initial duration, with the average contract lasting for [X] times as long as its initial duration.
- (d) Since contracts were so regularly extended, a significantly smaller proportion of the Parties' revenue was derived from longer term contracts when initially requested rather than when actual duration was considered. For example, the average initially requested duration was [X] months;¹³⁵ [40-50%] [X]% and [50-60%] [X]% of Microlease's revenue were derived from contracts with an initial duration of 6 months or less and 12 months or less respectively. Only [10-20%] [X]% of Microlease's rental revenue was derived from contracts with an initial duration of more than 36 months.

¹³² [Response to phase 1 decision](#), paragraph 7.1.

¹³³ [X]

¹³⁴ [X]

¹³⁵ We note that the results of this analysis were different from those in the Microlease Vendor Due Diligence Report reported in paragraph 5.25.

5.29 Microlease uses [REDACTED] when setting rental prices, so that [REDACTED] prices tend to be offered if [REDACTED] are expected. The [REDACTED] is informed by the customer's previous rental history.¹³⁶

Evidence from Microlease's lost opportunities analysis

5.30 Microlease's lost opportunities data provided 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 faced competition from other forms of TME provision. The detailed analysis of this data is presented in Appendix F and showed that (for opportunities where the relevant information is recorded):

- (a) Most opportunities (over [REDACTED]% by number) were lost to options other than rental (either purchase – [REDACTED]% of opportunities by value and [REDACTED]% by number – or internal supply – [REDACTED]% of opportunities by value and [REDACTED]% by number).
- (b) Rental from a different supplier was the customer's choice in approximately [REDACTED] of lost opportunities.
- (c) Purchase of the equipment was 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

5.31 During our inquiry, we conducted telephone calls with 29 customers.¹³⁷ 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 Parties' customer lists.¹³⁸ These 29 customers accounted for [50-60%] [REDACTED]% and [60-70%] [REDACTED]% of Microlease's and Electro Rent's 2016 UK rental revenue respectively.

¹³⁶ [REDACTED]

¹³⁷ We also talked with one customer ([REDACTED]), who despite being listed in Microlease's customer list was not a rental customer, instead using finance leases.

¹³⁸ 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 included 17 of Microlease's 20 largest UK customers and 13 of Electro Rent's 20 largest UK customers.

- 5.32 We also received responses to our online questionnaire from 55 additional customers. The respondents were mainly customers with relatively low expenditure on TME rental in the last two years.¹³⁹ A detailed examination of the evidence provided by customers concerning the constraint on rental from TME purchase is contained in Appendix E.
- 5.33 We also conducted calls with 10 TME intermediaries (either rental providers or resellers) and six OEMs¹⁴⁰ whilst five further intermediaries responded to questions by email. A detailed examination of this evidence is contained in Appendix D.
- 5.34 The Parties made representations on the way we conducted our telephone calls with customers, arguing that the weight that could be put on this evidence was reduced by the fact that no standard set of questions had been used and that customers had not been systematically asked about what they would have done if there was an increase in rental prices.¹⁴¹
- 5.35 It is our usual practice in merger inquiries to contact customers, usually through telephone calls. The questions we ask in these calls are designed to elicit information about a range of issues in which we are interested such as their views on how competition works in the industry, alternative suppliers, factors affecting purchasing decisions and, importantly, their views on the merger. In this case we used the same format for all the customer calls,¹⁴² although the precise questions varied depending on the nature of the customer as some had more complex and varied business needs than others. We asked consistently what alternative suppliers each customer had and their views on the merger.¹⁴³ The call notes we produced were checked and confirmed as accurate by each customer. We therefore consider the evidence from the calls to be reliable and relevant for our assessment of the Merger.

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

¹⁴⁰ The OEMs we spoke to manufactured equipment that accounted for at least [40-50%] [§] of Microlease's 2016 UK rental revenue and [60-70%] [§] of Electro Rent's 2016 UK revenue ([§]).

¹⁴¹ [Response to provisional findings](#), paragraphs 27-28.

¹⁴² We asked questions under the same broad topics: nature of the customer's business, how they chose TME supplier, important characteristics of TME rental supplier, availability of suppliers alternative to the Parties, substitutability between TME rental and other forms of acquiring TME, and views on the Merger.

¹⁴³ Customers' responses to our questions typically made it superfluous to explicitly ask what they would have done in response to a small but significant non-transitory increase in price (SSNIP). The Parties' customers generally told us that they had no alternative suppliers for many of their rental requirements, or that other suppliers charged much higher prices or provided a significantly lower quality of service (see Appendix E).

Substitutability between TME rental and TME purchase

- 5.36 Our calls with customers illustrated that customers considered 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 5.14) 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 required¹⁴⁴ – 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 equipment¹⁴⁵ – TME 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 constraints¹⁴⁶ – a number of customers noted that TME was 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 equipment¹⁴⁷ and its associated cost, and a desire to use up-to-date equipment in the face of technological change.¹⁴⁸ In the latter case, these customers considered that it was more cost effective to rent this equipment rather than to purchase the required items.
- 5.37 Those customers who had a view varied¹⁴⁹ 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, as reported in

¹⁴⁴ This factor was mentioned by eleven of the customers we spoke to.

¹⁴⁵ These factors were mentioned by nine of the customers we spoke to.

¹⁴⁶ This factor was mentioned by four of the customers we spoke to.

¹⁴⁷ Mentioned by one customer.

¹⁴⁸ Mentioned by four customers.

¹⁴⁹ 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.

Appendix E, Qorvo indicated that it would consider purchasing for requirements as short as two to three months, whereas Babcock stated that leasing/purchasing only made financial sense if an item was required for four to five years.

- 5.38 Generally, 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 5.36 meant that, even once the costs of rental and purchase become equivalent, customers might prefer rental to purchase. For example, a number of customers noted that, although they typically rented equipment for extended periods of time and, in hindsight, it might have been preferable to purchase that equipment, they lacked the certainty and/or capital expenditure budget required to make the purchase.¹⁵⁰
- 5.39 A follow-up question was sent to the customers to whom we spoke to test whether, as the Parties argued in response to our provisional findings¹⁵¹ (see paragraph 5.10(h) above), the possibility of using time-based software licences to upgrade the functionality of the equipment made purchase a more attractive option.¹⁵² Of the 11 customers responding to the question, seven told us that the availability of time-based software licences to upgrade the functionality of equipment was not a material consideration when choosing between rental and purchase.¹⁵³ Four customers told us that this was a consideration,¹⁵⁴ although one of them added that such an option was only occasionally available.¹⁵⁵
- 5.40 TME purchase appeared not to be a close alternative to TME rental for 22 of the 29 customers we spoke to (see Appendix E). Specifically:
- (a) 13 customers explicitly told us that they did not consider purchase to be a close alternative for all, or the vast majority, of their rental requirements.¹⁵⁶

¹⁵⁰ See Appendix E.

¹⁵¹ [Response to provisional findings](#), paragraph 12.

¹⁵² Evidence from customers in relation to the direct substitutability between TME rental and time-based software licences is discussed in paragraph 5.44.

¹⁵³ [REDACTED]

¹⁵⁴ [REDACTED]

¹⁵⁵ [REDACTED]

¹⁵⁶ 8point8, ALTA Communications, Altiostar, Com Dev Europe (for [REDACTED]% of the items currently rented), CommScope, Ericsson (for [REDACTED]% of the items currently rented), ICS, Jonics, MJ Quinn, Mono Consultants, Redhall Networks, TRL Technology and WHP Telecoms; [REDACTED].

- (b) Four customers told us that they generally sought to rent rather than purchase because of the flexibility renting provided and/or because of the calibration and repair services provided by their rental supplier.¹⁵⁷ 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.¹⁵⁸
- (c) One customer told us that it had run an internal investigation on whether to purchase the equipment, but the decision had been to continue renting it, partly to avoid repair and calibration costs.¹⁵⁹
- (d) For four customers, the lack of substitutability can be clearly inferred by the fact that they rented only for short-term projects, while purchase was preferred for equipment with long-term use.¹⁶⁰

5.41 For six of the remaining seven customers we talked to, purchase appeared to be a close alternative to rental for at least part of their requirements,¹⁶¹ while one customer did not provide a clear indication of its preferences.¹⁶²

Substitutability between TME rental and demonstration equipment, internal supply and/or time-based software licences

5.42 Two customers¹⁶³ we spoke to said that demonstration equipment was an alternative to rental. Demonstration equipment is TME loaned by an OEM to a customer at no cost¹⁶⁴ for a short time with a view to the customer subsequently choosing to buy it. Both customers noted that using demonstration equipment 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.¹⁶⁵ However, when this customer used demonstration equipment instead of 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

¹⁵⁷ Arris, Babcock, Clarke Telecom and Savills Telecom; [REDACTED].

¹⁵⁸ Savills Telecom, [REDACTED].

¹⁵⁹ Magdalene, [REDACTED].

¹⁶⁰ Cobham Wireless, Radio Design, Telent and Trescal; [REDACTED].

¹⁶¹ [REDACTED]

¹⁶² [REDACTED]

¹⁶³ [REDACTED]

¹⁶⁴ One OEM (Anritsu) told us that, in rare occasions, a customer might be asked to contribute to the cost of an extended pre-purchase evaluation.

¹⁶⁵ [REDACTED]

the customer required an item for one-week but rental suppliers required a minimum one-month rent for that specific item).

5.43 The customer calls and follow-up emails provided 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:¹⁶⁶

- (a) Three customers told us that, in most cases, internal supply was not an option for them.¹⁶⁷
- (b) 12 customers appeared to own no testing equipment or very few items compared to their rental volume.¹⁶⁸ For these customers, internal supply is therefore either impossible or very unlikely.
- (c) Four customers told us that the types of equipment they rented were different from the types of equipment they owned.¹⁶⁹ For these customers, therefore, internal supply is usually not an option.
- (d) Three customers told us that, where they both owned and rented particular types of equipment, rental was used to flex the number of items they used, when fluctuations in workflow required them to use more units than those already owned.¹⁷⁰ 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 operated multiple business divisions and the equipment they owned 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.¹⁷¹

¹⁶⁶ No clear inference could be drawn from four of the customers with whom we spoke, as they owned a significant volume of TME, but the possibility of using internal supply as a substitute for rental was not discussed in the calls.

¹⁶⁷ [REDACTED]

¹⁶⁸ [REDACTED]

¹⁶⁹ [REDACTED]

¹⁷⁰ [REDACTED]

¹⁷¹ [REDACTED]. In the case of one of these customers ([REDACTED]), the stock was managed by Microlease.

- (f) For one customer internal supply was an alternative, as it reduced its rental expenditure by 40% by moving equipment within the business.¹⁷²

5.44 Following our provisional findings, the Parties stated that the use of time-based software licences was an alternative to equipment rental because time-based software licences could be used to upgrade the functionalities of equipment the customers already owned.¹⁷³ In order to investigate this issue, we asked the customers we had talked to earlier to provide information on the extent to which the use of time-based software licences is an alternative to equipment rental. Of the 17 customers responding to the question:

- (a) eight customers told us that there were no situations in which time-based software licences could be an alternative to rental;¹⁷⁴
- (b) five customers said that such situations were very infrequent¹⁷⁵ or rare;¹⁷⁶
- (c) two customers observed that, as they owned no TME, the use of time-based software licences was not an option;¹⁷⁷
- (d) one customer, whose TME stock was managed by Microlease, told us that the use of time-based software licences was currently not an option, but it would become so in the future;¹⁷⁸ and
- (e) one customer told us that, in the future, time-based software licences would be a real alternative to rental; however, this customer had not yet purchased hardware capable of being upgraded through such licences.¹⁷⁹

Evidence from the online customer questionnaire

5.45 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).

5.46 17 out of 55 respondents said that purchase was a viable option for the last piece of equipment they rented from the Parties.¹⁸⁰ However, only seven

¹⁷² [REDACTED]

¹⁷³ [Response to provisional findings](#), paragraph 12.

¹⁷⁴ [REDACTED]

¹⁷⁵ [REDACTED]

¹⁷⁶ [REDACTED]

¹⁷⁷ [REDACTED]

¹⁷⁸ [REDACTED]

¹⁷⁹ [REDACTED]

¹⁸⁰ Question 6 of the online questionnaire (see Appendix E).

respondents said that purchasing equipment was their next best option to rental. 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.¹⁸¹

Evidence from OEMs and other rental suppliers

- 5.47 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 5.14 and 5.36).
- 5.48 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 that they considered rental providers and the sellers of TME to be competing with each other.
- 5.49 We received information from five OEMs on their provision of time-based software licences. None of them saw such licences as competing with TME rental to any significant extent.
- (a) Two OEMs told us that they typically sold time-based software licences to rental companies rather than to final customers.¹⁸²
 - (b) A third OEM mainly provided time-based software licences as standalone products that customers ran on a PC and that did not compete with rental; however, it was looking to expand its offering of time-base software licences to be used on hardware owned by customers.¹⁸³
 - (c) A fourth OEM used a subscription-based model for the software part of some of their test system, which are only sold directly to customers; it considered that these licences were never an alternative to TME rental.¹⁸⁴

¹⁸¹ Question 7 of the online questionnaire (see Appendix E). The other responses were 'don't know' (3) and 'other' (4).

¹⁸² [REDACTED]

¹⁸³ [REDACTED]

¹⁸⁴ [REDACTED]

(d) Finally, one OEM considered that its time-based software licences would be attractive to a very small proportion of its customer base and, as such, were not serious competitors to TME rental.¹⁸⁵

5.50 The Parties indicated that Ixia and Spirent were the principal OEMs supplying professional services, together with smaller manufacturers such as Anite.¹⁸⁶ The substitutability between professional services and TME rental was discussed in calls with Keysight (which owns Anite and Ixia) and Spirent.

(a) Keysight told us that Ixia was its only subsidiary providing professional services to UK customers. However, in 2017, [REDACTED]. Keysight observed that what differentiates professional services provided by Ixia from rental services was the ‘people component’, as customers received professional expertise that was not available through equipment rental.¹⁸⁷

(b) Professional services supplied by Spirent involved providing expertise, as well as hardware and software, to customers. These services could involve training in the use of the equipment and help in designing test methodologies, identifying the most important factors to test and interpreting test results. Spirent did not consider itself as competing with Microlease.¹⁸⁸

5.51 Two further OEMs (Anritsu and Rohde & Schwarz) told us that they did not supply professional services to UK customers.¹⁸⁹

Our assessment of the evidence

5.52 The Parties submitted that internal supply, the use of OEMs’ demonstration equipment, leasing, purchase, time-based software licences and professional services were sufficiently close alternatives to TME rental to be considered part of the relevant market (paragraphs 5.8 to 5.11).

5.53 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

¹⁸⁵ [REDACTED]

¹⁸⁶ [REDACTED]

¹⁸⁷ [REDACTED]

¹⁸⁸ [REDACTED]

¹⁸⁹ [REDACTED]

requirements of customers, rather than being substitutable. We consider the extent to which this is the case below.

- 5.54 In making our assessment we begin by considering the evidence regarding purchase before considering the evidence regarding other forms of TME provision.
- 5.55 The application of a SSNIP test¹⁹⁰ is not appropriate in this case, where there is a wide range of products and customer requirements, prices are individually negotiated and non-price aspects, such as stock availability and speed of delivery,¹⁹¹ are relevant to customers. We have therefore focused on a more qualitative assessment of the competitive constraint on TME rental from other forms of TME provision.¹⁹²

Purchase

- 5.56 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 5.16 to 5.18), the evidence from customers (paragraphs 5.36 to 5.46) and the fact that a significant proportion of customers in the lost opportunities analysis ([X]%) in terms of number of opportunities) purchased equipment rather than renting from Microlease (paragraph 5.30).
- 5.57 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.
- 5.58 First, the Parties' internal documents (paragraph 5.14 and Appendix G) and our calls with customers (paragraph 5.36 and Appendix E) and with OEMs and intermediaries (paragraph 5.47 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

¹⁹⁰ 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).

¹⁹¹ See paragraph 6.15.

¹⁹² This is consistent with the approach taken by the CMA in the recent [Diebold/Wincor](#) and [Clariant/Kilfroast](#) merger cases.

temporary basis or, for example, to respond to short-run requirements or to fluctuations in workloads.^{193, 194}

- (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 equipment¹⁹⁵ – 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.¹⁹⁶
- (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.¹⁹⁷
- (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.¹⁹⁸

5.59 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.

5.60 Second, the direct evidence from the Parties' internal documents and that provided by third parties indicated 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 5.39 and 5.41).¹⁹⁹ Notably,

¹⁹³ See Appendix G for examples from the Parties' internal documents. 16 of the 29 customers we called referred to these factors ([§]).

¹⁹⁴ 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, identified 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.

¹⁹⁵ See Appendix G for examples from the Parties' internal documents. Four customers we called referred to this factor.

¹⁹⁶ Six customers we called referred to this factor. Also see Appendix G for examples from the Parties' internal documents.

¹⁹⁷ See Appendix G for examples from the Parties' internal documents. These factors were referred to by nine of the customers we called.

¹⁹⁸ For example, see paragraph 5.15.

¹⁹⁹ [§]

13 customers explicitly told us that they considered that purchase was not a close alternative for any, or the vast majority, of their rental requirements.²⁰⁰

- (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 5.46). In contrast, 34 respondents viewed rental from a different supplier as their next best alternative.²⁰¹
- (c) The Parties' internal documents made relatively few references to TME purchase being a close alternative for current rental customers (paragraphs 5.16 to 5.20). For example, Microlease's monthly sales reports (which focus predominantly on the UK) contained only [X] 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 were over [X] references to Electro Rent in these reports, most of which were UK specific (see Chapter 6).

5.61 Third, while the Parties submitted that the availability of time-based software licences made purchase a more attractive option, fundamentally changing the competitive dynamic between rental and purchase (paragraph 5.10(h)), the Parties did not provide any supporting evidence for this view, and this view is not consistent with the way the impact of software licences was discussed in the Parties' internal documents, nor with the evidence we received from customers:

- (a) The only internal document in which time-based software licences were discussed concluded that the trend towards greater use of software 'does not represent a significant threat and could represent an opportunity for Microlease' (paragraph 5.23 and footnote 123).
- (b) Most of the customers responding to our relevant follow-up question told us that the availability of time-based software licences was not a material consideration when choosing between rental and purchase or that such option was only rarely available (paragraph 5.39).

5.62 Moreover, we consider it likely that any impact of the availability of time-based software licences on the choice between rental and purchase would have already been factored in by the customers we talked to (paragraph 5.60(a))

²⁰⁰ [X]

²⁰¹ Albeit 16 of those 34 respondents did not know who that supplier would be.

and by those who responded to the online questionnaire (paragraph 5.60(b)) in their assessment of the two options.

5.63 Fourth, 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 supported their submission that other forms of TME provision were close alternatives to TME rental. However, in our view:

- (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 provided some further evidence that purchase was not a close alternative to rental in many circumstances. This is because the analysis showed that a substantial proportion of Microlease's rental revenue was derived from shorter rentals where purchase was 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.

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

Rental duration

5.65 To support their submission that purchase is a close alternative to rental, the Parties noted that [30-40%] [X] of Microlease's revenue was accounted for by contracts with an actual duration of 36 months or more (see paragraph 5.28(b)). The Parties submitted that purchase was a natural alternative to rental for customers renting for this length of time.

5.66 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 5.58, 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 that 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.²⁰² 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.

5.67 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.

5.68 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.²⁰³ However, the evidence indicated that a reasonable, broadly applicable rental duration is around three years. This 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]...'.²⁰⁴
- (b) The ratio between monthly earnings and the cost of the assets reported by a number of rental providers, including the Parties, which indicated 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 became equivalent (see Appendix E).

5.69 In this context, a significant proportion ([60-70%] [REDACTED]) of Microlease's rental revenue is derived from contracts with an actual duration of less than three years. Furthermore, [30-40%] [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 5.28(b)).

5.70 Third, the Parties' submission is based on an analysis of actual duration. However, as the analysis discussed in paragraphs 5.27 to 5.29 and Appendix H shows, contracts are regularly extended significantly beyond their initial duration. If initially requested duration, rather than actual duration, is used, [50-60%] [REDACTED]% of Microlease's rental revenue is derived from contracts with an initial duration of less than 12 months and only [10-20%] [REDACTED]% of

²⁰² During our calls customers discussed a number of examples that illustrated this point (see Appendix E).

²⁰³ This range is consistent with the range of factors that affected the decision regarding whether to rent or to purchase.

²⁰⁴ [REDACTED]

Microlease's rental revenue is derived from contacts with an initial duration of more than 36 months.

- 5.71 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 contract. This is consistent with Microlease's use of a measure of [§] (based on the customer's previous rental behaviour) when pricing rental contracts.²⁰⁵
- 5.72 Therefore, neither actual nor initially requested duration is a perfect measure of the duration which a customer might have in mind when deciding whether to rent an item. This further limits (in addition to the issues discussed in paragraph 5.66) the extent to which any analysis of rental durations can inform the extent to which purchase is a close alternative to rental.²⁰⁶
- 5.73 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 it enables them to maintain flexibility or to overcome expenditure constraints).
- 5.74 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 it requires the product and the other constraints which it faces, both of which affect the substitutability of purchase and rental for that customer.
- 5.75 Consequently, 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, given that:
- (a) purchase is less likely to be a close alternative, all else being equal, to short rentals than to long ones;

²⁰⁵ [§]

²⁰⁶ The Parties submitted that when prices were not fully adjusted in line with [§] a customer was less likely to rent from Microlease ([§]). However, this observation did not allow one to identify the source of any competitive constraints and therefore the extent to which purchase was an alternative to rental or provided a competitive constraint on Microlease. The Parties' internal document that discussed the use of [§] when setting prices ([§]) did not mention the need to incorporate [§] to respond to competition.

- (b) [50-60%] [X]% of Microlease's rental revenue is derived from contracts with an initial duration of less than 12 months and [30-40%] [X] of Microlease's rental revenue is derived from contracts with an actual duration of less than 12 months; and
- (c) only [10-20%] [X]% of Microlease's rental revenue is derived from contacts with an initial duration of more than 36 months.

The lost opportunities analysis

- 5.76 The Parties also highlighted the results of the lost opportunities analysis, and in particular that [X]% of opportunities by value were lost to purchase (see paragraph 5.30).
- 5.77 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 that would determine a hypothetical TME rental monopolist's incentives to increase prices and/or reduce quality.
- 5.78 However, the lost opportunities analysis focused 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 decided to rent. The reasonableness of this assumption must be assessed in light of the other available evidence.
- 5.79 As discussed in Appendix F, we have doubts about the accuracy of some of the information recorded in the Parties' lost opportunities dataset, and therefore about 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 that supplier's overall rental revenue.²⁰⁷
- 5.80 In our view, the available evidence (as explained in paragraphs 5.58 to 5.64) indicates that rental and purchase are often used to respond to different requirements. Consequently, the evidence does not support the assumption

²⁰⁷ As we note in Appendix F, there was also some evidence that the lost opportunities for which information was available were more likely to be higher-value lost opportunities.

that would be required in order 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.^{208,209}

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

- 5.81 The Parties highlighted the following specific evidence to support their submission that purchase (and other forms of TME provision) are close alternatives to TME rental:
- (a) The evolution of Microlease's rental yields. In particular, the Parties submitted that:
 - (i) the decline in Microlease's rental yields prior to [REDACTED] (see paragraph 5.24) was attributable to competitive constraint from purchase; and
 - (ii) the fact that Microlease's rental yields had not increased following [REDACTED] was evidence of a competitive constraint from purchase (and other rental suppliers).²¹⁰
 - (b) Microlease's growth strategy, which is focused on encouraging customers to switch from TME purchase to TME rental.
- 5.82 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 are a number of factors that affect rental yields including contract durations, the mix of products on hire and changes in competitive constraints.
- 5.83 The limited evidence we have received, contained in the Microlease Vendor Due Diligence report and discussed in paragraphs 5.25 and 5.26, indicated that the decline in Microlease's rental yields prior to 2015 was attributable to

²⁰⁸ As we describe in Appendix F, our review of the lost opportunities database has also highlighted a number of examples that were consistent with the lost opportunities not being reflective of circumstances in which customers currently rented from Microlease.

²⁰⁹ The Parties submitted that the results of the lost opportunities analysis were 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 focused on customers who decided not to rent from Microlease and the online questionnaire focused on the subset of the Parties' customers with lower rental expenditures.

²¹⁰ [REDACTED]

an increase in average contract duration and competition between Livingston and Microlease.

- 5.84 Moreover, the Parties offered multiple explanations as to why Microlease's rental yields might not have increased following the Livingston merger. On the one hand, the Parties submitted that [REDACTED].²¹¹ On the other hand, they argued that, shortly after the Livingston merger, [REDACTED] (which would also hold yields down).²¹²
- 5.85 Second, we accept that Microlease's growth strategy focused on encouraging customers to switch from purchase to rental. This is reflected in Microlease's monthly sales reports which, between March and October 2015, include a short section discussing attempts to convert buyers into renters (see paragraph 5.21) and it is not surprising given that the overall value of TME purchase in the UK is significantly higher than that of TME rental (paragraph 5.10(a)). However, this does not necessarily imply that purchase is a close alternative for a significant proportion of existing rental customers.
- 5.86 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 5.57 to 5.64, purchase does not appear to be a close alternative.

Other forms of TME provision

- 5.87 We considered other forms of TME provision, namely use of demonstration equipment or leasing of equipment, internal supply, the use of time-based software licences or professional services to determine if any or all were sufficiently close alternatives to TME rental to be considered as part of the relevant market.

Demonstration equipment and leasing

- 5.88 Competition from demonstration equipment and the leasing of equipment are not mentioned to a material extent in the Parties' internal documents. The evidence from these documents is consistent with the evidence we received from the Parties' customers. As noted in Appendix E, only two of the customers²¹³ we spoke to mentioned leasing as an option that they use and in

²¹¹ [REDACTED]

²¹² [REDACTED]

²¹³ [REDACTED]

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.²¹⁴ Moreover, no respondents indicated leasing as the next best option to their latest rental from the Parties.

- 5.89 Only two of the 29 customers²¹⁵ 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.²¹⁶ As a result, the circumstances in which the use of demonstration equipment was an alternative to rental for these two customers were extremely limited.²¹⁷
- 5.90 Based on this evidence, we concluded that the use of demonstration equipment or leasing of equipment are not sufficiently close alternatives to TME rental to be considered as part of the relevant market.

Internal supply

- 5.91 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 enter into a third-party transaction. Nevertheless, the Parties made submissions that internal supply is a significant constraint on TME rental and we have assessed them on their merits.
- 5.92 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 being available, not necessarily immediately but, as the Parties noted, becoming ‘available internally in a timely fashion’.²¹⁸

²¹⁴ Question 6 of the online questionnaire (see Appendix E).

²¹⁵ [REDACTED]

²¹⁶ [REDACTED]

²¹⁷ 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 considered the use of demonstration equipment as well.

²¹⁸ [REDACTED]

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

- 5.93 The Parties made a number of submissions regarding internal supply and particularly highlighted Microlease's lost opportunities analysis, which indicated that [X] % of opportunities by number were lost to customers' internal supply (see paragraph 5.30). We have explained the limitations of the lost opportunities analysis at paragraphs 5.76 to 5.80 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 for TME rental customers.
- 5.94 The more direct evidence indicates that internal supply is not a close alternative to rental. In particular, the evidence from customers illustrated that it was because the equipment was not available, either at all or in a timely manner, that many rental customers were renting equipment. As a result, and as described in paragraph 5.43, 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 that they rented.²¹⁹
- 5.95 Similarly, only seven of 55 respondents to our online questionnaire referred to internal supply as their next best alternative to rental.²²⁰ By contrast, 34 respondents viewed rental from a different supplier as their next best alternative.²²¹
- 5.96 The Parties also submitted that the availability of time-based software licences extended the benefits of internal supply as an alternative to rental (see paragraph 5.10(i)). However, similarly to the case of purchase discussed in paragraph 5.61, any impact of the availability of time-based software licences on the choice between rental and internal supply would likely have already been factored in by the customers we talked to and those who responded to the online questionnaire in their assessment of the two options.
- 5.97 Finally, internal supply is not mentioned as a meaningful competitive alternative to TME rental in the Parties' internal documents.
- 5.98 The evidence discussed above does not support a view that internal supply is a sufficiently close alternative to TME rental to be considered as part of the relevant market.

²¹⁹ [X]

²²⁰ Additionally, only 10 of 55 customers viewed internal supply as even a 'viable option'.

²²¹ Albeit 16 of those 34 respondents did not know who that supplier would be.

Time-based software licences and professional services

- 5.99 In response to our provisional findings, the Parties submitted that time-based software licences supplied by OEMs should be considered part of the relevant market, even when this is restricted to TME rental. They submitted that, by making measurement functionality available to end-customers on a temporary basis, time-based software licences are a direct alternative to TME rental as they can obviate the need for renting specialised equipment (paragraph 5.11(a)), although they provided no supporting evidence of this happening in practice.²²²
- 5.100 We found that the Parties' internal documents did not discuss time-based software licences as a significant competitive threat to the Parties' TME rental business (see paragraph 5.23). The only document mentioning time-based software licences stated that they did 'not represent a significant threat and could represent an opportunity for Microlease'.²²³
- 5.101 Moreover, of the 17 customers responding to our follow-up question, eight told us that there were no situations in which time-based software licences could be an alternative to rental; five said that such situations were very infrequent or rare. Only one customer told us that, although it did not currently own equipment that could be upgraded by using time-based software licences, this would become an alternative to rental in the future. Finally, three customers observed that, as they either owned no TME or their equipment was managed by Microlease, the use of time-based software licences was currently not an option (paragraph 5.44). We note that four other customers among those we spoke to rented all or almost all of their TME;²²⁴ the use of time-based software licences would therefore not be an alternative to rental for them.²²⁵
- 5.102 Finally, four of the five OEMs that provided us with information on their time-based software licences either typically sold them to rental companies rather than to final customers, provided them only for very expensive equipment not available through rental companies or supplied them mainly as standalone products that customers ran on a PC. In none of these cases were time-based software licences an alternative to TME rental. The fifth OEM considered such

²²² [Response to provisional findings](#), paragraph 12.

²²³ [REDACTED]

²²⁴ [REDACTED]

²²⁵ Moreover, although we did not expressly ask customers about time-based software licences in our customer calls, we consider that, had they been a close alternative to TME rental as submitted by the Parties following our provisional findings ([Response to provisional findings](#), paragraph 12), they would have been mentioned by some of the customers when we asked about alternatives to renting from the Parties. However, none of the customers we talked to mentioned time-based software licences as an alternative to renting from the Parties.

licences to be attractive only to a very small proportion of its customer base and, as such, to be rarely an alternative to TME rental (paragraph 5.49).

5.103 The evidence set out above indicates that time-based software licences are not a sufficiently close substitute to TME rental to be included in the relevant market.

5.104 The Parties also submitted that professional services provided by OEMs should be considered part of the relevant market. We recognise that, unlike time-based software licences, professional services often include the provision of both hardware and software and, as such, might be seen as a closer alternative to equipment rental. However, professional services are not discussed as competitive threats in the Parties' internal documents. Moreover, some of the largest OEMs operating in the UK (Anritsu, Rohde & Schwarz and Keysight) told us that they did not provide this type of professional services to UK customers. Finally, as reported in paragraph 5.50 and in Appendix D, of the two OEMs indicated by the Parties as the main providers of professional services in the UK:

- (a) Ixia mostly provided professional services as people-only projects, as the customers already owned the equipment. The cases in which professional services involved equipment rental were few and accounted for very limited revenue.
- (b) Spirent considered that its professional services addressed different customer requirements than Microlease's rental services, involving training in the use of the equipment and help in designing test methodologies, identifying the most important factors to test and interpreting test results.

5.105 Based on this evidence, we consider that professional services are not a sufficiently close alternative to TME rental to be included in the relevant market.

Possibilities for supply-side substitution

5.106 The Parties submitted that suppliers of other forms of TME provision could easily move into the rental market.²²⁶ However, in our view, many of the barriers to entry discussed in paragraphs 7.12 to 7.27 apply equally to suppliers attempting to switch from other forms of TME provision, especially

²²⁶ [Response to phase 1 decision](#), paragraph 4.4.

stock requirements, both in terms of scale and range, and the need for logistics and inventory management expertise.

5.107 For example, the OEMs we contacted highlighted a number of factors that would limit their ability to begin to provide rental services on a significant scale in the UK.²²⁷ Specifically, one OEM told us that the TME rental business had traditionally been multi-vendor (meaning that rental suppliers each offered equipment from a range of manufacturers) and that customers expected this to be the case. As a result, it was difficult for OEMs to expand into rental, since they were unlikely to want to offer products from a range of different manufacturers.²²⁸ Another OEM also explained that one of the reasons it preferred to rely on rental partners was because it lacked the logistics and inventory management expertise necessary to operate a rental business.²²⁹

5.108 We received no evidence that suppliers active in other forms of TME provision were considering expanding into or switching their activities to TME rental.

Product segmentation

5.109 TME designed for different applications is not substitutable from a demand side perspective (eg TME designed for use in the telecommunications sectors 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 would be possible. We have considered whether product segmentation is appropriate for product market definition.

5.110 We found there was not any segmentation that was commonly agreed by both the Parties and third parties.

(a) As shown in Appendix G, the Parties proposed several possible segmentations during the course of the investigation:

- (i) One segmentation was based on customer types (Telecommunications, A&D, Infotech).²³⁰ This segmentation is broadly followed in some of the Parties' internal documents.
- (ii) Several segmentations were based on product characteristics, with between three (RF Test, General Purpose/Infotech and

²²⁷ None of the OEMs we contacted directly provided TME rental services as a normal part of their business.

²²⁸ [REDACTED]

²²⁹ [REDACTED]

²³⁰ See [Merger Notice](#), paragraph 92.

Telecommunications) and 12 separate product groups.²³¹ Further possible segmentations appeared in the Parties' internal documents.

(b) There is a lack of consistency in the views of customers about market segmentation:

- (i) [X] considered that telecommunications and RF/microwave equipment all fell under the same umbrella (a similar point was made by [X]²³²). It suggested that a better segmentation could be between optical and RF testing equipment.²³³
- (ii) [X] considered a segmentation of equipment types into wireless telecommunications, wired telecommunications, A&D, and general-purpose²³⁴ to be sensible.²³⁵
- (iii) [X] suggested a segmentation between telecommunications, medical sector equipment manufacturers, infrastructure, and mobile telecommunications infrastructure.²³⁶
- (iv) [X] noted that the mobile and landline telecommunication industries had very different needs in terms of required equipment and acceptable lead times; there were also significant differences in the TME equipment used in different working environments (eg office vs a mobile mast).²³⁷

5.111 The variety of the Parties' and third parties' views reflects the wide variety of customer types and requirements that characterises the rental supply of TME. Customers vary significantly depending on the industries they operate in and the size of their businesses. Their rental needs also vary widely, in terms of the type, volume and range of instruments they require, their preference for single-sourcing, etc. The ability of TME rental providers to meet the needs of particular customers is affected by all these variables.

5.112 As a result, any viable market segmentation would be misleading, because it would not accurately reflect the conditions of competition across types of equipment and customer requirements. On the other hand, a mechanistic application of the SSNIP test – even if it were to prove possible in practice –

²³¹ [X]; [Response to provisional findings](#), paragraph 21 and Table 2.

²³² [X]

²³³ [X]

²³⁴ Such segmentation was proposed by the CMA to [X].

²³⁵ [X]

²³⁶ [X]

²³⁷ [X]

would likely lead to the identification of hundreds of separate markets, each referring to a narrow subset of customer requirements and characterised by slightly different competitive conditions, making the analysis intractable.

5.113 For the reasons above, we consider that a precise segmentation of the supply of rental TME into product or customer segments would not assist our competitive assessment of the Merger.²³⁸ The extent to which different suppliers are competitive in satisfying requirements deemed important by customers is considered in our competitive assessment, taking into account variations in preferences across customers.²³⁹

5.114 Defining the relevant market as encompassing all TME rental does not, however, imply that rental suppliers are necessarily capable of supply-side substitution across different types of equipment, as has been argued by the Parties.²⁴⁰ As discussed in paragraphs 7.13 to 7.21, stock requirements and the need for specialist knowledge are significant barriers to expansion into different types of TME.

Conclusion on the relevant product market

5.115 For the reasons stated above, we conclude that the relevant product market is the rental supply of TME. We take into account in our competitive assessment the variations in customers' requirements, the extent to which each supplier within the market is able to satisfy them and constraints from outside the relevant product market from other forms of TME provision.

Geographic market definition

The Parties' submissions

5.116 The Parties submitted that the relevant geographic market was wider than the UK and probably global and that the UK is the narrowest candidate geographic market.²⁴¹ To support this submission the Parties noted that:

²³⁸ In this regard we note that market definition is not an end in itself, but an analytical tool intended to assist the competitive analysis of a merger by identifying the products and/or services that are the most significant competitive alternatives available to the customers of the merged companies.

²³⁹ This is consistent with the approach taken by the CMA in the recent [Diebold/Wincor](#) merger case and with the [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraphs 5.2.1 and 5.2.2 (as noted in paragraph 5.1).

²⁴⁰ [Response to provisional findings](#), footnote 24.

²⁴¹ [Response to phase 1 decision](#), paragraphs 4.5 and 4.8.

- (a) Much TME could be shipped to any location in the world without significant delay or cost.²⁴²
- (b) UK customers were 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 supplied the UK from Belgium.²⁴³

Evidence from the Parties' internal documents

- 5.117 The Parties' internal documents (see Appendix G) indicated that some UK customers had a preference for a UK-based supplier and that competitive conditions differed across geographic areas.
- 5.118 For example, one Microlease monthly sales report stated that '[c]ompetitive threats differ from territory to territory. [REDACTED]'. Similarly, Microlease's October 2015 CEO Europe Board Report referred to Microlease's UK presence as a reason for its success in 'maintaining a high winning ratio against [REDACTED]'.²⁴⁴
- 5.119 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].²⁴⁵ 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.²⁴⁶

Evidence concerning Electro Rent's UK presence

- 5.120 Electro Rent Europe was established in 2005²⁴⁷ 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].^{248,249}

²⁴² [Response to phase 1 decision](#), paragraph 4.5.

²⁴³ [Response to phase 1 decision](#), paragraph 4.6.

²⁴⁴ [REDACTED]

²⁴⁵ [REDACTED]

²⁴⁶ We also note that [REDACTED].

²⁴⁷ Prior to this time, we understand that Electro Rent was sub-renting items to a Europe-based provider ([REDACTED]).

²⁴⁸ [REDACTED]

²⁴⁹ Microlease also employed a similar approach, establishing sales offices in various European countries in order to compete more effectively in those countries.

5.121 [REDACTED]²⁵⁰

5.122 A number of the Parties' internal documents discussed Electro Rent's intention to establish a physical UK presence. Electro Rent 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.²⁵¹ Those internal documents (summarised in Appendix G) discussed 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 stated:

Why are we focused on this/what are we trying to solve? ... [REDACTED] ... local presence. [REDACTED].²⁵²

Evidence from third parties

5.123 Views varied across the customers we talked to as to whether having a UK presence is important for a rental supplier supplying UK customers.²⁵³ The calls with these customers are discussed further in Appendix E.

- (a) Five customers saw a lack of a UK presence as a severe limitation. For four of these customers²⁵⁴ this was 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 a supplier in the Benelux) because it lacked a UK presence.²⁵⁵
- (b) Three customers²⁵⁶ considered a UK presence to be an advantage, in particular when equipment was required quickly, but not necessary for dealing with a rental supplier.
- (c) Four other customers told us that a UK presence was not a factor in their choice of rental provider.²⁵⁷ In particular, one customer decided to use Electro Rent after deliberately looking for suppliers outside the UK, because of the high prices it was offered by Livingston and Microlease.²⁵⁸

²⁵⁰ [REDACTED]

²⁵¹ [REDACTED]

²⁵² [REDACTED]

²⁵³ The issue was explicitly discussed with only nine customers.

²⁵⁴ [REDACTED]

²⁵⁵ [REDACTED]

²⁵⁶ [REDACTED]

²⁵⁷ [REDACTED]

²⁵⁸ [REDACTED]

5.124 One other customer²⁵⁹ described how it had considered using TRS RenTelco but the customer had understood that TRS RenTelco was unable to supply equipment adapted to European frequencies²⁶⁰ and it was also discouraged by the transit costs associated with renting from a US-based company.

5.125 The information we 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-based 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.

5.126 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.²⁶¹

Our assessment of the evidence

5.127 The evidence supports the view that the relevant geographic market is the UK. This is because the evidence indicates that market conditions vary across countries and that having an established UK presence is an important factor when competing to supply 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 made it clear that a desire to compete more effectively to supply UK customers was an important factor in establishing a physical UK presence.²⁶²

(b) Electro Rent's view is consistent with the evidence from some customers (paragraph 5.123) who indicated that a lack of UK premises was a reason

²⁵⁹ [REDACTED]

²⁶⁰ 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) tended to be specific to each geographic area ([REDACTED]).

²⁶¹ [REDACTED]

²⁶² As we discuss (eg paragraph 6.53), [REDACTED].

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 5.118) 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 [✂] across these countries (paragraph 5.119 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 submitted that customers are supplied by a number of non-UK based suppliers, as discussed in paragraph 5.125, the UK rental revenues of non-UK based suppliers are extremely limited. This is consistent with the importance of having a UK sales presence.

5.128 Finally, whilst we consider that variations in market conditions across countries and the importance of an established UK presence indicates that the relevant 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 6.45(a)) and by 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.

Conclusion on the relevant geographic market

5.129 For the reasons stated above, we conclude that the relevant geographic market is the UK.

Conclusion on market definition

5.130 For the reasons set out above, we conclude 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 Microlease is the leading supplier of TME rental in the UK and Electro Rent, although significantly smaller in the UK, is its closest competitor. The competitive pressure that Electro Rent imposes on Microlease is based on it

being a close alternative for Microlease's customers, given its large European (and global) TME stock, and this is not fully reflected by its rental revenues in the UK. 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.
- 6.3 Additionally, Electro Rent's decision to establish a physical UK presence indicated an intention to continue to grow as a competitor in the UK absent the Merger.
- 6.4 We 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 internal supply, the use of OEMs' demonstration equipment and professional services, and the use of time-based software licences. 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 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, across a wide range of TME requirements. The evidence indicates that the Parties have the ability to, and do, price discriminate across customers based upon the options that 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.
- 6.6 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 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 and considering the impact of the merger on competition across types of TME.
 - (e) Setting out the 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 conclusions regarding the competitive assessment.
- 6.7 For each area of analysis, the relevant appendix provides a more detailed description of the evidence.²⁶³

Nature of competition

Dimensions of competition in TME rental

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

²⁶³ 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).

experienced customer and technical support and proprietary equipment management systems.²⁶⁴

6.9 Similarly, Microlease's monthly sales reports²⁶⁵ highlighted the influence of product availability and price in determining customers' choice of rental supplier, and its deal management guides referred to '[REDACTED]',²⁶⁶ '[REDACTED]',²⁶⁷ and '[REDACTED]' as important factors in customer choices.²⁶⁸

6.10 Other documents also indicated 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 stated 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.²⁶⁹

6.11 Microlease's internal documents suggested that for some customers a physical UK presence was seen as making Electro Rent a more attractive supplier:

[REDACTED]^{270,271}

6.12 Similarly, Electro Rent's internal documents setting out its rationale for establishing a UK office (see paragraph 6.51) also made 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 customers²⁷² we have spoken to referring to this factor. A number of customers provided specific examples of instances where they had sought quotations from multiple suppliers with the intention of negotiating over prices.²⁷³

²⁶⁴ [REDACTED]

²⁶⁵ [REDACTED]

²⁶⁶ [REDACTED]

²⁶⁷ [REDACTED]

²⁶⁸ [REDACTED]

²⁶⁹ [REDACTED]

²⁷⁰ [REDACTED]

²⁷¹ Likewise, a Microlease monthly sales report states that: 'Competitive threats differ from territory to territory. [REDACTED].

²⁷² [REDACTED]

²⁷³ For example, seven customers discussed seeking quotes from both Electro Rent and Microlease and using these to negotiate a better price.

- 6.14 Views varied across customers about the importance of a UK presence. Five customers²⁷⁴ 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.²⁷⁵ However, four customers explicitly told us that a UK presence was not a factor in their choice of rental provider.²⁷⁶
- 6.15 In terms of 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 12 customers as being important.²⁷⁷ Both of these factors are related to the depth of a supplier's stock.
- 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 required 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-sourced on a significant scale.²⁷⁸

The Parties' price setting

- 6.17 The Parties provided a number of internal documents that described how they set prices for customers. These documents are described in Appendix G.
- 6.18 Both Parties produce guide prices that 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].

²⁷⁴ [REDACTED]

²⁷⁵ [REDACTED]

²⁷⁶ [REDACTED]

²⁷⁷ Seven customers mentioned the speed of delivery whilst five customers referred to the replacement of equipment.

²⁷⁸ [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:²⁷⁹
- (a) [REDACTED]; and
- (b) [REDACTED].
- 6.20 A number of Microlease internal documents made it clear that these guide prices were intended to inform negotiations with customers but that sales people were expected to '[REDACTED]'.²⁸⁰ Similarly, during the main party hearing Electro Rent explained that most customers did not pay the guide price.²⁸¹
- 6.21 Some of the factors that influence prices were mentioned in an internal Microlease presentation, which stated that a salesperson might wish to offer [REDACTED] because it '[REDACTED]'.²⁸² 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].²⁸³ [REDACTED].²⁸⁴
- 6.23 The Parties submitted that the extent to which contracts are extended means that Microlease was unable to identify which contracts were truly short-term when setting prices and implied that, even for contracts with a short initial duration, Microlease had to set prices that were competitive vis-à-vis other options, including purchase.²⁸⁵
- 6.24 However, in our view, the duration initially requested is informative for identifying those contracts that 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.²⁸⁶ Therefore, contracts with a longer

²⁷⁹ [REDACTED]

²⁸⁰ [REDACTED]

²⁸¹ [REDACTED]

²⁸² [REDACTED]

²⁸³ [REDACTED]

²⁸⁴ Microlease also estimated the average roll-on across all its customers ([REDACTED]).

²⁸⁵ [REDACTED]

²⁸⁶ Across all contracts the correlation between initial and actual duration was [REDACTED] and the r-squared of a regression between actual and requested duration was [50-60%] [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 was [50-60%] [REDACTED]% but disagree that this meant that initially requested duration was not a useful predictor of actual duration.

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 [REDACTED].

6.25 Further evidence that the Parties had an awareness of the options that were likely to be available to their customers could be found in:

(a) Microlease's monthly sales reports, which included regular discussions of [REDACTED]. For example:

(i) The June 2015 report stated that '[REDACTED]'.^{287,288}

(ii) From November 2015 onwards, the reports also included a summary of key deals lost and won and the reasons why, [REDACTED].

(iii) Between March and October 2015, the reports also discussed Microlease's attempts to convert buyers into renters. [REDACTED].

(b) Microlease's deal management guides, which prompt the sales person [REDACTED].²⁸⁹

(c) The CMA's calls with customers, in which seven customers²⁹⁰ 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 that 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 increase. Where 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

²⁸⁷ [REDACTED]

²⁸⁸ Likewise, the July 2015 report includes the statements: '[REDACTED]'.

²⁸⁹ [REDACTED]

²⁹⁰ [REDACTED]

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 was not a particularly important source of competition to Microlease in the UK and that the Parties faced 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 told us that the OEMs Rohde & Schwarz and Keysight provided TME rental and that the US based rental supplier TRS RenTelco was making efforts to enter the UK market. The Parties submitted that other forms of TME provision also imposed an important competitive constraint on them.²⁹¹

- 6.30 In support of their submissions the Parties stated that:

- (a) Internal documents referred to other competitors and in particular to a constraint from OEMs.²⁹²
- (b) Electro Rent was one of a number of smaller competitors to Microlease in the UK and references to Electro Rent in Microlease's internal documents were unlikely to be reflective of the competitive constraint posed on Microlease in the UK because:
 - (i) Many internal documents did not have a UK focus and discussed competition on a European or global basis. Electro Rent was globally one of the largest TME rental suppliers and many of these references referred to competitive interactions outside the UK.
 - (ii) Several internal documents were produced at a time when [REDACTED].²⁹³ This explains the prevalence of references to Electro Rent in Microlease's internal documents.

²⁹¹ [Response to phase 1 decision](#), paragraphs 5.3 and 6.1.

²⁹² [Response to phase 1 decision](#), paragraph 6.4.

²⁹³ [REDACTED]

- (c) Individual customers generally required equipment from a specific product segment (eg wireline telecommunications) and some rental competitors were particularly strong in particular product segments. Collectively the competitors who were present constrained the Parties across all product segments.²⁹⁴
- (d) The Parties' mystery shopping exercises provided evidence that a number of competitors were able to offer and to deliver equipment.²⁹⁵ Similarly, Microlease lost more tenders in the Microlease lost opportunities data to other rental suppliers in combination than it did to Electro Rent individually.²⁹⁶
- (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.²⁹⁷
- (f) A range of evidence, as described at paragraph 5.10, supported the submission that other forms of TME provision were 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, Microlease's UK rental revenue was £[X] million in FY15-16, whereas Electro Rent's UK rental revenue was £[X] million in 2015.²⁹⁸
- 6.32 As illustrated in Table 9, in the UK, telecommunications customers are the main customer group for both Parties.

²⁹⁴ [Response to phase 1 decision](#), paragraph 6.5.

²⁹⁵ [Response to phase 1 decision](#), paragraph 6.2.

²⁹⁶ [Response to phase 1 decision](#), paragraph 5.7.

²⁹⁷ [Response to phase 1 decision](#), paragraph 6.2.

²⁹⁸ 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] [5-10]	[REDACTED]	[REDACTED] [10-20]
Telecommunications	[REDACTED]	[REDACTED] [40-50]	[REDACTED]	[REDACTED] [60-70]
Other	[REDACTED]	[REDACTED] [10-20]	[REDACTED]	[REDACTED] [20-30]
Uncategorised	[REDACTED]	[REDACTED] [40-50]	[REDACTED]	[REDACTED]
Total	[REDACTED]	100	[REDACTED]	100

Source: The Parties ([REDACTED]).

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

6.33 While Table 9 refers to customer groups, the Parties' revenues can also be split according to the type of equipment supplied. The Parties rent a wide range of TME, which could be segmented in several ways, as discussed in paragraphs 5.109 to 5.112. Both Parties generate most of their UK rental revenue from equipment in what they refer to as the 'telecommunications' product category.²⁹⁹ This is particularly the case for Electro Rent, which, as illustrated in Table 10, derives [60-70%] [REDACTED]% of its UK rental revenue from this category. The table also shows that telecommunications equipment accounts for a smaller percentage ([50-60%] [REDACTED]%) of Electro Rent's total rental revenue in the EEA.

Table 10: Parties' UK and EEA rental revenues by product category (calendar year 2016)

Geographic area	Product category	Microlease		Electro Rent	
		Rental revenue (£m)	% of total	Rental revenue (£m)	% of total
UK	Telecommunications	[REDACTED]	[REDACTED] [50-60]	[REDACTED]	[REDACTED] [60-70]
	Non-telecommunications	[REDACTED]	[REDACTED] [40-50]	[REDACTED]	[REDACTED] [30-40]
	Total	[REDACTED]	100	[REDACTED]	100
EEA	Telecommunications	[REDACTED]	[REDACTED] [60-70]	[REDACTED]	[REDACTED] [50-60]
	Non-telecommunications	[REDACTED]	[REDACTED] [30-40]	[REDACTED]	[REDACTED] [40-50]
	Total	[REDACTED]	100	[REDACTED]	100

Source: The Parties ([Response to provisional findings](#) and [REDACTED]).

Note: For EEA data, the Parties used the following currency conversion rates: EUR 1.20, USD 1.60.

Evidence from the Parties' internal documents

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

6.34 As described in Appendix G, Microlease's internal documents frequently indicated an awareness of Electro Rent as a significant competitive presence in the UK. These documents mentioned Electro Rent far more frequently than any other firm when discussing the competition faced by Microlease.

²⁹⁹ For examples of the types of equipment included in this category, see Table 1 in Appendix D. Note that this category does not include all equipment required by customers operating in the telecommunications industry.

6.35 In addition to being mentioned more frequently than any other firm, Electro Rent was discussed explicitly as the main source of competitive pressure that influenced Microlease's price-setting decisions, including in the UK.³⁰⁰ For example, [REDACTED] from 9 April 2015 stated:

[REDACTED]³⁰¹

6.36 The Microlease internal documents that most clearly focus on the UK are Microlease's monthly sales reports. We reviewed copies of these documents for the period March 2015 to February 2017.³⁰² The reports are not exclusively about the UK, covering the UK, Nordics & Export, but their coverage of the UK was extensive and the UK was a major focus of these reports.^{303,304}

6.37 Electro Rent was by far the most frequently mentioned competitor in these monthly sales reports. Between March 2015 and February 2017, Electro Rent was mentioned as a competitor on around [REDACTED] separate occasions,^{305,306} of which at least [REDACTED] could reasonably be interpreted as specific to the UK.³⁰⁷ By comparison, there are fewer than [REDACTED] occasions in which other competitors are mentioned in any context.

6.38 Of the references to Electro Rent, [REDACTED] were 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 were a further [REDACTED] occasions on which the reports discussed competition with Electro Rent in relation to customers who were listed in the UK sales database of either Electro Rent or Microlease. Given the UK focus

³⁰⁰ In Microlease's FY2015-16 European Business Plan, a separate section of the 'competitive landscape' subsection was dedicated to Electro Rent, while other competitors were grouped together under 'others'. As such, a competitor-specific strategy was developed only for Electro Rent. While this was a Europe-wide document, it noted that Electro Rent's business was 'increasingly focused in the UK, as well as France and Italy' ([REDACTED]).

³⁰¹ [REDACTED]

³⁰² As the Transaction was completed on 31 January 2017, more recent documents are not relevant to our assessment.

³⁰³ For example, Microlease provided European wide sales data [REDACTED]. This data showed that in 2016 Microlease's UK rental revenue was £[REDACTED] million whilst the combined rental revenue of Denmark, Finland, Norway and Sweden (the countries identified as in the Nordic region in [REDACTED]) was £[REDACTED].

³⁰⁴ 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 [5-10%] [REDACTED]% of the region's rental revenue in 2016/17. We understand that the £[REDACTED] figure does not include the Nordics ([REDACTED]).

³⁰⁵ [REDACTED]

³⁰⁶ We estimate that Electro Rent was mentioned on [REDACTED] separate occasions in these reports. A separate occasion does not include two mentions of a firm that clearly refer to the same thing. For example, the statement in 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.

³⁰⁷ Of these occasions, [REDACTED] were discussions explicitly of one of the following: [REDACTED]. In addition, there were a further [REDACTED] occasions on which the sales reports discussed [REDACTED] (see Appendix G).

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 contained [REDACTED] separate occasions which we interpret as discussions of competition with Electro Rent specifically within the UK.

- 6.39 Microlease's internal documents also showed a close interest in the possibility of Electro Rent establishing a UK presence. For example, Microlease's monthly sales reports provided regular updates on Electro Rent's UK operations, with references to Electro Rent's UK presence in June, July, September, October and November 2015, and February and October 2016.³⁰⁸ Similarly, Microlease's [REDACTED] CEO updates also expressed concern about [REDACTED]. For example, in the April 2015 report such concerns were expressed as follows:

[REDACTED]³⁰⁹

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

- 6.40 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 referred to the primary European competitors as being Microlease and Livingston.
- 6.41 A number of Electro Rent's internal documents discussing Electro Rent's UK expansion plans clearly indicated that Microlease was the main UK TME rental supplier. For example:
- (a) An Electro Rent Marketing Campaign Program described Electro Rent's marketing position as follows: 'Who is our target customer and how do we reach them? ... What is their problem/challenge? ... [REDACTED]'.³¹⁰
 - (b) Electro Rent also circulated an email to their UK customers in the aftermath of the acquisition of Livingston by Microlease, with the header '[REDACTED]'.³¹¹ This presented Microlease as [REDACTED] in TME rental, and the

³⁰⁸ [REDACTED]

³⁰⁹ [REDACTED]

³¹⁰ [REDACTED]

³¹¹ [REDACTED]

increase in Electro Rent's UK presence as a significant competitive threat to Microlease: '[X]'.

Evidence from Microlease's lost opportunities analysis

- 6.42 As described in Chapter 5 and Appendix F, 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 [X] 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, [X]% of opportunities by number and [X]% of opportunities by value were won by Electro Rent.³¹² Electro Rent is the individual competitor that won the largest number of opportunities lost by Microlease ([X] won a similar proportion by value).³¹³
- 6.43 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 ([X]% in terms of number, [X]% in terms of value), [X] won only [X]% by number and [X]% by value.
- 6.44 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 ([X]³¹⁴ opportunities out of a total of [X]), although the share in terms of value is still similar to [X].³¹⁵

Evidence from third parties

Evidence from customers

- 6.45 As described in Appendix E, the majority of the 29 customers we contacted by telephone (who accounted for [50-60%] [X]% and [60-70%] [X]% of

³¹² 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.

³¹³ As noted in paragraph 5.30(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.

³¹⁴ This figure is a range because, in some cases, more than one possible winner is indicated for a lost opportunity. [X] is the figure if the opportunity where Electro Rent is listed alongside another supplier is assumed to have been won by that other supplier.

³¹⁵ [X]

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.³¹⁶
- (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,³¹⁷ suggesting that it saw 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.³¹⁸ In another case it was because Electro Rent did not stock sufficient numbers of the items the customer required.³¹⁹ In another case it was because equipment from specific manufacturers was required and Microlease is the UK technology partner of these firms.³²⁰ In the remaining two cases³²¹ the customers had not actively considered the alternatives available to them.³²²

6.46 Customers did not provide a consistent view of how service quality compared between Electro Rent and Microlease. However, seven customers stressed that Electro Rent tended to offer lower prices than Microlease³²³ and another seven customers described explicitly how they had previously sought quotations from both Parties and used them to negotiate better terms.³²⁴

6.47 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.

6.48 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

³¹⁶ [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.

³¹⁷ [REDACTED]

³¹⁸ [REDACTED]

³¹⁹ [REDACTED]

³²⁰ [REDACTED]

³²¹ [REDACTED]

³²² Of the remaining two customers, one had 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 ([REDACTED]).

³²³ [REDACTED]

³²⁴ [REDACTED]

44 Microlease customers had used Electro Rent in the last two years. Likewise, three of the five Electro Rent customers, when asked to name their next best option, stated that renting from Microlease was 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 used³²⁵ 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

- 6.49 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).
- 6.50 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 were the only two significant rental companies in the UK.³²⁶ 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

- 6.51 Electro Rent's internal documents suggested 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;
 - (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 after the merger between Microlease and Livingston.

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

³²⁶ As noted above, the OEMs we contacted manufacture equipment that 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]).

6.52 This rationale was reflected in Electro Rent's Marketing Campaign Program,^{327,328} which offered 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]'.

6.53 Although Electro Rent established a physical UK presence,³²⁹ including a warehouse with the capability to hold equipment, [REDACTED].³³⁰

6.54 Electro Rent explained that its strategy in the UK had been to gradually attract customers, focusing in particular on telecommunications customers and on those spending significant sums on rental.³³¹ This focus is consistent with both the composition of Electro Rent's UK rental revenue (where telecommunications customers are 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 6.45 to 6.48.

6.55 [REDACTED].³³² The telecommunications focus of Electro Rent's UK business, noted in paragraph 6.32, appears to reflect the telecommunications-focused nature of Livingston's business³³³ prior to its merger with Microlease [REDACTED].

Evidence regarding competition from other rental suppliers

Evidence from the Parties' internal documents

Evidence regarding competition from other rental intermediaries

6.56 In the Parties' internal documents presented in Appendix G, the Parties referred to each other far more frequently than they referred to other rental suppliers.

³²⁷ [REDACTED]

³²⁸ This document went on to state: [REDACTED].

³²⁹ See Appendix B for details.

³³⁰ [REDACTED]

³³¹ [REDACTED]

³³² [REDACTED]

³³³ Microlease described Livingston as 'telco-focussed' in their [REDACTED].

- 6.57 As described in Appendix G, other rental suppliers were mentioned only on [REDACTED] as many separate occasions as the separate mentions of Electro Rent in Microlease's monthly sales reports. Additionally, the majority of the suppliers³³⁴ suggested by the Parties as competitors (see Appendix D for a full list) did not appear at all in these sales reports.³³⁵
- 6.58 Microlease's FY2015-16 European Business Plan noted that 'in the UK, there are other strong competitors, notably [REDACTED]' and that '[REDACTED] has also become a force in the UK'.³³⁶ However, the strategy notes that accompanied these references indicated that Microlease considered these suppliers as a much less significant competitive threat than Electro Rent.³³⁷
- 6.59 Regarding the specific suppliers mentioned in the Parties' internal documents (see Appendix G for more details):
- (a) Interlligent was mentioned less than [REDACTED] as often as Electro Rent in Microlease's monthly sales reports; some of these references made it clear that Interlligent had yet to establish itself in the UK and suggested that its competitive interactions with Microlease were limited. For example, the March 2015 sales report stated: '[REDACTED]'.³³⁸
 - (b) EMC Hire did not appear to be explicitly referred to in the Parties' internal documents as a rental competitor.
 - (c) TES was referred to on [REDACTED] occasions³³⁹ in Microlease's deal management guides and monthly sales reports.
 - (d) MCS was also referred to on [REDACTED] occasions³⁴⁰ in Microlease's monthly sales reports.
 - (e) Inlec was referred to [REDACTED]. However, [REDACTED]. On the other occasion, Inlec was mentioned by Microlease when [REDACTED].
 - (f) TRS RenTelco was referred to by one customer when negotiating with Microlease, but the internal documents made it clear that Microlease did not consider TRS RenTelco to be active in Europe to a material extent.

³³⁴ [REDACTED]

³³⁵ [REDACTED]

³³⁶ [REDACTED]

³³⁷ This document stated that '[REDACTED]'.

³³⁸ [REDACTED]

³³⁹ This figure excludes one reference to [REDACTED].

³⁴⁰ This figure excludes one reference to MCS [REDACTED], and one to MCS activity in [REDACTED].

Evidence regarding competition from OEMs as rental providers

- 6.60 In our view, a number of documents indicated that OEMs were not meaningful rental competitors within the UK. For example, although Microlease's Vendor Due Diligence Report noted the presence of 'OEM offering rental service for RF, Mobile test, and EMC equipment',³⁴¹ this document identified [X] as the largest OEM providing such a service,³⁴² and [X] was explicitly noted to only provide rental services outside the UK. Microlease's Vendor Due Diligence Report stated that, in the UK, Microlease was a 'rental partner' rather than a competitor to [X].³⁴³
- 6.61 Similarly, Electro Rent provided a confidential information memorandum which noted that although OEMs may sell TME to customers, 'OEMs do not themselves typically provide a rental or leasing alternative due [X]', and that they see Electro Rent as a 'key partner' rather than a competitor for rental.³⁴⁴

Evidence from Microlease's lost opportunities analysis

- 6.62 As shown in Appendix F, the lost opportunities analysis shows that, for potential contracts where information is available, Microlease lost slightly more than [X] of these potential rental contracts to alternative rental supply (including Electro Rent). However, [X] was the only supplier (in addition to Electro Rent) who won a significant proportion of opportunities: [X]% in terms of number, [X]% in terms of value.³⁴⁵ Each of the other rental suppliers won less than [X]% 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 [X] is significantly lower ([X]% in terms of number, [X]% in terms of value), while other rental suppliers won even lower proportions.
- 6.63 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.³⁴⁶

³⁴¹ [X]

³⁴² The report estimated that [X] European rental revenue was larger than any firm other than the Parties.

³⁴³ [X]

³⁴⁴ [X]

³⁴⁵ As noted in Appendix F, the rental revenue associated with opportunities lost to [X] ([X] in 2016) appears grossly disproportionate in comparison to [X] actual rental revenues (£[X] per annum).

³⁴⁶ 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]%.

Evidence from the mystery shopping exercises

- 6.64 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).
- 6.65 [X] received the requested equipment by the deadline only from [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 validity of the order and no delivery took place.
- 6.66 [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

- 6.67 The Parties submitted a list of 20 third-party rental suppliers that they regarded as competitors (see Appendix D).³⁴⁷ We have received information from 15 of them.³⁴⁸ 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’ product groups (among others); and
 - (b) Those active mostly or exclusively in the ‘Industrial’ and ‘General Purpose’ product groups.

‘RF Test & Scopes’ and ‘Telecommunications’ rental suppliers

- 6.68 Nine of the rental suppliers we contacted fall within the first of the Parties’ classifications (see Appendix D); they are either very small or focused on

³⁴⁷ Two of the firms listed by the Parties were different brands of the same rental supplier.

³⁴⁸ See Appendix D for the reasons why we did not contact the remaining four rental suppliers listed by the Parties.

specific product niches (or both) or are not active in the UK to a material extent.³⁴⁹

- *EMC Hire*³⁵⁰

6.69 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.³⁵¹

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

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

- *First Rental*

6.72 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 focused on general purpose equipment, while it did not supply any telecommunications test equipment, given its greater cost.³⁵²

6.73 [REDACTED]³⁵³

- *Instrumex*³⁵⁴

6.74 Instrumex is a company based in Germany with minimal TME rental activities in the UK. It told us that it had no intention of expanding its UK activities in the foreseeable future.

³⁴⁹ The Parties submitted that the details of product segments on third-party rental providers' websites suggest that these suppliers offer products that are similar to those offered by Microlease and Electro Rent ([Response to provisional findings](#), paragraph 16). The same had been submitted in relation to the rental suppliers active mostly or exclusively in the 'Industrial' and 'General Purpose' product groups ([Response to provisional findings](#), paragraph 22). We note that it was difficult to assess the degree of product overlap from the product categories appearing on a supplier's website, as such analysis cannot account for the breadth or depth of stock within each category. We considered that the evidence we received directly from suppliers was better evidence as to the degree of overlap between those suppliers' businesses and the Parties' rental businesses.

³⁵⁰ [REDACTED]

³⁵¹ EMC equipment accounted for [10-20%] [REDACTED]% of Microlease's rental revenue in the UK ([Response to provisional findings](#), paragraph 22).

³⁵² [REDACTED]

³⁵³ 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.

³⁵⁴ [REDACTED]

- *Interlligent*³⁵⁵

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

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

- *Leasametric*

6.77 Leasametric is a company based in France which is not currently active in TME rental in the UK.³⁵⁶

- *MCS*³⁵⁷

6.78 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 supply of equipment used in wired telecommunications applications. Therefore, its activities cover only a subset of the Parties' activities.

6.79 MCS submitted that it operated in more specialist areas where competition from Microlease was less intense. [REDACTED].

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

- *TES*³⁵⁸

6.81 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].

6.82 TES estimated its rental revenue at £[REDACTED] per year³⁵⁹ and did not consider itself as competing against the Parties for TME rental.

³⁵⁵ [REDACTED]

³⁵⁶ [REDACTED]

³⁵⁷ [REDACTED]

³⁵⁸ [REDACTED]

³⁵⁹ TES expressed its revenues as £[REDACTED] per month ([REDACTED]).

- *TICS International*

6.83 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 approximately £[REDACTED] in 2016³⁶⁰ and approximately £[REDACTED] between January and November 2017.³⁶¹

- *TRS RenTelco*³⁶²

6.84 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

6.85 Four of the rental suppliers we contacted are active mostly or exclusively in what the Parties classify as the 'Industrial' and 'General Purpose' product groups. These suppliers did not see themselves as competing with the Parties, since they served different groups of customers.

- *Caltest*³⁶³

6.86 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.

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

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

³⁶⁰ [REDACTED]

³⁶¹ [REDACTED]

³⁶² [REDACTED]

³⁶³ [REDACTED]

- *Inlec*³⁶⁴

6.89 Inlec is a UK-based rental company specialising in the industrial sector. While its overall rental income is significant (£[REDACTED] million per year),³⁶⁵ the majority of it is realised from products and/or customer groups which the Parties do not supply. Inlec's customers operate mainly in the water, gas, electricity and construction markets.

6.90 Inlec estimated 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*³⁶⁶

6.91 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.

6.92 Instruments4Hire did not consider itself as competing with Microlease or Electro Rent.³⁶⁷ While there is some overlap between the products it supplies and those supplied by the Parties, it told us that for historical reasons the customer segments served were different.

- *Seaward/ISS Aberdeen*

6.93 In the list of rental suppliers they provided to us, the Parties included Seaward, which, in some submissions, is identified with ISS Aberdeen.³⁶⁸ These are, however, two separate firms.

6.94 Seaward is an equipment manufacturer, which is not active in the rental of testing equipment.³⁶⁹

6.95 ISS Aberdeen operates as a rental supplier. Whilst ISS Aberdeen rents out some items of testing equipment, it considered that it had a very different customer base to the Parties and did not look at the Parties' pricing structure

³⁶⁴ [REDACTED]

³⁶⁵ [REDACTED]

³⁶⁶ [REDACTED]

³⁶⁷ Instruments4Hire was not aware of Electro Rent operating in the UK.

³⁶⁸ [REDACTED]

³⁶⁹ [REDACTED]

when setting its own prices. ISS Aberdeen's rental turnover in 2016 was approximately £90,000.³⁷⁰

Other suppliers and OEMs

- 6.96 The Parties included in their list of competing rental suppliers Testwall, a reseller of new and used TME which is not involved in rental.³⁷¹
- 6.97 The Parties also listed eTest Equipment as a rental competitor. However, eTest Equipment [REDACTED].³⁷²
- 6.98 Finally, none of the OEMs we contacted told us that it provided directly TME rental as a normal part of its business. In particular, Rohde & Schwarz does not typically provide rental in the UK, nor any other form of leasing, deferred payment or other financial solution.³⁷³ Anritsu offers ad hoc financial packages and flexible payment terms in some cases, but it does not have any formal rental programme.³⁷⁴ Keysight and EXFO may occasionally rent some pieces of equipment to larger customers.³⁷⁵ Ixia, which was acquired by Keysight in 2017, does not rent its equipment directly to UK customers.³⁷⁶ Spirent occasionally rents equipment to customers [REDACTED]. Typically, the customer then purchases the equipment [REDACTED].³⁷⁷

Evidence from customers

- 6.99 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 Parties' customer lists. 18 of these customers had not used any rental suppliers other than the Parties,^{378,379} while 17 viewed Microlease and Electro Rent as their only options, at least for the majority of the equipment they rent.³⁸⁰ In one case the customer was unable to switch as it was bound by global contracts negotiated by its parent company.³⁸¹

³⁷⁰ [REDACTED]

³⁷¹ Testwall told us that it is not involved in the rental market in any meaningful way ([REDACTED]).

³⁷² [REDACTED]

³⁷³ [REDACTED]

³⁷⁴ [REDACTED]

³⁷⁵ [REDACTED]

³⁷⁶ [REDACTED]

³⁷⁷ [REDACTED]

³⁷⁸ 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]).

³⁷⁹ [REDACTED]

³⁸⁰ [REDACTED]

³⁸¹ [REDACTED]

6.100 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 to rather than substitutable for the Parties. Thirteen 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.³⁸²

6.101 Of the specific suppliers named as possible alternatives:

- (a) EMC Hire was named by five customers,³⁸³ and noted to specialise in electromagnetic compatibility equipment. It was used by three customers for only this part of their rental requirements.³⁸⁴ Another customer noted that the equipment supplied by EMC Hire was highly specialised.³⁸⁵
- (b) MCS was noted by three customers to focus on high-end, specialist equipment,³⁸⁶ and was usually mentioned as either a supplementary source of high-end TME rental by firms who mainly rented from the Parties,³⁸⁷ or as a provider of equipment for purchase.³⁸⁸
- (c) Moreover, customers noted that the stocks of EMC Hire³⁸⁹ and MCS³⁹⁰ 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.³⁹¹
- (d) TES has supplied equipment to four of the customers we contacted,³⁹² although for one of these this was more often for purchase,³⁹³ while another customer had used TES to supplement a larger rental order from the Parties with specialist equipment.³⁹⁴ Another customer told us that TES offered a similar range of equipment to Microlease and Electro Rent,

382 [REDACTED]
383 [REDACTED]
384 [REDACTED]
385 [REDACTED]
386 [REDACTED]
387 [REDACTED]
388 [REDACTED]
389 [REDACTED]
390 [REDACTED]
391 [REDACTED]
392 [REDACTED]
393 [REDACTED]
394 [REDACTED]

but on a much smaller scale.³⁹⁵ Only one customer noted that TES would stock 'a large percentage' of its TME requirements.³⁹⁶

- (e) TRS RenTelco was mentioned by only one customer, but the customer was deterred from using TRS RenTelco by transit costs and its understanding that TRS RenTelco was unable to supply equipment adapted to European frequencies.³⁹⁷
- (f) Interlligent was mentioned by only two customers. One of these customers was deterred from using Interlligent by the long lead time required to supply the equipment,³⁹⁸ and the other customer did not think that Interlligent was primarily a rental supplier.³⁹⁹

6.102 Only four customers said that they had been in contact with OEMs about renting TME directly from them.⁴⁰⁰ One of these customers has gone out of business.⁴⁰¹ Of the remaining three customers, one was able to borrow equipment from manufacturers for short periods of time because it is a large customer,⁴⁰² and another was directed by the manufacturers to rent from Microlease.^{403,404}

Our assessment of the evidence regarding competition between rental suppliers

6.103 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.

6.104 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 greater than Electro Rent's annual UK rental revenue.⁴⁰⁵

³⁹⁵ [REDACTED]

³⁹⁶ [REDACTED]

³⁹⁷ [REDACTED]

³⁹⁸ [REDACTED]

³⁹⁹ [REDACTED]

⁴⁰⁰ [REDACTED]

⁴⁰¹ [REDACTED]

⁴⁰² [REDACTED]

⁴⁰³ [REDACTED]

⁴⁰⁴ The additional customer discussed the possibility of using a suppliers' demo stock ([REDACTED]). This issue is discussed in Chapter 5.

⁴⁰⁵ Based on a comparison of Microlease's FY15-16 and Electro Rent's 2015 UK revenues.

- (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.⁴⁰⁶ In contrast, the evidence has consistently illustrated that customers view Microlease as a close alternative to Electro Rent: all the Electro Rent customers we talked to considered Microlease to be a credible competitor and three of the five Electro Rent customers responding to the online questionnaire viewed Microlease as their best alternative (see paragraphs 6.45 and 6.48).
- (c) Electro Rent's internal documents prepared for the establishment of UK premises described Microlease as the only rental supplier in the UK and stated that customers had '[REDACTED]'.⁴⁰⁷ This reflects that Microlease was the main TME rental supplier in the UK.

6.105 However, as set out below, the evidence illustrates that Electro Rent is an important competitive constraint on Microlease, the Parties are each other's closest rental competitor in the UK and the competitive constraint on the Parties from other rental suppliers is limited:

- (a) Microlease's internal documents with a UK focus paid particular attention to Electro Rent and competition with Electro Rent was referred to in these documents significantly more than competition with any other rental suppliers. For example, Microlease's monthly sales reports made over [REDACTED] separate references to competition with Electro Rent in the UK whilst there were fewer than [REDACTED] references to all other rental suppliers in these reports, including references to competition outside the UK.⁴⁰⁸ [REDACTED] (see paragraph 6.39).
- (b) 20 of the 29 customers we spoke to considered both of the Parties as credible suppliers,⁴⁰⁹ having used or actively considered using both Parties for their rental requirements (see paragraph 6.45(a)). Seventeen of these 20 customers also viewed Microlease and Electro Rent as their only options, at least for the majority of the equipment they rented (see

⁴⁰⁶ [REDACTED]

⁴⁰⁷ See paragraph 6.41.

⁴⁰⁸ As described in Appendix G some of these references to alternative suppliers indicated that Microlease considered these suppliers to be a limited threat.

⁴⁰⁹ [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]).

paragraph 6.99).⁴¹⁰ 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.⁴¹¹

- (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 indicated that the competitive interaction between the Parties and the other rental suppliers described as competitors in the Parties' submissions was limited. The evidence showed that these other rental suppliers either did not supply the same product/customer groups as the Parties (eg Inlec and Instruments4Hire) or focus on particular niches of the market with only a partial overlap with the Parties (eg EMC Hire, Interlligent and MCS). In particular:
 - (i) There were 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.⁴¹²
 - (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 (paragraphs 6.90 and 6.92), the larger rental suppliers identified by the Parties (Inlec and Instruments4Hire) do not see themselves as being in competition with the Parties (since they serve distinct customer groups).

⁴¹⁰ [REDACTED]

⁴¹¹ These figures include only customers who considered both Electro Rent and Microlease as rental alternatives and do not include customers who did not consider Electro Rent. Additionally, as noted at paragraph 6.105(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.

⁴¹² [REDACTED]

- (iv) As discussed above, MCS, Interlligent and EMC Hire supply equipment that overlaps to some extent with that supplied by the Parties. However, MCS and EMC Hire have both stated that they operated in more specialist areas than the Parties, such that direct competition with them was limited. Interlligent is focused on RF and microwave testing equipment 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 supplies telecommunications equipment 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 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.

6.106 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. With the exception of Interlligent, the rental suppliers who are materially active in the UK are not active 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] million. By contrast, Electro Rent is a large, established global supplier with a significant depth and breadth of stock, as is Microlease.⁴¹³

6.107 We consider that the strength of the competitive constraint that Electro Rent imposes on Microlease is not fully reflected in Electro Rent's currently limited rental revenues in the UK, and derives in part from Electro Rent's large European (and global) TME stock, which can be easily shipped to the UK from its businesses in different countries.⁴¹⁴ The large stock makes Electro

⁴¹³ As noted in Chapter 2, Electro Rent's 2016 global turnover was £117.7 million whilst Microlease's was £116.5 million.

⁴¹⁴ [Merger Notice](#), paragraph 105.

Rent better able to cater to UK customer requirements and to compete with Microlease than other rental suppliers, as:

- (a) The depth of a supplier's stock may determine the speed of delivery and/or the availability of replacement equipment (eg when items need to be recalibrated or repaired), which were mentioned by 12 of the customers we talked to as important elements of service (paragraph 6.15).
- (b) The range of a supplier's stock is also important for at least some customers, as indicated by the preference, explicitly expressed by seven customers, for sourcing all the equipment they require from a single supplier (paragraph 6.16).
- (c) Thirteen customers emphasised that potential alternative rental suppliers lacked a sufficient depth and/or breadth of stock to cater to their requirements (paragraph 6.100).
- (d) Third parties told us that a large stock improves the viability of a TME rental business, making it possible to take advantage of economies of scale and to maximise stock availability and utilisation (see paragraphs 7.13 and 7.23). This was also said to be an important consideration driving Microlease's acquisition of Livingston (see paragraph 7.23).

6.108 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).

6.109 The calls focused on the Parties' largest customers, who accounted for [50-60%] [X] % of Microlease's and [60-70%] [X] % of Electro Rent's rental revenue. Respondents to the online questionnaire typically spent less than £5,000 per annum on rental equipment.⁴¹⁵ Customers spending less than £5,000 per annum account for [0-5%] [X] % of Microlease's and [5-10%] [X] % of Electro Rent's 2016 UK rental revenue.⁴¹⁶

6.110 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

⁴¹⁵ 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.

⁴¹⁶ Even if the threshold is increased to £20,000, such customers accounted for only [X] % of Electro Rent's and [X] % of Microlease's 2016 UK rental revenue.

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 telecommunications customers and customers with the largest rental expenditures.⁴¹⁷

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

6.112 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.

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

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

(b) [REDACTED].

6.114 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.⁴¹⁸

⁴¹⁷ [REDACTED]

⁴¹⁸ [REDACTED]

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.

6.115 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].⁴¹⁹

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

6.117 We do not consider that our view regarding 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 will often need multiple units.

6.118 During our inquiry, we have gathered information regarding the UK rental revenue of the Parties and of the other rental suppliers which the Parties indicated competed with them in the UK (summarised in Table 11).⁴²⁰ In principle, this information could be used to calculate shares of supply of TME rental. However, we do not consider that such shares would be reflective of the competitive constraints existing between the suppliers. In particular, as

⁴¹⁹ [REDACTED]

⁴²⁰ We did not discover any competitors other than those indicated by the Parties.

described at paragraph 6.105, the evidence indicates that other rental suppliers either do not supply the same products/customers 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 11 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. For these reasons, we place little weight on shares of supply in our assessment.⁴²¹

Table 11: UK TME rental revenues

[REDACTED]

Source: Parties and third parties.

Notes: [REDACTED]

The extent of competition lost across types of TME

6.119 In response to our provisional findings, the Parties considered a segmentation of the market into product groups and submitted that:

- (a) There were numerous competing TME rental suppliers for all product groups other than 'telecommunications'.⁴²²
- (b) As Electro Rent's rental revenue in the UK was concentrated in 'telecommunications' equipment ([60-70%] [REDACTED]%), these competing suppliers were larger than Electro Rent in the product segments in which they operated.⁴²³
- (c) TME suppliers that focused on specific types of equipment would, all else being equal, provide a more effective competitive constraint in the segments where they are active.⁴²⁴
- (d) For the reasons above, there was no evidence that any SLC caused by the Merger would extend beyond the rental supply of telecommunications TME.⁴²⁵

⁴²¹ The Parties stated that the Merger reduced the number of 'material' TME suppliers in the UK from five to four and lead to a limited increment in the merged entity's share of supply; they argued that this was an insufficient basis for an SLC finding (see [Response to provisional findings](#), paragraphs 12 and 13). For the reasons discussed in this paragraph, we considered that the Parties' approach did not reflect the closeness of competition between the Parties and, therefore, the extent of the loss of competition resulting from the Merger.

⁴²² [Response to provisional findings](#), paragraph 21.

⁴²³ [Response to provisional findings](#), paragraph 21 and Table 2.

⁴²⁴ [Response to provisional findings](#), paragraph 20.

⁴²⁵ [Response to provisional findings](#), paragraph 21.

6.120 For the reasons explained in paragraphs 5.109 to 5.113, we have not delineated a precise product or customer segmentation of the market for the rental supply of TME. The segmentation adopted by the Parties in response to our provisional findings is just one of the possible segmentations and the Parties provided no evidence on:

- (a) Whether each proposed segment is sufficiently internally homogeneous; or
- (b) Whether there are systematic differences between the competitive conditions in the segments, so that each one is a sensible category to consider in isolation.

6.121 We consider that the segmentation proposed by the Parties is unlikely to accurately reflect differences in competitive conditions (see paragraphs 5.111 and 5.112). Nevertheless, in response to the Parties' submission we have assessed the extent to which the Merger would significantly reduce the alternatives available to those among the Parties' rental customers who require TME outside of the 'telecommunications' product category.

6.122 The customers with which we had calls span a range of industries, as can be seen in Table 2 in Appendix E, although most of them operate in the telecommunications industry.⁴²⁶ However, some customers in the telecommunications industry mainly require TME from outside the telecommunications product segment as defined by the Parties. For example, four of the five telecommunications equipment manufacturers we spoke to explicitly mentioned that their main rental requirement was equipment that the Parties had included in the 'RF test' product segment.⁴²⁷

6.123 Given the variety of customers' needs, matching individual customers with specific types of equipment is not straightforward. However, we consider that it is reasonable to treat the information received from telecommunications equipment manufacturers as well as from those customers not operating in the telecommunications industry as relevant for assessing competition outside the telecommunications product segment that the Parties defined. These two groups collectively account for 11 of the 29 customers we talked to.⁴²⁸

⁴²⁶ Of these 29 customers, 23 operate in a widely defined telecommunications industry. Of these: 13 are mainly active in the installation and maintenance of mobile network infrastructure; three are mainly active in the installation and maintenance of fixed network infrastructure; two design and/or manage telecommunications network; five are mainly telecommunications equipment manufacturers. Of the remaining six customers, four operate in the aerospace and defence industry; one is a semiconductor manufacturer; and one is a calibration company.

⁴²⁷ [REDACTED]. The fifth customer ([REDACTED]) did not specify the type of equipment it rents.

⁴²⁸ [REDACTED]

- 6.124 When the analysis is limited to this group of customers, six of the 11 customers viewed Microlease and Electro Rent as their only options, at least for the majority of the equipment they rented;⁴²⁹ four of them emphasised that potential alternative rental suppliers lacked a sufficient depth and/or breadth of stock to cater to their requirements.⁴³⁰ Of the 20 customers who explicitly expressed a concern with the Merger (see paragraph 6.146), seven were either telecommunications equipment manufacturers or were operating outside the telecommunications industry.
- 6.125 Awareness of other rental suppliers was also low among those 11 customers, and alternative suppliers were seen as complementary to the Parties, rather than substitutes:
- (a) Three of 11 customers told us they used or could use EMC Hire; they all told us that the equipment supplied by EMC Hire was highly specialised and could fulfil only part of their requirements.⁴³¹
 - (b) Interlligent was mentioned only by one of the 11 customers, who did not think it was primarily a rental supplier.⁴³²
 - (c) Two customers out of 11 mentioned MCS, considering it a source of high-end TME rental used to supplement (rather than replace) renting from the Parties.^{433,434}
- 6.126 The evidence from the customers we talked to, therefore, indicates that the Merger is likely to lead to a substantial reduction in the number of alternatives available to the Parties' customers even outside the 'telecommunications' product segment identified by the Parties.
- 6.127 This is consistent with the information received from third-party rental suppliers, discussed in paragraphs 6.105(d)(iii)-(v), and with evidence from the Parties' internal documents, as shown below.
- 6.128 The Parties argued that, all other things being equal, suppliers focusing on a specific product segment were stronger competitors in that segment than if they did not specialise (paragraph 6.119(c)). However, we note that the breadth of the product offering was listed as one of the dimensions of competition in Electro Rent's 2015 Annual Report (see paragraph 6.8).

⁴²⁹ [REDACTED]

⁴³⁰ [REDACTED]

⁴³¹ [REDACTED]

⁴³² [REDACTED]

⁴³³ [REDACTED]

⁴³⁴ None of the customers we talked to mentioned either Inlec or Instruments4Hire as alternative rental suppliers of TME.

Moreover, customers who need a one-stop-shop for all their TME rental needs would not consider specialist suppliers as a close alternative to the Parties. As seen in paragraph 6.16, evidence from customers indicates that some of them have a preference for single-sourcing their TME requirements. Specialised rental suppliers would therefore be strong competitors only in a limited number of cases.

6.129 Finally, the fact that Electro Rent's rental revenue in the UK is concentrated in telecommunications equipment does not necessarily mean that Electro Rent does not impose a significant competitive constraint on Microlease also in relation to other types of TME:

- (a) Unlike most other rental suppliers operating in the UK, Electro Rent has access to a deep and wide stock pool and has technical knowledge across a wide spectrum of TME. This makes it better able to compete even if it currently generates little revenue from some types of customers or products in the UK. The competitive pressure that Electro Rent imposes on Microlease depends on it being a close alternative for Microlease's customers, rather than on the scale of its revenues in the UK from the rental of specific types of TME.
- (b) As shown in paragraph 6.33 and Table 10, in 2016, Electro Rent generated [60-70%] [REDACTED]% of its UK rental revenue from equipment in the telecommunications category (versus [50-60%] [REDACTED]% in the case of Microlease). However, it had sizeable revenue from non-telecommunications equipment in the EEA. Indeed, at the European level, Microlease is more focused on telecommunications than Electro Rent. As Electro Rent serves UK customers using equipment stocked at its European headquarters in Mechelen (Belgium), it is a credible supplier of non-telecommunications equipment to UK customers as well.
- (c) Microlease's internal documents also indicated that the competitive constraint imposed by Electro Rent extended across a wide range of TME.
 - (i) As seen in paragraph 6.35, [REDACTED].
 - (ii) Microlease's Deal Management Guides demonstrated the range of TME across which Electro Rent competes with Microlease. For example, in the [REDACTED] Deal Management Guide, for a deal to rent a

Noise Analyser,⁴³⁵ it is noted that Electro Rent ‘compete on every deal, [we] estimate [that] we win 60/40’ for [REDACTED] TME rental.⁴³⁶

(iii) The sales reports contained further evidence of the breadth of TME across which Electro Rent competes with Microlease. In discussions of competition with Electro Rent for UK customers it is possible to identify products across a wide range of the product categories listed on Microlease’s website.⁴³⁷

(d) Electro Rent’s telecommunications focus in the UK, rather than reflecting a weak competitive constraint from Electro Rent for other types of TME, is mainly a result of the strategy Electro Rent adopted to expand in the UK market after the merger between Microlease and Livingston. At that time [REDACTED].⁴³⁸ The telecommunications focus of Electro Rent’s UK business, therefore, reflects the telecommunications-focused nature of Livingston’s business prior to its merger with Microlease.

6.130 Based on these considerations, we conclude that, as a result of the Merger, rental options are significantly reduced for customers whose TME requirements cover a wide range of TME product types, not limited to telecommunications equipment.

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

6.131 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 were recognised in the Parties’ internal documents (see paragraph 5.14) and have been indicated by the

⁴³⁵ Noise analysers are classified in each of the Parties’ websites as ‘Other Test Equipment’.

⁴³⁶ [REDACTED]

⁴³⁷ For example, it is possible to identify products labelled on Microlease’s website as Optical Test Equipment ([REDACTED]), RF Signal Generators ([REDACTED]), RF Network Analysers ([REDACTED]), and RF Spectrum Analysers ([REDACTED]). Similarly, there are some references to broader categories such as ‘RF Kit’ ([REDACTED]).

⁴³⁸ This is what could be understood from Electro Rent Marketing Campaign Presentation ([REDACTED]).

customers we spoke to (see paragraph 5.36) and by TME intermediaries and OEMs (see paragraph 5.47).

- (b) For 22 of the 29 rental customers we spoke to purchase was not a close alternative to rental (see paragraph 5.40). For six of the remaining seven customers, purchase appeared to be a close alternative to rental for at least part of their requirements. Internal supply was also unlikely to be a close alternative for the majority of rented items for most of the customers we talked to (see paragraph 5.43). 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 5.42).⁴³⁹
- (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 5.46).
- (d) As discussed in paragraphs 5.16 to 5.23, the Parties' internal documents did make a number of references to competition between TME rental and TME purchase. However, they suggested a limit to the extent to which purchase is an alternative to TME rental. For example, in Microlease's monthly sales report, there were only [REDACTED] references to competition from purchase, and [REDACTED] references to other forms of supply. In contrast, there were over [REDACTED] references to competition from Electro Rent. The Parties' internal documents did not refer to competition with other forms of TME provision to any material extent.
- (e) Microlease's UK rental revenue is, approximately, [REDACTED] 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 [30-40%] [REDACTED] of Microlease's revenue was accounted for by contracts with an actual duration of 36 months or more (see paragraph 5.28) and submitted that purchase was a natural alternative to rental for customers renting for this length of time. Since contracts were regularly extended, a significantly smaller proportion of the Parties' revenue was derived from longer term contracts when initially requested rather than actual duration is

⁴³⁹ Most of the customers responding to the relevant follow-up question told us that the availability of time-based software licences is not a material consideration when choosing between rental and purchase or that such an option is only rarely available (paragraph 5.39). Moreover, we consider it likely that any impact of the availability of time-based software licences on the choice between rental and purchase would have already been factored in by the customers when assessing the two options.

considered. For example, [50-60%] [X] % of Microlease's revenue was derived from contracts with an initial duration of 12 months or less and only [10-20%] [X] % from contacts with an initial duration of more than 36 months (see paragraph 5.70).

- (f) Microlease's lost opportunities analysis showed 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 5.30(a)).
- (g) Microlease's rental yields [X] from March 2012 to mid-2014, followed by [X] from mid to late 2014, since when Microlease's rental yield has been [X] (see paragraph 5.24). The Parties' submitted that the evolution of Microlease's rental yields was evidence of the competitive constraint from purchase.

6.132 To assess the constraint imposed by time-based software licences, the following evidence is relevant:

- (a) The Parties' internal documents did not discuss time-based software licences or professional services as a significant competitive threat to the Parties' TME rental business (see paragraph 5.23).
- (b) In the calendar year 2017, software-upgradeable TME accounted for [X] % and [X] % of the rental revenue generated in the UK by Microlease and Electro Rent, respectively.⁴⁴⁰
- (c) The customers responding to a follow-up question on time-based software licences told us that currently there were at most only rare situations in which the use of these licences was an alternative to TME rental; only one customer told us that time-based software licences would become a real alternative in the future (see paragraph 5.44). Moreover, the OEMs with whom we discussed time-based software licences either typically supplied them to rental providers rather than to final customers, provided them to a very small proportion of their customers or only for equipment not available through rental companies, or supplied them mainly as standalone products that customers run on a PC (see paragraph 5.49).
- (d) Nineteen of the 29 customers we spoke to either owned no or very few items compared to their rental volume, or the types of equipment they owned differed from those which they rented, or they used rental to vary the number of items they used. For these customers, time-based software

⁴⁴⁰ [X]

licences are unlikely to be an alternative to rental, as the necessary underlying hardware is not available to them. These 19 customers accounted for [30-40%] [REDACTED]% of Microlease's 2016 UK rental revenue and [40-50%] [REDACTED]% of Electro Rent's.

6.133 In relation to professional services, the OEMs we spoke to who provided these services viewed them as significantly different from the services customers can get from the Parties. Keysight observed that what differentiates professional services provided by Ixia from rental services is the 'people component', as customers receive professional expertise that is not available through equipment rental. Moreover, the cases in which Ixia's professional services involve equipment rental were few and accounted for very limited revenue.⁴⁴¹ Similarly, Spirent provided professional services involving training in the use of the equipment, help in designing test methodologies, identifying the most important factors to test, and interpreting test results. These services were different from those that customers could receive from the Parties, and Spirent did not consider its professional services competed for the same customers' requirements catered for by the Parties.⁴⁴²

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

6.134 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.

6.135 As discussed in Chapter 5, the Parties' internal documents and our calls with customers, OEMs and intermediaries indicated 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 between 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.

6.136 As we described in Chapter 5, we consider that there are good reasons to expect that the circumstances in which internal supply is a close alternative to

⁴⁴¹ [REDACTED]

⁴⁴² [REDACTED]

rental for the Parties' current rental customers are limited, since these customers will often be renting because internal supply is not an option.

6.137 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 did 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 did not consider purchase as a close alternative for all, or the vast majority, of their rental requirements.⁴⁴³

(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.⁴⁴⁴

(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 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 focused much less on competition from purchase than on competition from other rental suppliers. For example, Microlease's monthly sales reports (which focused predominately on the UK) contained only [REDACTED] references to a rental customer considering purchase instead of rental, to a rental deal being lost to purchase or to

⁴⁴³ [REDACTED]

⁴⁴⁴ [REDACTED]

purchase being attractive for a specific piece of equipment. In contrast, there were over [X] references to Electro Rent in these reports, most of which were UK specific. The Parties' internal documents did not refer to leasing, internal supply or the use of demonstration equipment as meaningful competitive alternatives to TME rental.

6.138 The evidence listed in paragraph 6.132 showed that time-based software licences provide only a limited competitive constraint on the Parties. For example, the Parties' internal documents did not discuss time-based software licences as a significant competitive threat; most equipment rented by the Parties is not software-upgradeable, in which case the possible use of these licences would not be relevant; customers told us that there were currently at most only rare situations in which the use of these licences was an alternative to TME rental; and the evidence from all five OEMs to whom we spoke indicated that these licences were only rarely a relevant constraint.

6.139 OEM's professional services are distinct from TME rental and cater to very different customer needs; as a result, the competitive constraint they impose on the Parties is also very limited. For example, as discussed in paragraph 6.133, the Parties' internal documents did not discuss professional services as a competitive threat, and neither of the two major suppliers of professional services indicated by the Parties directly competed with TME rental in this regard.

6.140 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 in mind when deciding whether to rent an item.

6.141 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:

- (a) Purchase is less likely to be a close alternative, all else being equal, to short rentals than to long ones.
- (b) The evidence indicated that, as a rule of thumb, the costs of rental and purchase become equivalent after 36 months, [90-100%] [X]% of Microlease's rental revenue is derived from contracts with an initial

duration of less than 36 months and around [60-70%] [X] of Microlease's rental revenue is derived from contracts with an actual duration of less than 36 months.

- 6.142 Regarding Microlease's lost opportunities analysis, the most relevant evidence for our competitive assessment was 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.
- 6.143 However, as discussed in paragraphs 5.30 and 5.76, Microlease's lost opportunities analysis analysed the options considered by customers in cases where they decided not to rent from Microlease. Therefore, the lost opportunities analysis was informative for our assessment only to the extent that it allowed us to infer information about the alternatives available in circumstances where customers currently rented 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 5.78, 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.⁴⁴⁵
- 6.144 As discussed in paragraphs 5.81 to 5.86, 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

⁴⁴⁵ Specifically, the rental revenue associated with opportunities lost to [X] appears grossly disproportionate relative to [X] annual rental revenues.

currently renting, for many of whom, as seen in paragraph 6.136, purchase does not appear to be a close alternative.

Third party views on the Merger

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

6.146 Of the 29 customers contacted by telephone, 20 explicitly expressed concern about the Merger. Two other customers told us that they had previously used quotations from one of the Parties to negotiate better terms with the 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.⁴⁴⁶ 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.

6.147 The customers who responded to our online questionnaire were less concerned about the Merger. Of the 49 customers who responded to the relevant question,⁴⁴⁷ 15 expressed concerns about the Merger,⁴⁴⁸ against 26 who were unconcerned. Eight respondents chose the option 'Don't know'.

6.148 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.

6.149 The Parties submitted that some of the customers we spoke to contradicted themselves by expressing concern about the Merger while, at the same time, telling us that they had not used Electro Rent before or that there were other rental suppliers available to them.⁴⁴⁹ We note, however, that a Merger effect is not confined to those customers who have no alternatives: there may still be a significant reduction in the alternatives available to customers who have a few options, especially if those options are not as desirable as the Parties, or if they apply to only some of the customer's TME needs. In addition, we note that even those customers who currently only use Microlease may face

⁴⁴⁶ The final rental customer we spoke to had ceased operations and did not express a view ([X]).

⁴⁴⁷ Question 23 of the online questionnaire (see Appendix E).

⁴⁴⁸ 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.

⁴⁴⁹ [Response to provisional findings](#), paragraph 31.

harm from the Merger if they are currently able to use the threat of switching to Electro Rent when negotiating with Microlease.

- 6.150 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.
- 6.151 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.

Conclusions on the effects of the Merger

- 6.152 In our view, the evidence shows that Microlease is the leading supplier of TME rental in the UK and that Electro Rent, although significantly 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 rental expenditure and some 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 TME rental to a significant proportion of customers in the UK across a wide range of TME. The constraint that Electro Rent imposes on Microlease is stronger than is suggested by its current UK rental revenue and derives from its ability to serve UK customers from its large European and global TME stock.
- 6.153 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. 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.
- 6.154 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 6.99). These 17 customers accounted for [20-30%] [X]% of Microlease's 2016 UK rental revenue and [50-60%] [X]% of Electro Rent's 2016 UK rental revenue.⁴⁵⁰

- 6.155 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%] [X]% of Microlease's and [50-60%] [X]% of Electro Rent's 2016 UK rental revenue.
- 6.156 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 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.
- 6.157 This assessment is also consistent with the views on the Merger expressed by customers (paragraphs 6.145 to 6.148). In particular, 20 of the 29 customers we called expressed concerns about the Merger and in two other cases concerns could be inferred because the customers have previously sought quotations from both Parties and used them to negotiate better terms, and 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.
- 6.158 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

⁴⁵⁰ These figures include only customers who considered both Electro Rent and Microlease as rental alternatives and do not include customers who did not consider Electro Rent. Additionally, as noted at paragraph 6.105(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.

reduced as a result of the Merger. The evidence indicates that these customers account for a significant proportion of the Parties' rental revenues.

6.159 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 2.18 and paragraphs 6.51 to 6.54) 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 6.45(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.⁴⁵¹

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.⁴⁵²

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:

⁴⁵¹ [Merger Assessment Guidelines \(CC 2 Revised\)](#).

⁴⁵² [Merger Assessment Guidelines \(CC 2 Revised\)](#).

- 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.⁴⁵³

- 7.4 This section discusses the evidence for barriers to entry and expansion for the rental supply of TME in the UK.

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.⁴⁵⁴ The Parties estimated that, since their recent entry, each of Electro Rent and Interlligent had established a share of supply for the rental of TME in the UK of approximately [0-5%] [X]%.⁴⁵⁵
- 7.6 Prior to opening its UK premises in Sunbury-on-Thames, Electro Rent was already established in the UK market servicing its UK clients from Belgium (and it continues to supply its UK customers from its Mechelen warehouse). We note that Electro Rent had 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 consider the Electro Rent example to be of limited assistance in assessing the ease of entry or expansion into the UK market.

⁴⁵³ [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraphs 5.8.3 and 5.8.4.

⁴⁵⁴ See paragraph 7.28 for other attempted entry/expansion mentioned by third parties.

⁴⁵⁵ [Merger Notice](#), paragraph 174; Interlligent's own data indicates a significantly lower market share, see paragraph 6.76 for details.

- 7.7 Interlligent's presence in the UK is relatively small and specialised.⁴⁵⁶ Combined with the evidence that Interlligent is not a strong alternative to the Parties (for example, see paragraphs 6.105 to 6.106), 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.⁴⁵⁷
- 7.9 Microlease estimated that Electro Rent serviced its UK operations with an inventory worth around £4 million, and that this has the level of investment that 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, £4 million of stock would drive an income stream equivalent to Electro Rent's current levels. They also stated that it was not strictly necessary to own the stock directly, as it was possible to sub-rent stock from other TME rental companies.⁴⁵⁸
- 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.⁴⁵⁹ 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 rental firms).⁴⁶⁰

⁴⁵⁶ [X]

⁴⁵⁷ [Merger Notice](#), paragraphs 171&172.

⁴⁵⁸ [X]

⁴⁵⁹ [Response to phase 1 decision](#), paragraph 8.2.

⁴⁶⁰ [X]

- 7.11 The Parties also stated that competitors could enter into agreements with OEMs, and so the Parties' arrangements with OEMs would not act as barriers to entry and expansion.⁴⁶¹

Views of third parties

- 7.12 In this section we summarise the views expressed to us by other TME rental suppliers, OEMs, and other third parties on barriers to entry and expansion.⁴⁶² 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

- 7.13 Several third parties emphasised the crucial importance of holding a large stock of equipment in order to be a competitive rental supplier, and cited the need to build up such a stock as a particularly significant barrier to entry. MCS told us that having a depth of stock so that customer requirements could be fulfilled was a key feature of competition between rental providers.⁴⁶³ Another stakeholder explained that it was necessary to reach a critical mass of business in order to maximise availability and utilisation, while ensuring that the business could cope with technology shifts over time.⁴⁶⁴
- 7.14 The amount of stock required depended on the range of equipment a supplier wanted to make available. To compete, as the Parties do, across most TME product categories at European level, stock requirements appeared very significant. Other TME suppliers estimated that stock worth at least \$50 million (£35 million) was necessary.⁴⁶⁵
- 7.15 On the other hand, other suppliers told us that a company could be active in a niche area with a relatively small inventory, but that this restricted its

⁴⁶¹ [Response to provisional findings](#), paragraph 3(e).

⁴⁶² For more details of the evidence from third parties, see Appendix D.

⁴⁶³ [REDACTED]

⁴⁶⁴ [REDACTED]

⁴⁶⁵ [REDACTED]

competitiveness since some customers needed a broader range of TME and prefer rental suppliers that could cover all their requirements.⁴⁶⁶

- 7.16 We were also told that the length of the repayment period on rental stock may discourage new entrants with limited capital availability.⁴⁶⁷ Responses from third parties indicated that it took around three years for rental revenues to cover the initial investment in equipment.⁴⁶⁸ This was consistent with data in the Microlease Vendor Due Diligence report.⁴⁶⁹
- 7.17 We considered whether existing rental suppliers could grow their business and expand into new product groups by growing the stock gradually using their own cashflow. The evidence we received suggested that this would not happen in a timely manner. For example, Interlligent considered that building up a competitive UK business using this approach would take more than a decade.⁴⁷⁰
- 7.18 Acquiring the necessary stock might also present a barrier to new entrants or smaller rental suppliers. The rental partnerships that the Parties had with some of the major equipment manufacturers, and the discounts they were able to obtain, placed smaller competitors at a disadvantage unless they could agree similar terms.⁴⁷¹ For example, the Parties had agreements with OEMs such as Keysight (the largest global TME OEM) that could provide the Parties with advantages such as access to discounts not available to other suppliers, and advance information on new products.⁴⁷² While the Parties stated that other competitors could enter similar agreements with OEMs,⁴⁷³ they also provided evidence that often these agreements were exclusive (either contractually, or ‘in practice’), and that existing competitors had generally been unable to enter into these agreements.⁴⁷⁴ This is consistent with our discussions with OEMs where they rarely mentioned having agreements with other TME rental suppliers.⁴⁷⁵

⁴⁶⁶ [REDACTED]

⁴⁶⁷ [REDACTED]

⁴⁶⁸ [REDACTED]

⁴⁶⁹ In the period between February 2012 and June 2015, the ratio between monthly earnings and the cost of the assets oscillated between [REDACTED]% and [REDACTED]%, which corresponds to [REDACTED]% yearly ([REDACTED]).

⁴⁷⁰ [REDACTED]

⁴⁷¹ [REDACTED]

⁴⁷² [REDACTED]

⁴⁷³ [Response to provisional findings](#), paragraph 3(e).

⁴⁷⁴ [REDACTED] discussed the exclusivity of Authorised Technology Partners and Demonstration Pool Agreements respectively (while Preferred Rental Partner agreements were described as non-exclusive); [REDACTED] directed us to Keysight’s list of preferred partners in the UK, of which the Parties were the only rental providers listed, and Tektronix’s website (one of the other suppliers mentioned) similarly indicated the Parties were the only UK rental partners.

⁴⁷⁵ [REDACTED]

- 7.19 Finally, while the Parties submitted that OEMs could obtain equipment for rental at much lower cost (see paragraph 7.8), OEMs faced their own barrier to entering the rental market. Anritsu told us that the TME rental business had traditionally been multi-vendor and that customers expected this to be the case. As a result, it was difficult for OEMs to expand into rental, since they were unlikely to want to offer alternative products from a range of different manufacturers.⁴⁷⁶ Moreover, OEMs might lack the logistics and inventory managing expertise required to run a rental business. Keysight told us that this was one of the reasons why it preferred to rely on rental partners.⁴⁷⁷

Specialist knowledge

- 7.20 We found that different types of TME required different specialist knowledge. For example, EMC Hire told us that they had specialist expertise in EMC equipment, but not in other types of TME. The unwillingness to enter segments where it did not have specialist knowledge was one of the reasons why it was not planning to expand beyond its existing segment.⁴⁷⁸ Inlec told us that expertise was necessary for [REDACTED] for a customer's requirements, and for [REDACTED].⁴⁷⁹
- 7.21 Focusing on a niche in which a provider has specialist knowledge was also a strategy adopted to compete against larger providers like the Parties. [REDACTED], for example, told us that it [REDACTED] in such niches. It considered that [REDACTED].⁴⁸⁰ Another third party stated that it was important to be, and to be perceived as, a technical expert, particularly since this was one way to differentiate from the Parties and avoid competing purely on price.⁴⁸¹

Other barriers

- 7.22 Another requirement was to have customer relationships, which take time to build up. According to TRS RenTelco, this exacerbated the substantial investment required in stock since it might take some time before a supplier had sufficient business to effectively utilise that stock, reducing the likelihood that an attractive return is made on that investment.⁴⁸² Another respondent

⁴⁷⁶ [REDACTED]

⁴⁷⁷ [REDACTED]

⁴⁷⁸ [REDACTED]

⁴⁷⁹ [REDACTED]

⁴⁸⁰ [REDACTED]

⁴⁸¹ [REDACTED]

⁴⁸² [REDACTED]

noted that in order to successfully expand the business, it was necessary to build trust with new customers, and that this necessarily took time.⁴⁸³

- 7.23 One OEM noted that it was difficult for smaller TME rental suppliers to compete effectively, as ‘the need for back-up stock generates significant economies of scale’.⁴⁸⁴ This was also described by Microlease as being one of the most important considerations driving its acquisition of Livingston in terms of maximising the utilisation of its stock,⁴⁸⁵ as well as the large estimated capital synergies available from the Merger.⁴⁸⁶
- 7.24 One respondent considered that geographic diversity was important, in order to capitalise on the different technological growth cycles taking place in different countries, to ensure sufficient levels of utilisation of TME to justify the initial investment.⁴⁸⁷
- 7.25 TME 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 Interlligent when considering expansion in the UK.⁴⁸⁸
- 7.26 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]; and
- (b) [REDACTED].⁴⁸⁹
- 7.27 In addition, one respondent noted the importance of having a local presence in order to expand beyond a certain size, in particular as this can affect availability and speed of delivery as well as customer perceptions of these factors.⁴⁹⁰

⁴⁸³ [REDACTED]

⁴⁸⁴ [REDACTED]

⁴⁸⁵ [REDACTED]

⁴⁸⁶ Estimated as ‘\$[REDACTED]’ ([REDACTED]).

⁴⁸⁷ [REDACTED]

⁴⁸⁸ [REDACTED]

⁴⁸⁹ [REDACTED]

⁴⁹⁰ [REDACTED]

Past entry attempts and third parties' expansion plans

7.28 The existence of high barriers to entry can be corroborated further if there are examples of past failed entry. Evidence from third-party rental providers included:

(a) [REDACTED]⁴⁹¹

(b) [REDACTED]⁴⁹²

(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.⁴⁹³

7.29 None of the rental suppliers (or other intermediaries in the TME industry) that we contacted told us that they had plans to expand beyond the product groups and geographies in which they currently operated. [REDACTED].⁴⁹⁴

7.30 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 companies would be able to compete with Electro Rent and Microlease from a standing start.⁴⁹⁵

Parties' internal documents

7.31 Internal documents from both Microlease and Electro Rent indicated 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 highlighted were consistent with the observations made by third parties above.

⁴⁹¹ [REDACTED]

⁴⁹² [REDACTED]

⁴⁹³ [REDACTED]

⁴⁹⁴ [REDACTED]

⁴⁹⁵ [REDACTED]

7.32 A Microlease Management presentation about the acquisition, for example, listed seven '[REDACTED]':⁴⁹⁶

- (a) Leading market position;
- (b) £[REDACTED] million 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.

7.33 Documents produced by third parties on Microlease's behalf made similar claims which implied that the TME market exhibited high entry barriers. [REDACTED] Microlease Information Memorandum of October 2015 stated that Microlease's 'broad geographic footprint, large asset pool and strong service levels and reliability provide strong competitive advantages and [REDACTED]'.⁴⁹⁷

7.34 This memorandum further emphasised that Microlease had a 'robust business model with [REDACTED]' on a global scale. The memorandum noted that 'Microlease has over 30 years of experience, high levels of repeat business, a large and diverse asset pool (c.£ [REDACTED] million at cost) and a [REDACTED] European position (c. [REDACTED]% market share)', and argued that 'these factors are [REDACTED], and consequently there are [REDACTED] providers that can compete with Microlease on a global scale'.⁴⁹⁸

7.35 Similarly, a number of Electro Rent's internal documents emphasised the difficulties facing a new competitor in trying to replicate Electro Rent's services. An information memorandum produced by [REDACTED] for Electro Rent noted that '[T]he 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 favourable secular and end market trends to drive future growth'.⁴⁹⁹

7.36 This memorandum also noted the importance of a large product stock in competing in the TME rental market, stating that:

⁴⁹⁶ [REDACTED]

⁴⁹⁷ [REDACTED]

⁴⁹⁸ [REDACTED]

⁴⁹⁹ [REDACTED]

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.⁵⁰⁰

- 7.37 Moreover, concerning the European market, the Microlease Vendor Due Diligence report stated that '[t]here appears to be no logical rationale for [X]' to try and substantially take share in Europe given: [X]'.⁵⁰¹

Our assessment of likelihood, timeliness and sufficiency of entry and expansion

Introduction

- 7.38 In this section, we assess the evidence we received and whether new entry or expansion would be timely, likely and sufficient to mitigate or prevent an SLC.

Timeliness

- 7.39 The CMA's usual approach is to consider that the impact of any entry should be felt within two years to be timely. 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.⁵⁰² However, we are not aware of any reason to depart from the usual approach of using two years.
- 7.40 The evidence we seen on the level of stock required to compete on a scale that would act as a constraint on the Parties varies substantially. This may be partly because third parties may consider that a competing supplier would likely need to serve non-UK geographies as well, in order to reach sufficient scale to be competitive with the Parties. This is likely to be a result of the need to maximise utilisation from the stock itself, which, as the Parties indicated, is

⁵⁰⁰ [X]

⁵⁰¹ [X]

⁵⁰² [Merger Assessment Guidelines \(CC 2 Revised\)](#), paragraph 5.8.11.

highly scale sensitive, and is assumed to be 70-75% by the Parties in their calculation.⁵⁰³

- 7.41 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.
- 7.42 The situation could be different for an established international supplier with a good level of worldwide stock that decided to enter the UK market and make its worldwide stock available to UK customers. However, we have not seen any evidence of any such supplier planning to enter the UK market within the next two years.

Likelihood

- 7.43 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. [REDACTED]. 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.
- 7.44 Despite raising them as a possibility, the Parties did not provide details of any calibration companies or general rental firms that may have plans to expand into the TME sector in the UK. In addition, we are not aware of any 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.
- 7.45 Based on this evidence, we consider that successful entry or expansion on a significant scale is unlikely to occur within the next two years.

Sufficiency

- 7.46 Our review of the recent history of the market indicates that there have been very few (if any) recent examples of entry.
- 7.47 We consider that, to be sufficient to remedy or mitigate an SLC, entry (or expansion) would have to take place in all the various sectors serviced by

⁵⁰³ See paragraphs 7.9 and 7.23 above.

both Parties. This could either take the form of one supplier, with expertise and capability in all these sectors, or possibly a number of suppliers each with expertise and capability in a single market sector.

- 7.48 The perception (from both potential entrants and/or customers) of a need for specialist expertise⁵⁰⁴ appears to limit the ability for a supplier to expand across multiple sectors, even if it had the level of stock to do so. This would reduce the likelihood of sufficient expansion, or indicate that any such expansion would take a long time to implement.
- 7.49 We found limited evidence of any plans for entry or expansion, and consider it unlikely that such entry or expansion would take place on a sufficient scale to mitigate or prevent an SLC.

Conclusion on likelihood of entry or expansion in the UK

- 7.50 We 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 conclude that entry or expansion is unlikely to be timely, likely, and sufficient such as to mitigate or prevent an SLC arising in the UK.

Buyer power

- 7.51 The Parties did not submit any arguments, nor did we see evidence to suggest, that TME rental customers had buyer power sufficient to mitigate or prevent an SLC arising in the UK.

Efficiencies

- 7.52 The Parties identified a number of efficiencies from the global transaction. However, we were not provided with any evidence that any such efficiencies would be passed on to UK customers, or would be timely, likely and sufficient to mitigate or prevent an SLC arising in the UK.
- 7.53 In addition, we received no evidence of, and the Parties made no submissions on, the existence of relevant customer benefits (RCBs) arising from the Merger.⁵⁰⁵

⁵⁰⁴ See paragraph 7.20 for examples of evidence provided by third parties on specialist expertise required for rental of TME

⁵⁰⁵ [REDACTED]

8. Conclusions

8.1 As a result of our assessment we have 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.

9. Remedies

9.1 Having concluded that the Merger may be expected to result in an SLC, the CMA is required, pursuant to [section 35\(3\)](#) of the Act, to decide the following:

- (a) whether action should be taken by it under [section 41\(2\)](#) of the Act for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect that may be expected to result from the SLC;
- (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect that may be expected to result from the SLC; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

9.2 The Act requires that the CMA, when considering possible remedial actions, shall ‘in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it’.⁵⁰⁶

9.3 To fulfil this requirement, as set out in the Merger Remedies Guidance,⁵⁰⁷ the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects. Where the CMA is choosing between remedies that it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive. The CMA will also seek to ensure that no remedy is disproportionate to the SLC and its adverse effects.⁵⁰⁸ When considering the costs associated with a remedy, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture since in the case of a completed merger, the merger

⁵⁰⁶ [Section 35\(4\)](#) of the Act.

⁵⁰⁷ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), subsequently adopted by the CMA.

⁵⁰⁸ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraphs 1.8 to 1.13.

parties have taken the foreseeable risk that the CMA may require divestiture,⁵⁰⁹ and so the divestiture costs are in essence avoidable. However, it will consider costs such as those resulting from distortions in the market, compliance costs, and the loss of any RCBs arising from the merger.⁵¹⁰

9.4 The Merger Remedies Guidance sets out four aspects to be considered in assessing the effectiveness of a remedy:⁵¹¹

- (a) **Impact on the SLC and its resulting adverse effects:** normally, the CMA will seek to restore competitive rivalry through remedies that re-establish the structure of the market expected in the absence of the merger.
- (b) **Appropriate duration and timing:** the CMA will prefer a remedy that quickly addresses competitive concerns, with the effect of the remedy sustained for the likely duration of the SLC.
- (c) **Practicality:** a practical remedy should be capable of effective implementation, monitoring and enforcement.
- (d) **Acceptable risk profile:** the CMA will seek remedies that have a high degree of certainty of achieving their intended effect.

9.5 On 5 February 2018, along with our provisional findings, we published a Notice of possible remedies (Remedies Notice),⁵¹² in which we sought views on possible remedies to the SLC we had provisionally identified. In particular, we sought responses on structural remedy options involving the sale of certain of the Parties' operations in the market in which an SLC had been provisionally found, as well as inviting any views on other practicable remedies to address the SLC and any resulting adverse effects, including any behavioural remedies that could be required to support the effectiveness of a divestiture.

9.6 In addition, we directly contacted a number of TME suppliers and other relevant interested parties (including some suggested by the Parties) to

⁵⁰⁹ *Intercontinental Exchange, Inc v Competition and Markets Authority and NASDAQ Stockholm AB* [2017] CAT 6 at 101.

⁵¹⁰ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraphs 1.10 to 1.11.

⁵¹¹ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 1.8.

⁵¹² The Remedies Notice sets out the actions that the CMA considers it might take for the purpose of remedying the SLC and resulting adverse effects identified in our [provisional findings](#). The Remedies Notice can be found [here](#).

discuss potential remedy options and to gauge the level of interest amongst potential suitable purchasers for any necessary divestment.⁵¹³

- 9.7 The Parties provided a response to the Remedies Notice on 19 February 2018, and on 1 March 2018 we held a response hearing with the Parties which included discussion of potential remedies. The Parties also submitted a summary of their remedies proposal on 7 March 2018. On 13 March 2018, we issued a remedies working paper to the Parties for comment. Having received a response to the remedies working paper from the Parties on 20 March 2018, we issued a remedies supplementary working paper on 5 April 2018, to which the Parties responded on 12 April 2018.
- 9.8 The rest of this chapter is structured as follows:
- (a) an overview of remedy options;
 - (b) an assessment of the effectiveness of potential remedies;
 - (c) an assessment of the proportionality of the effective remedies identified;
 - (d) the implementation process for any remedies; and
 - (e) our decision on remedies.

Overview of remedy options

- 9.9 As set out in the Merger Remedies Guidance,⁵¹⁴ remedies are conventionally classified as either structural or behavioural:
- (a) Structural remedies, such as divestiture or prohibition, are generally one-off measures that seek to restore or maintain the competitive structure of the market through a direct change in market structure.
 - (b) Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of the merging parties with the aim of restoring or maintaining the level of competition that would have been present absent the merger.
- 9.10 In merger inquiries, the CMA generally prefers structural remedies to behavioural remedies because:⁵¹⁵

⁵¹³ The CMA had phone calls with [X]. A number of other stakeholders contacted declined to comment, including [X].

⁵¹⁴ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), Part 2.

⁵¹⁵ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 2.14.

- (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
- (b) behavioural remedies may not be effective and may create significant costly distortions in market outcomes; and
- (c) structural remedies do not normally require monitoring and enforcement once implemented.

9.11 These factors mean that behavioural remedies are generally subject to greater risks than structural remedies and are therefore less likely to be effective solutions to an SLC in a merger inquiry.

Options set out in the Remedies Notice

9.12 In the Remedies Notice we set out two remedy options as being likely to provide a comprehensive solution to the SLC and the resulting adverse effects:⁵¹⁶

- (a) requiring the divestiture of Microlease Limited and its subsidiaries (Microlease Companies); or
- (b) requiring the divestiture of Electro Rent Europe NV and its subsidiaries (if any), (Electro Rent Europe).

9.13 In addition, the Remedies Notice stated that it was also possible that the divestiture of a narrower part of the Parties' businesses, focused on the UK, might be capable of providing a comprehensive solution to the SLC and the resulting adverse effects, for example through the divestiture of Electro Rent Europe NV's UK business (Electro Rent UK).⁵¹⁷

9.14 In the Remedies Notice, we also stated our view that a stand-alone behavioural remedy was unlikely to be an effective remedy to the SLC and any resulting adverse effects, but noted that we would consider any behavioural remedies that the Parties or any third party might propose.⁵¹⁸

9.15 Further, the Remedies Notice highlighted that we would consider whether any behavioural remedies are required in a supporting role to safeguard the effectiveness of any structural remedies. In particular, we identified that the following may be needed to support the divestment of Electro Rent UK.⁵¹⁹

⁵¹⁶ Remedies Notice, paragraph 13.

⁵¹⁷ Remedies Notice, paragraph 15.

⁵¹⁸ Remedies Notice, paragraph 10.

⁵¹⁹ Remedies Notice, paragraph 21.

- (a) providing the purchaser with the option, if it so wished, to have continued unfettered access to Electro Rent's global inventory for a period of time – likely to be at least 24 months – on terms to be agreed, but no worse than the terms on which other Electro Rent companies and subsidiaries have access to such inventory;
 - (b) providing the purchaser with the option to purchase from Electro Rent any such additional inventory which it has rented to customers during the period referred to in sub-paragraph (a), on a basis to be agreed; and
 - (c) the provision by the vendor of central support services such as finance, IT and procurement.
- 9.16 For the potential divestment of Electro Rent Europe, the Remedies Notice stated that the provision of central support services such as finance, IT and procurement might be required for a transitional period, and it might also be appropriate to include similar provisions for access to equipment from Electro Rent's global inventory as described in paragraphs 9.15(a) and 9.15(b) above.⁵²⁰

Effectiveness of potential remedies

- 9.17 When considering whether remedies would be effective in addressing an SLC, the Competition Appeal Tribunal (CAT) has recognised that the CMA is 'entitled to impose a remedy which would result in no realistic prospect of an SLC materialising.'⁵²¹ In that regard, the CMA is entitled to use its own experience and knowledge of business and management to form its assessment of proposed remedies.⁵²²
- 9.18 In the rest of this section, we consider the effectiveness of potential remedies proposed in the Remedies Notice and by respondents to that Notice. The specific potential remedies and supporting provisions considered are:
- (a) stand-alone behavioural remedies;
 - (i) a retail price cap;
 - (b) structural remedies;
 - (i) the divestment of the Microlease Companies;

⁵²⁰ Remedies Notice, paragraph 22.

⁵²¹ *Ryanair Holdings plc v Competition Commission* [2014] CAT 3, paragraph 202.

⁵²² *Ryanair Holdings plc v Competition Commission* [2014] CAT 3, paragraph 204.

- (ii) the divestment of Electro Rent Europe;
 - (iii) the divestment of Electro Rent UK; and
 - (iv) the divestment of another narrower part of the Parties' businesses.
- (c) the need for any transitional supporting provisions.

Stand-alone behavioural remedies

A retail price cap

- *Description*

9.19 The Parties proposed a behavioural remedy consisting of a TME rental rate freeze for telecommunications customers in the UK, followed by a period of restrictions on TME rental rate increases (by reference to a consumer price index) for telecommunications customers in the UK.⁵²³

9.20 The Parties did not propose a duration either for the TME rental rate freeze for telecommunications customers in the UK or the subsequent restrictions, nor for the specific consumer price index, stating these could be agreed between the Parties and the CMA.⁵²⁴

- *Views of parties*

- *The Parties*

9.21 The Parties stated that the CMA's evidence in its provisional findings cannot support any SLC finding outside the telecommunications segment, and so the proposed behavioural remedy can be targeted at telecommunications customers in the UK.⁵²⁵ Further, they stated that there are certain niches within this segment where the Parties are dominant suppliers.⁵²⁶

9.22 Accordingly, the Parties stated that its proposal for a retail price cap would comprehensively remedy the only SLC that the CMA may conceivably find on the basis of the evidence in its provisional findings, by ensuring that the

⁵²³ [Response to Remedies Notice](#), paragraphs 8 and 4.1.

⁵²⁴ [REDACTED]

⁵²⁵ [Response to Remedies Notice](#), paragraph 4.1.

⁵²⁶ 'The behavioural remedy is specifically in the telecommunications area where I am saying I have agreement with you that there are particular niches where Electro Rent and Microlease are the dominant suppliers and, therefore, you could come to the conclusion that there is a serious lessening in competition in that sector.' ([REDACTED]).

Parties could not increase prices in this segment for a considerable period of time.⁵²⁷

9.23 The Parties also stated that the use of the described price cap would be reasonable and practicable, as it would be quick and easy to implement and monitor, while being less intrusive than alternative structural remedies.⁵²⁸

9.24 The Parties suggested that there were not a large number of customers (likely to be fewer than [100-200] [REDACTED]) or pieces of equipment (likely to be around [50-100] [REDACTED] variants of products) which would be affected by the price cap, and that entry of new customers was relatively rare.⁵²⁹ The remedy could be monitored through a number of mechanisms including:⁵³⁰

- (a) informing relevant current customers of the arrangements for their existing rental agreements;
- (b) a review of pricing, either random or total, against the specific client base (with the option of involving a monitoring trustee); and
- (c) using a gross yield measure on the equipment to determine the appropriate level of the price cap for new customers/agreements.

9.25 The Parties stated that they had not particularly considered the risk of reducing service levels as they did not envisage ever doing so, but that it might be possible to include controls on this in the behavioural remedies, to maintain the existing levels of service.⁵³¹

○ *Third parties*

9.26 The remedy proposed by the Parties had not been submitted at the time we spoke with most third parties regarding the potential remedies set out in the Remedies Notice. However, we enquired about the effectiveness of behavioural remedies, using examples of price caps and access remedies, and we encouraged the respondents to consider whether any of these approaches could be designed to be effective.

⁵²⁷ [Response to Remedies Notice](#), paragraph 4.2(a).

⁵²⁸ [Response to Remedies Notice](#), paragraph 4.2(b).

⁵²⁹ [REDACTED]

⁵³⁰ [REDACTED]

⁵³¹ [REDACTED]

- 9.27 Almost all third parties submitted that behavioural remedies would not be effective at addressing the SLC, in particular where these might be required for an extended period of time.
- 9.28 [X] stated that it would be very difficult to implement any behavioural remedies over an extended period of time.⁵³²
- 9.29 [X] stated that there were no behavioural remedies that would be effective, and any effective remedy would require divestiture of part of the Parties' business.⁵³³
- 9.30 [X] highlighted the issues and complexity associated with implementing and monitoring any behavioural remedies, and raised concerns that at the end of their duration the underlying competition issue would remain.⁵³⁴
- 9.31 [X] stated that a price cap may be helpful as part of a remedies package, but alongside a divestment, due to the expected continued market strength of the Parties (eg due to their high level of stock, and close relationships with OEMs).⁵³⁵
- 9.32 [X] stated that if the CMA required behavioural remedies, the Parties would be likely to comply and not intentionally harm the market.⁵³⁶

- *Effectiveness*

- 9.33 As discussed in paragraphs 9.10 to 9.11 above, the CMA has a preference for structural merger remedies as these deal with an SLC directly and comprehensively at source, raise fewer concerns regarding effectiveness or the risk of distortions, and have lower monitoring and enforcement requirements.
- 9.34 Using a price cap to control outcomes seeks to prevent merging firms from exercising the enhanced market power that they are likely to acquire from a merger. This can raise a number of issues, as discussed in the CMA's guidance:⁵³⁷

⁵³² [X]

⁵³³ [X]

⁵³⁴ [X]

⁵³⁵ [X]

⁵³⁶ [X]

⁵³⁷ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 4.30.

- (a) This class of remedy directly overrides market signals with the result that it may generate substantial distortion risks over time that increase the cost of the remedy or reduce its effectiveness.
- (b) Defining appropriate parameters for the control measure, for example the level of a price cap, may be complex and impractical and the measure may therefore be vulnerable to specification risks.
- (c) The control may be vulnerable to circumvention risks despite the addition of preventative provisions.
- (d) Monitoring and enforcement may be costly and intrusive and may lack effectiveness, especially where the form of remedy is complex.

9.35 In this case, we consider that the imposition of a price cap as described by the Parties is unlikely to restore the competitive structure of the market expected in the absence of the Merger. In particular:

- (a) The price that may be expected in normal competitive conditions is unlikely to be fixed at a particular level, followed by an increase in line with a consumer price index. The Parties have noted previously that gross yields had been decreasing over the past few years (albeit they also stated that this had stabilised in the past two years).⁵³⁸
- (b) The use of either a flat price or a consumer price index is unlikely to reflect changes in the Parties' underlying costs, and so we would expect the price cap to diverge (upwards or downwards) from the price level in normal competitive conditions over time. We are not aware of any choice of index (either price-based or cost-based) which might help mitigate this effect. If the price cap is too high, the remedy becomes ineffective as it is no longer a sufficient constraint. If it is too low then it could result in harmful distortions such as incentivising an underinvestment in stock and/or reducing incentives for entry by third parties.
- (c) Prices are individually negotiated with customers, and so applying a blanket price cap would be difficult to define, implement and monitor.⁵³⁹ Given the number of competitive parameters considered when bidding for business (eg length of rental period, likelihood of rollover, availability of own stock, likely competitor availability of stock, size and frequency of rental, additional functionality of equipment and expected life of rented equipment), we consider that price based on a simple gross yield figure

⁵³⁸ For example, see: [§].

⁵³⁹ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 4.30(a)(iii).

applied to the cost of the underlying equipment would not replicate the competitive price for a customer enquiry. In addition, the monitoring regime would need to be carefully specified, and could be complex, for example, in order to ensure that the prices agreed with individual customers (particularly where customers have not rented a specific item before) are in compliance with the remedy.

- (d) The Parties did not explain on what basis customers would be considered 'telecommunication customers' and so would be affected by the price cap. We noted earlier that a precise customer segmentation of the market for the rental supply of TME was neither possible nor desirable (paragraphs 5.109 to 5.114).
- (e) As described in Chapters 5 and 6 above, the SLC we have identified is not restricted to telecommunication customers. The Parties accepted that the approach as proposed would not be effective in addressing the SLC and its resulting effects for the entire market for the rental supply of TME in the UK.⁵⁴⁰ Therefore, any price cap aimed at comprehensively addressing the SLC would need to be applied more widely, increasing the risk of distortions, and requiring additional monitoring.

- 9.36 In addition, the proposed retail price cap would not guard against the degradation of service levels which, we were told, were important for a significant number of rental TME customers⁵⁴¹ (eg speed of delivery, flexibility of renewal and supplying replacement units if required). The Parties' suggestion of including additional behavioural controls to preserve these service levels would be hard for the CMA to design, implement and monitor over an extended period.
- 9.37 Given that we have no evidence that the competitive conditions in the relevant market are likely to change in the future, any price cap may need to remain in place indefinitely (with no clear delineator to move between flat prices and adopting index-linked changes in prices). The Parties did not provide any reasons for a shorter time being chosen. This time-period would also need to apply to any related controls, such as for service levels.
- 9.38 In our view, there is a risk of a price cap causing market distortions which would increase over time, particularly where changes in the index used do not closely mirror changes to the underlying cost base, and so relying on this

⁵⁴⁰ [REDACTED]

⁵⁴¹ See paragraph 6.15 above. Seven customers mentioned the speed of delivery whilst five customers referred to the replacement of equipment.

remedy indefinitely or for ‘a considerable period of time’ (as suggested by the Parties)⁵⁴² would further increase the risk of harmful market distortions.

- 9.39 In addition to the risk of market distortions, there would be substantial complexity and costs associated with designing, implementing and continually monitoring the proposed price cap, particularly for an extended period of time.
- 9.40 For the reasons stated above, we consider that the price cap remedy, as submitted by the Parties, has a number of risks and disadvantages, and would not be an effective remedy to address the SLC that we have identified.

Structural remedies

- 9.41 As stated in the CMA's guidance, to be effective in restoring or maintaining rivalry in a market where there is an SLC, a divestiture remedy should involve the sale of an appropriate divestiture package to a suitable purchaser through an effective divestiture process.⁵⁴³ Divestitures may be subject to a variety of risks that may limit their effectiveness in addressing an SLC, in particular through composition risk, purchaser risk and asset risk.⁵⁴⁴
- 9.42 In defining the scope of a divestiture package that will comprehensively address the SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.⁵⁴⁵ The CMA will generally prefer divestiture of an existing business that can compete effectively on a stand-alone basis independently of the merger parties, to divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.⁵⁴⁶
- 9.43 The associated risk profile of a remedy is one of the dimensions in determining its effectiveness.⁵⁴⁷ The effectiveness of any remedy is always likely to be uncertain to some degree. In evaluating the effectiveness of remedies, the CMA will seek remedies that have a high degree of certainty of achieving their intended effect.

⁵⁴² [Response to Remedies Notice](#), paragraph 4.2(a).

⁵⁴³ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.1.

⁵⁴⁴ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.3.

⁵⁴⁵ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.7.

⁵⁴⁶ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.7 and 3.9.

⁵⁴⁷ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 1.8.

Divestment of the Microlease Companies

- *Description*

9.44 This option would require the divestment of the Microlease Companies. This represents the smallest legal entity which encompasses the UK operations of Microlease, and which also includes operations in other European countries conducted through its subsidiaries. It would not include Microlease, Inc.'s operations in the US or the operations of other Microlease entities located in Asia and India.

9.45 This option would include all the assets owned and utilised by these companies and current contracts, including the Microlease and/or Livingston brands.

- *Views of parties*

- *The Parties*

9.46 The Parties considered that this remedy option would be effective,⁵⁴⁸ but described it as 'manifestly disproportionate'.⁵⁴⁹ The proportionality of remedy options is discussed in paragraphs 9.144 to 9.168 below.

- *Third parties*

9.47 All the third parties that commented on the effectiveness of this option considered that the divestment of the Microlease Companies would be effective in addressing the SLC that we have identified.

9.48 [X] stated that this divestment would be effective at restoring competition, but that there may be a limited number of potential buyers due to its relatively large size (compared to other TME suppliers). Although the relative scale would be unlikely to raise operational problems for a purchaser (assuming the existing staff could be retained), the expected price may be prohibitive for smaller purchasers. The third party mentioned that OEMs or venture capital companies may be interested.⁵⁵⁰

9.49 [X] stated that of all the options specified in the Remedies Notice, the divestment of the Microlease Companies was the 'best', and that it would effectively 'undo the acquisition' (with the exception of the US entity already

⁵⁴⁸ [X]

⁵⁴⁹ [Response to Remedies Notice](#), paragraph 10; [X].

⁵⁵⁰ [X]

transferred). It also noted that the Microlease Companies represented a stand-alone business that could attract a non-trade buyer (eg private equity), particularly noting its depth of inventory, experienced sales force and existing systems. This third party therefore considered that this option might attract the largest number of potential purchasers.⁵⁵¹

- 9.50 [X] noted that divesting the Microlease Companies would be possible, but would likely require either an investment fund or an existing large TME rental supplier (eg [X]). This is because the purchaser would need sufficient capital to invest in stock to support ongoing operations and future growth potential.⁵⁵²

- *Effectiveness*

- 9.51 Microlease Limited is the acquired company supplying the overlapping UK activities of the merged business and, in accordance with our guidance, would represent the ‘starting point’ for identifying a divestiture package.⁵⁵³

- 9.52 The sale of the business acquired as part of the Merger to a suitable purchaser would have the effect of restoring the pre-existing levels of rivalry. The CAT has held that:

it is not unreasonable for the [CMA] to consider, as a starting point, that “restoring the status quo ante” would normally involve reversing the completed acquisition unless the contrary were shown. After all, it is the acquisition that has given rise to the SLC, so to reverse the acquisition would seem to us to be a simple, direct and easily understandable approach to remedying the SLC in question.⁵⁵⁴

- 9.53 This divestment package is a large part of the pre-existing Microlease business, which includes the necessary support services (such as finance and IT). In addition, a large proportion of Microlease’s existing stock is owned and held by the Microlease Companies. Therefore, this approach may require minimal transitional arrangements or supporting behavioural provisions, if any.

- 9.54 Although some third parties expressed concerns about the number of potential bidders for the Microlease Companies, in our view an open, well-publicised and fair sale process should result in suitable interested bidders identifying themselves.⁵⁵⁵ Furthermore, a number of the third parties we

⁵⁵¹ [X]

⁵⁵² [X]

⁵⁵³ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.6.

⁵⁵⁴ *Somerfield plc v Competition Commission* [2006] CAT 4, paragraph 99.

⁵⁵⁵ The suitability requirements of potential purchasers are discussed in more detail in paragraphs 9.183 to 9.189 below.

spoke to expressed potential interest in acquiring the Microlease Companies as a divestment package.⁵⁵⁶

- 9.55 We consider that the Microlease Companies would be able to act on a stand-alone basis, and so would not be at risk of serious disruption during any transition as a result of divestment. Accordingly, we do not consider that any transitional arrangements and/or supporting behavioural provisions would be necessary. Divestment of the Microlease Companies is therefore likely to be a practical remedy that is capable of effective implementation.
- 9.56 Based on the above, we consider that the divestment of the Microlease Companies to a suitable purchaser would represent an effective remedy to address the SLC that we have identified.

Divestment of Electro Rent Europe

- *Description*

- 9.57 The divestment of Electro Rent Europe would represent the smallest legal entity which encompasses the UK operations of Electro Rent (including its UK branch), as well as its operations in a number of other countries in Europe. It would not include any operations in the US, Asia or China or the Electro Rent brand as this would be retained by the merged entity. However, it would include the option of acquiring the Microlease and/or Livingston brand.⁵⁵⁷
- 9.58 This option would include all the currently owned and associated assets and current contracts of Electro Rent Europe and its subsidiary companies.
- 9.59 Due to the extent to which Electro Rent Europe relies on other parts of the wider Electro Rent group, this option may require additional behavioural provisions to provide support during a transitional period (as discussed in paragraphs 9.66 to 9.67 and paragraphs 9.118 to 9.143 below).

- *Views of parties*

- *The Parties*

- 9.60 The Parties considered that this remedy option would be effective,⁵⁵⁸ but described it as ‘manifestly disproportionate’⁵⁵⁹ albeit less onerous than the

⁵⁵⁶ For example, [REDACTED].

⁵⁵⁷ [REDACTED]

⁵⁵⁸ [REDACTED]

⁵⁵⁹ [Response to Remedies Notice](#), paragraph 10; [REDACTED].

divestment of the Microlease Companies.⁵⁶⁰ The proportionality of remedy options is discussed in paragraphs 9.144 to 9.168 below.

- *Third parties*

9.61 Most third parties we spoke to felt unable to comment meaningfully on the effectiveness of this possible remedy as they did not have a good understanding of the size or operational arrangements of Electro Rent Europe.⁵⁶¹

9.62 [X] stated that this divestment would be effective at restoring competition but, as for the Microlease Companies (see paragraph 9.48 above), there may be a limited number of potential buyers due to its relatively large size. Again, the relative scale would be unlikely to raise operational problems for a purchaser (assuming the existing staff could be retained), but the expected price may be prohibitive for smaller purchasers.⁵⁶²

9.63 [X] stated that a divestment of Electro Rent Europe would be more difficult than the Microlease Companies, but if sold to a large existing TME rental supplier then it could be effective. This third party considered that there are only two which are likely to be large enough to provide access to a similar range of stock as is currently provided by Electro Rent group ([X]). This third party also stated that Electro Rent Europe relies on stock from the wider group (particularly the US) to fulfil its current business contracts, and it would likely take an additional \$30-40 million to replicate this stock. In addition, a purchaser would need to be able to supply systems to support the existing business.⁵⁶³

- *Effectiveness*

9.64 Electro Rent Europe is the company supplying the overlapping UK services of the acquiring business, and accordingly may be accepted as a remedy if it is not subject to greater risk in addressing the SLC than a divestment of the acquired business (or part of the acquired business).⁵⁶⁴

9.65 If Electro Rent Europe were sold to a suitable purchaser, this divestment would address the SLC by removing the Parties' overlapping business in the

⁵⁶⁰ [X]

⁵⁶¹ [X]

⁵⁶² [X]

⁵⁶³ [X]

⁵⁶⁴ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.6.

UK, and would be effective in addressing the SLC and resulting adverse effects.

- 9.66 When assessing the effectiveness of this remedy we have considered that Electro Rent Europe is not a totally stand-alone business, and relies on other parts of its corporate group for supporting services such as [REDACTED]. Electro Rent stated that it had '[REDACTED]'. It also stated that '[T]he ability to [REDACTED]'. We really maintain a very tight control over the operation, certainly administratively, out of the US operations'.⁵⁶⁵ The Parties subsequently stated that [REDACTED].⁵⁶⁶ In addition to these supporting services, around [REDACTED]% of stock on which Electro Rent Europe relied to fulfil its contracts was provided by other parts of the Electro Rent corporate structure.⁵⁶⁷
- 9.67 Electro Rent Europe's reliance on the wider Electro Rent group means that additional behavioural provisions to provide support during a transitional period (discussed in paragraphs 9.118 to 9.143 below) would be necessary to ensure that the remedy would be effective.
- 9.68 Although the divestment of Electro Rent Europe would have somewhat higher composition risk than the divestment of the Microlease Companies, we consider that these composition risks are manageable by including specific requirements for a suitable purchaser (discussed more in paragraphs 9.187 to 9.188 below) and including a number of transitional supporting provisions (discussed more in paragraphs 9.118 to 9.143 below). Therefore, a remedy package based on the divestment of Electro Rent Europe would in our view represent an effective remedy to the SLC that we have identified and its adverse effects.

Divestment of Electro Rent UK

- *Description*

- 9.69 This option would require a partial divestment of the Parties' business, being the part that is focused on the UK, specifically the assets that Electro Rent was using to serve the UK. Electro Rent UK is not a separate legal entity; it is a branch of Electro Rent Europe and represents a collection of assets (owned by Electro Rent Europe, with relevant inventory sourced from a combination of

⁵⁶⁵ [REDACTED]

⁵⁶⁶ [REDACTED]

⁵⁶⁷ This was explained to the CMA during its site visit to Mechelen.

Electro Rent Europe and Electro Rent Corporation) used to serve UK customers.

9.70 The Remedies Notice specified a number of assets that we would expect to be available to a purchaser in any divestiture package.⁵⁶⁸ The Parties provided additional detail to clarify the specific relevant assets that could be included in a divestiture package in this case.⁵⁶⁹ We consider that the following represents the assets which the Parties would be required to offer in the divestment, subject to negotiation with the purchaser and final approval by the CMA:

- (a) A lease or sublease for Electro Rent's business premises in the UK, on terms equivalent to those which were in place at the point of the Merger.⁵⁷⁰
- (b) The physical facilities related to the operation of the Electro Rent business at its UK site, including office, warehousing, shelving and sorting, equipment testing and logistics facilities.
- (c) Electro Rent's staff in the UK, to be transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- (d) Existing supplier contracts in respect of Electro Rent's UK business, including all relevant preferred rental partnerships.
- (e) Existing contracts to serve Electro Rent customers in the UK, and the rights to fulfil these.
- (f) Access to relevant historical customer data for Electro Rent customers in the UK, including contact details, enquiry and order history.
- (g) A pool of TME stock/inventory (worth at least £7.5 million based on original equipment cost, as described in more detail below).
- (h) Rights to receive services and utilities currently being provided at Electro Rent's sites in the UK, such as gas, electricity, building access and services etc.
- (i) The Microlease and/or Livingston brand.

9.71 In addition, due to the extent to which Electro Rent UK relies on other parts of the wider Electro Rent group, this option may require additional behavioural

⁵⁶⁸ Remedies Notice, paragraph 18.

⁵⁶⁹ [REDACTED]

⁵⁷⁰ [REDACTED]

provisions to provide support during a transitional period (as discussed in paragraph 9.111 and paragraphs 9.118 to 9.143 below).

9.72 The divestment of Electro Rent UK was pursued during the phase 1 investigation as potentially representing a suitable remedy for undertakings in lieu (UIL) of a phase 2 reference, albeit with a somewhat different specific composition.⁵⁷¹

- *Views of parties*

- *The Parties*

9.73 The Parties stated that the divestment of Electro Rent UK (including the assets described in paragraph 9.70 above), along with a number of supporting behavioural provisions, would be a comprehensive solution that is reasonable and practicable to remedy the SLC provisionally identified by the CMA and any adverse effects resulting from it.⁵⁷² In a subsequent submission, the Parties stated that they would be ‘willing to divest Electro Rent Europe’s business in the UK, with the additional elements set out in the CMA’s Notice of Possible Remedies’.⁵⁷³

9.74 The Parties noted that this remedy would provide a purchaser with a stand-alone business that would be fully operational from day one,⁵⁷⁴ and that it ‘deals directly with its customers, supports those customers and it has continued to grow and develop and flourish under the local management of that business’.⁵⁷⁵

9.75 Following a request by the CMA that the Parties calculate the level of stock on which Electro Rent UK relies,⁵⁷⁶ the Parties provided an estimate of the peak demand value of stock (based on the original equipment cost) on rent to Electro Rent UK customers for each ‘product family’ over the past three years, and estimated this figure to be £7.5 million.⁵⁷⁷ The Parties explained that calculating this at the end of each month over a three-year period produced a higher figure than the value used in any given calendar year as it ignored the

⁵⁷¹ See [Proposed Undertakings](#) on the [CMA case page](#). The main differences in composition are the level of stock included and the inclusion of the Microlease and/or Livingston brands.

⁵⁷² [Response to Remedies Notice](#), paragraph 5; [REDACTED].

⁵⁷³ [REDACTED]

⁵⁷⁴ [Response to Remedies Notice](#), paragraph 14.

⁵⁷⁵ [REDACTED]

⁵⁷⁶ Remedies working paper ([REDACTED]), suggested an example approach of ‘the total value of stock used by Electro Rent customers in the UK over the past three years’.

⁵⁷⁷ Depending on the exact items included, the Parties estimated that this was equivalent to around £3-5 million at net book value, and around £6 million at replacement/market value ([REDACTED]).

shift in product mix over time, and so provided a peak demand frame of reference.⁵⁷⁸

- 9.76 The Parties proposed that the specific list of assets that would be included in the divestment package would consist of all TME on rent or committed to Electro Rent UK's customers at the time of the transfer (which the Parties estimated as being around £4 million, based on original equipment cost),⁵⁷⁹ with the remainder being chosen by the purchaser from Electro Rent's global pool of assets depending on the purchaser's needs/preferences.⁵⁸⁰
- 9.77 The Parties considered that, in order to continue to operate and grow, Electro Rent UK would require external support in relation to web development/search engine optimisation and a public relations company to assist with marketing.⁵⁸¹ Any other service could be provided directly by the acquirer, or bought in from an external source if it were needed.⁵⁸²
- 9.78 The Parties stated that the CMA's provisional finding that Electro Rent is Microlease's closest TME rental competitor in the UK highlighted the effectiveness of this approach.⁵⁸³
- 9.79 In our provisional findings, we reported the importance of having a UK presence, which the Parties consider is 'another factor pointing towards the most obvious starting point for consideration of remedies: the incremental business located in the UK [ie Electro Rent UK]'.⁵⁸⁴
- 9.80 In addition, the Parties submitted that, although decisions taken at phase 1 are not binding on an inquiry group at phase 2, this remedy was considered by the CMA as being a suitable remedy at phase 1, which applies the same legal test as phase 2. They considered that it would therefore be incongruous for the CMA to now be considering a radically different remedial package, and the phase 1 approach should be the starting point for any remedies.⁵⁸⁵
- 9.81 When considering potential purchasers, the Parties considered that this remedy would include everything to which Electro Rent UK currently has access in order to compete in the UK (including the present staff and stock). Therefore, in their view, a purchaser does not need a significant pre-existing TME rental business to operate this business in a meaningful way in

⁵⁷⁸ [REDACTED]

⁵⁷⁹ [REDACTED]

⁵⁸⁰ [REDACTED]

⁵⁸¹ [REDACTED]

⁵⁸² [REDACTED]

⁵⁸³ [Response to Remedies Notice](#), paragraphs 5 and 12.

⁵⁸⁴ [Response to Remedies Notice](#), paragraph 13.

⁵⁸⁵ [Response to Remedies Notice](#), paragraphs 6 and 16.

competition with Microlease and other UK TME rental providers.⁵⁸⁶ However, the Parties did note that the purchaser would need to have an understanding of the dynamics of a rental business (not necessarily TME rental), particularly the finance criteria involved when making investment decisions.⁵⁸⁷

- *Third parties*

9.82 Two respondents ([REDACTED] and [REDACTED]) stated that the divestment of Electro Rent UK would be sufficient to produce an effective remedy.⁵⁸⁸

9.83 [REDACTED] stated that a UK carve-out ‘would only go so far’ in applying pressure back on the Parties, but would provide a platform from which a purchaser could grow. In addition, the respondent highlighted that a number of supporting transitional provisions were likely to be required in order to protect the purchaser for a period of time while it could grow to a level where it could start investing in equipment to ‘become a more serious competitor’. These included the potential for a non-compete clause for approximately two months to prevent the Parties from ‘immediately go[ing] after the customers it lost as part of the divestment’ as the Parties ‘could easily take the customers back’ (in particular due to a combination of the Parties’ size, the level of investment they have available, the short-term nature of these contracts and their knowledge of their ex-customers’ requirements). This respondent also noted that the identity of the purchaser was likely to be important, as it would need to have a sufficient level of understanding and expertise within TME and sufficient sales staff available particularly if the current Electro Rent UK sales staff were to leave and needed to be replaced (in which case it would be ‘very difficult to pick up the pieces’).⁵⁸⁹

9.84 [REDACTED] stated that it was unsure how successful the divestment of Electro Rent UK would be as a remedy, most notably as it was very small, and so would require a purchaser that had access to a larger stock of inventory, particularly as the business grows. These larger businesses may be less interested in an acquisition of this scale. This respondent also noted that the small size of the acquisition may restrict the number of interested purchasers, in particular if this was being used as a platform for growth into Europe (which would require support for multiple jurisdictions and languages).⁵⁹⁰

⁵⁸⁶ [Response to Remedies Notice](#), paragraph 7; ‘They have an infrastructure and a staff that already understand the market itself and they understand the customer base and they have serviced and dealt with that customer base for a long time. There is no knowledge that needs to be brought in that is different.’ ([REDACTED]); [REDACTED].

⁵⁸⁷ [REDACTED]

⁵⁸⁸ [REDACTED]

⁵⁸⁹ [REDACTED]

⁵⁹⁰ [REDACTED]

9.85 [X] stated that the smaller size of Electro Rent UK and associated lower level of complexity would allow a purchaser to integrate and run the business more easily than for Electro Rent Europe or the Microlease Companies.⁵⁹¹

9.86 [X] felt unable to comment meaningfully without a better understanding of the Electro Rent UK business.⁵⁹²

- *Effectiveness*

9.87 As stated in the CMA's guidance, and noted in paragraph 9.41 above, to be effective in restoring or maintaining rivalry in a market where there is an SLC, a divestiture remedy should involve the sale of an appropriate divestiture package to a suitable purchaser through an effective divestiture process. Divestitures may be subject to a variety of risks that limit their effectiveness in addressing an SLC, in particular through composition risk, purchaser risk, and asset risk.⁵⁹³

(a) Composition risk arises if the scope of a divestiture package is too constrained or not properly configured to attract a suitable purchaser or may not allow the purchaser to operate as an effective competitor.

(b) Purchaser risk might arise if a suitable purchaser were not available or if the merger parties dispose to a weak or otherwise inappropriate purchaser.

(c) Asset risk arises if the competitive capability of the asset to be divested will deteriorate before completion of divestiture.

- *Composition risk*

9.88 As noted in paragraph 9.42 above, when defining the scope of a divestiture package that will comprehensively address the SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.⁵⁹⁴

9.89 The CMA will generally prefer divestiture of an existing business, that can compete effectively on a stand-alone basis independently of the merger parties, to divestiture of part of a business or a collection of assets. This is

⁵⁹¹ [X]

⁵⁹² [X]

⁵⁹³ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.3.

⁵⁹⁴ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.7.

because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.⁵⁹⁵

- 9.90 Where a proposed divestiture comprises part of a business, the capabilities and resources of prospective buyers are likely to be more important in determining whether the divestment will address the SLC. A package of assets may also be far more difficult to define or ‘carve out’ from an underlying business, and so the CMA may have less assurance that the purchaser will be supplied with all it requires to operate competitively. Therefore, where a package of assets is proposed for divestiture, we will require the merger parties to specify the composition and operation of the package in detail.⁵⁹⁶
- 9.91 The evidence we have (see paragraphs 2.17 to 2.26 above) suggests that Electro Rent UK is not a stand-alone business; it is a part of Electro Rent Europe which supplies UK customers. It represents a narrow part of the Electro Rent business, with only [REDACTED] employees ([REDACTED]), and is heavily reliant on support from the wider Electro Rent group. In particular, Electro Rent UK draws on the global pool of Electro Rent stock to supply its customers (our understanding is that, of the equipment rented out by Electro Rent Europe, around [REDACTED]% is sourced by Electro Rent Europe, and the remaining [REDACTED]% from elsewhere in the Electro Rent group). In addition, the Electro Rent group provides numerous support services to Electro Rent UK, such as sales support, finance, IT, investment, procurement, calibration, and repair services.
- 9.92 Due to Electro Rent UK’s current reliance on the global stock pool of Electro Rent, the level of stock included in the divestment package is relevant when assessing the composition risk associated with (and hence effectiveness of) a separate Electro Rent UK. Based on the Parties’ submission, the stock level included in the divestment (ie at least £7.5 million) is greater than the stock currently being used to serve UK customers (which was estimated as being around £4 million),⁵⁹⁷ and reflects the peak use of equipment in any ‘product family’ over the last three years.
- 9.93 When defining the exact list of equipment to be included in the divestment package, we agree with the Parties’ proposed approach to include all stock currently being used by Electro Rent UK, and then to allow the purchaser to select any additional TME it requires (up to the defined original equipment

⁵⁹⁵ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.9.

⁵⁹⁶ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.10.

⁵⁹⁷ [REDACTED]

cost of at least £7.5 million) from Electro Rent's global stock pool. This approach ensures that a suitable purchaser⁵⁹⁸ would have the stock that it requires / considers necessary to run the business, as well as avoiding the risk of the Parties choosing to only include lower quality equipment (eg older or even broken items) which have the same original equipment cost as newer or more attractive stock items.

9.94 The level of stock included in the divestment package would mitigate some of the composition risk associated with a remedy based on the divestment of Electro Rent UK. However, even with this level of stock, we consider that Electro Rent UK does not represent a viable, stand-alone business that could compete effectively with the Parties on an ongoing basis, particularly not from 'day one' as submitted by the Parties. Rather, Electro Rent UK requires substantial external support services to operate on a day-to-day basis, as described in paragraph 9.90 above.

9.95 The Parties submitted that our provisional finding that Electro Rent was Microlease's closest TME rental competitor in the UK highlighted the effectiveness of this remedy. However, this finding is based on Electro Rent UK being part of the broader corporate group, and so benefiting from the support that it provides. This means that the assessment does not necessarily hold true if Electro Rent UK was split from the rest of Electro Rent. In addition, even if Electro Rent UK remained the closest competitor to Microlease, it would still be in a weaker competitive position if it was split from its broader corporate group than in the counterfactual.

9.96 In our view, the divestment of Electro Rent UK remains exposed to a level of composition risk because it is a package of assets that is reliant on the wider Electro Rent group. However, we consider that this risk can be mitigated to a sufficient extent through requiring the business to be divested to a suitable purchaser, and through the use of transitional supporting provisions (discussed more in paragraphs 9.118 to 9.143 below).

- *Purchaser risk*

9.97 In our view, in order to ensure that this remedy would be effective the purchaser needs to provide the range and level of support services that broadly replicate those currently being provided by the Electro Rent group.⁵⁹⁹ This would include having the assets and capabilities required to continue to

⁵⁹⁸ See paragraphs 9.183 to 9.189 for the discussion of purchaser suitability.

⁵⁹⁹ Consistent with our guidance that 'A package of assets proposed for divestiture may [...] be more dependent on an appropriate match with the capabilities of the purchaser.' [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.10.

operate the business in competition with the Parties, as well as the means of providing sufficient investment to support future expansion, the threat of which can act as a competitive pressure (even if no expansion has currently occurred). Due to this requirement, we included a specific list of capabilities in the remedies working paper that we would expect a suitable purchaser of Electro Rent UK to fulfil.⁶⁰⁰

9.98 We consider that additional specific requirements are necessary (on top of the usual requirements for a suitable purchaser as described in our guidance),⁶⁰¹ and these are discussed in more detail in paragraphs 9.187 to 9.188 below.

9.99 The Parties stated that, in their view, at least six of the potential purchasers that the CMA had contacted would fulfil the suitability criteria,⁶⁰² in particular as they already meet, or could meet immediately after the purchase, all of the specific capability criteria listed in paragraph 9.187 below.⁶⁰³ In addition, the Parties stated that running a transparent, open, and rigorous process would attract a broader set of other potential purchasers, including some that will meet the CMA's suitability criteria.⁶⁰⁴

9.100 The evidence available to us on the existence of an interested suitable purchaser for Electro Rent UK is necessarily incomplete at this point (as is generally the case at this stage in a merger inquiry) as we have not yet conducted a full suitability assessment, and we can only judge levels of interest on the basis of what we are told by third parties. On the basis of the information currently available to us we consider that there is sufficient likelihood for one or more of the interested potential purchasers we have spoken to so far to meet our purchaser suitability requirements.

9.101 However, as we have not yet conducted a full suitability assessment, there remains a risk that none of these potential interested purchasers will meet the suitability requirements needed for a divestment of Electro Rent UK.

9.102 Our guidance states that:

substantial uncertainty as to whether a suitable purchaser will emerge will generally not be sufficient for the [CMA] to conclude that any form of divestiture remedy is not feasible. The [CMA] has found that it is

⁶⁰⁰ [REDACTED]

⁶⁰¹ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.15.

⁶⁰² Specifically, [REDACTED] ([REDACTED]).

⁶⁰³ [REDACTED]

⁶⁰⁴ [REDACTED]

normally possible to implement divestitures, despite such uncertainties, given flexibility in the disposal price.⁶⁰⁵

9.103 Although the phase 1 process would indicate that the disposal price is relatively constrained (the final proposal would have involved a sale price of £[REDACTED]), the package of assets that would be included in this remedy is substantially more attractive than at phase 1 and so would provide for additional flexibility in the disposal price.

9.104 Therefore, in the circumstances of this case and consistent with our guidance, we consider that the level of uncertainty around finding an interested suitable purchaser for Electro Rent UK is manageable, and so does not in itself prevent the remedy from being effective.

- *Asset risk*

9.105 Where a divestment of assets is proposed, we note there is a risk that degradation of those assets can happen more quickly. For example, the loss of a small number of key customers or remaining staff members may result in a degradation of the business itself. We note that, since the start of the Merger process, [REDACTED], and only a small staff remains. This is particularly concerning given the evidence about the importance of [REDACTED] in this industry (eg paragraph 9.83 above), for example, the Parties' statement that Electro Rent UK has 'staff that already understand the market itself and they understand the customer base and they have serviced and dealt with that customer base for a long time',⁶⁰⁶ and one third party respondent which stated that if the last sales person at Electro Rent UK left then '*the business would collapse*'.⁶⁰⁷ In order to reflect these developments and risks, we are requiring more specific requirements around the 'capability' of potential purchasers of Electro Rent UK in our suitability requirements, as discussed in paragraph 9.187 below.

9.106 Since the start of the CMA investigation, the Parties have been subject to an Interim Order aimed at preventing pre-emptive action through any potential asset degradation.⁶⁰⁸ Since November 2017, this has been overseen by a Monitoring Trustee.⁶⁰⁹

⁶⁰⁵ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 2.19.

⁶⁰⁶ [REDACTED]

⁶⁰⁷ [REDACTED]

⁶⁰⁸ [Initial enforcement order](#) dated 1 February 2017, as [varied](#) on 6 February 2017; [Interim order](#) dated 7 November 2017.

⁶⁰⁹ [Directions to appoint Monitoring Trustee](#) dated 7 November 2017.

9.107 The CMA will therefore maintain its ongoing enforcement of the Interim Order (or equivalent replacement). This will include ensuring that effective asset maintenance obligations are put in place during the divestment process to minimise the risk of any degradation of the divestment package.

9.108 In addition to the risk of degradation of the business during the divestment process, we noted that at the point of sale, since the divestment is not a separate legal entity, the Parties may not be able to transfer existing contracts unilaterally without consent from the relevant counterparties.⁶¹⁰

9.109 The Parties stated that they would be able to transfer unilaterally all customer contracts to the purchaser. Existing supplier contracts would require the consent of the relevant supplier which we would require the Parties to procure using best efforts, if requested by the purchaser.⁶¹¹

○ *Our conclusion on effectiveness of divestment of Electro Rent UK*

9.110 The Parties put it to us that any departure from the remedy that was considered effective at phase 1 of this investigation could not be justified. We do not agree. Notwithstanding that an SLC has been found both at phase 1 and at phase 2, the phase 2 finding is based on a more thorough understanding of the relevant market and the likely effects of the Merger. The phase 2 investigation is conducted afresh and is neither reliant on nor predetermined by the phase 1 findings. Our Rules and Guidance make it clear that at phase 2 we are required to come to an independent view and, if necessary, design an effective remedy for the SLC we have identified.⁶¹² In addition, the evidence base available to the CMA has changed since the phase 1 decision was taken, such that the assessment of the evidence currently available to the phase 2 decision-makers could result in a different decision.

9.111 In our view, the risks that could reduce the effectiveness of the divestment of Electro Rent UK are manageable and do not preclude it from being an effective remedy, in particular:

- (a) Some of the composition risks would be at least partially addressed through the inclusion of behavioural provisions during a transitional period (as discussed in paragraphs 9.118 to 9.143 below). Although we have found that long-term behavioural remedies would not be appropriate in

⁶¹⁰ [REDACTED]

⁶¹¹ [REDACTED]

⁶¹² For example, [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), paragraph 1.7 notes the independence of the phase 2 inquiry group when undertaking its assessment.

this case, short-term supporting provisions and short-duration behavioural provisions are less likely to result in market distortions and so may be appropriate to address specific aspects of composition risk.⁶¹³

- (b) Residual composition risks would be addressed through specifying the capability requirements for a purchaser, in order to ensure that the purchaser is able to provide a service broadly equivalent to that which the wider Electro Rent group currently provides to Electro Rent UK (as discussed in paragraphs 9.187 to 9.188 below).
- (c) Purchaser risk would be principally mitigated by flexibility in the disposal price, which should ensure that any suitable purchasers will consider acquiring the business.
- (d) Asset risk would be managed through continued monitoring and enforcement work by the CMA during the divestment period.

9.112 We conclude that the partial divestment of Electro Rent, namely Electro Rent UK, including all of the elements in paragraph 9.70 above coupled with a number of transitional supporting provisions (discussed in paragraphs 9.118 to 9.143 below), remains exposed to a certain level of risk, principally the uncertainty around the existence of an interested, suitable purchaser. However, in line with our guidance and given flexibility in the disposal price, we consider that these risks are manageable, and so a remedy package requiring the divestment of Electro Rent UK (as described above) is likely to be effective.

Divestment of other, narrower parts of the Parties' businesses

- *Description*

9.113 The Remedies Notice stated that it was also possible that the divestiture of a narrower part of the Parties' businesses, focused on the UK, might be capable of providing a comprehensive solution to the SLC and the resulting adverse effects. One example of this was given as Electro Rent UK (discussed above). However, we considered whether other narrower parts might also be possible.⁶¹⁴

⁶¹³ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 4.31 (envisaging remedies that control outcomes may be appropriate on a temporary basis).

⁶¹⁴ [Remedies Notice](#), paragraph 15.

- *Effectiveness*

9.114 We received no evidence on any alternative, narrower parts of the Parties' businesses as potential remedies.

9.115 The Parties stated that Microlease and Electro Rent Europe both serve customers across Europe and are integrated operationally such that it would be inefficient and costly to separate any UK-specific elements of each European hub.⁶¹⁵

9.116 In paragraphs 9.87 to 9.112 above, we have discussed the effectiveness of divesting Electro Rent UK, which consists of a package of assets that Electro Rent was using to serve customers in the UK. In line with the requirements set out in our guidance, we have been able to assess the composition and operation of the package as submitted by the Parties.⁶¹⁶ We have not received evidence of any other package of assets that could represent an effective remedy.

9.117 On this basis, we consider that there are no other divestments of narrower parts of the Microlease Companies or Electro Rent Europe that would be an effective remedy.

Transitional supporting provisions

Description

9.118 During and shortly after the divestment process, any disruption to the ongoing operations of the divested package could affect its ability to compete with the Parties and restore the pre-merger rivalry in the relevant market. These risks can be addressed through the inclusion of short-term, transitional behavioural provisions as part of the remedy package. These transitional supporting provisions consist of agreements that we would require the Parties to offer to any purchaser.

9.119 The Remedies Notice included three short-term behavioural provisions that could support a divestment of Electro Rent UK (with similar potential considerations for Electro Rent Europe), specifically:

- (a) providing the purchaser with the option, if it so wished, to have continued unfettered access to Electro Rent's global inventory for a period of time – likely to be at least 24 months – on terms to be agreed, but no worse than

⁶¹⁵ [Response to Remedies Notice](#), paragraph 10(d).

⁶¹⁶ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.10.

the terms on which members of the Electro Rent group have access to such inventory;

- (b) providing the purchaser with the option to purchase from Electro Rent any such additional inventory that it has rented to customers during the period referred to in sub-paragraph (a), on a basis to be agreed; and
- (c) the provision by the vendor of central support services such as finance, IT and procurement.

9.120 In addition, a number of additional potential mechanisms were raised by third parties, including:

- (a) providing access for the purchaser to existing calibration services, or agreements to allow for calibration of equipment (including by acting as an agent where external services are required);⁶¹⁷
- (b) providing extended warranties to the purchaser for any stock included in the divestment package (eg equivalent to the existing level of warranty that the Parties have on this stock);⁶¹⁸ and
- (c) some level of short-term protection for the purchaser (eg a prohibition on the Parties actively competing for Electro Rent UK's existing customers for a few months) in order to allow the purchaser to establish a relationship with the customers it acquired.⁶¹⁹

9.121 The Parties proposed an additional mechanism relating to staff levels, and the inclusion of a service level agreement associated with the stock access provision:

- (a) If the purchaser required additional, experienced staff, the Parties would offer its existing staff (sales staff or systems development team in either Electro Rent or Microlease) the opportunity to transfer to Electro Rent UK under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and offer retention incentives (eg through the use of bonuses) to ensure their continued employment with the divested business.⁶²⁰
- (b) Including a service level agreement with the purchaser in relation to the stock access provision, in which Electro Rent would agree to certain

⁶¹⁷ [REDACTED]

⁶¹⁸ [REDACTED]

⁶¹⁹ [REDACTED]

⁶²⁰ [REDACTED]

service levels including the availability of equipment and speed of delivery.⁶²¹

Views of Parties

- *The Parties*

- 9.122 The Parties generally considered that the use of transitional supporting provisions would not be very intrusive, although the starting point should be the approach proposed during the phase 1 UIL process,⁶²² which included a stock access agreement for a period of 12 months.⁶²³
- 9.123 In a subsequent submission, the Parties stated that they would be ‘willing to divest Electro Rent Europe’s business in the UK, with the additional elements set out in the CMA’s Notice of Possible Remedies’.⁶²⁴
- 9.124 In their latest submission, the Parties proposed extending the duration of the stock access provision to a period of up to 36 months, with an associated lengthening of the option to purchase provision. In addition, any sub-rental agreements established during this period would continue until their completion, meaning that the purchaser’s ability to utilise Electro Rent’s TME inventory would in practice exceed three years.⁶²⁵
- 9.125 The Parties noted that the stock access remedy would allow a purchaser time to develop an understanding of new TME segments, and the areas that it should be investing in before committing its own capital.⁶²⁶ However, they noted that the amount of stock included in the divestment package of Electro Rent UK is ‘significantly larger than the value of assets that Electro Rent UK has relied on to support historical customer requirements’, and so the stock access provision was unlikely to be used in practice. If the purchaser did not rely on the stock access provision (or only used it rarely), this would eliminate all the associated risks.⁶²⁷
- 9.126 The Parties explained that these transitional supporting provisions would not be difficult to implement or monitor due to the ability to use existing systems within the Electro Rent/Microlease organisations. Specifically:

⁶²¹ [REDACTED]

⁶²² [Response to Remedies Notice](#), paragraph 16; [REDACTED].

⁶²³ [Electro Rent/Microlease Phase 1 proposed Undertakings](#), paragraph 3.3.

⁶²⁴ [REDACTED]

⁶²⁵ [REDACTED]

⁶²⁶ [REDACTED]

⁶²⁷ [REDACTED]

- (a) a web-portal, which would allow for live visibility and booking of stock within the wider Electro Rent group on a first-come-first-served basis, and would enable this stock to remain with that entity until the contract finished and the item was returned.⁶²⁸ This web-portal would not facilitate the transfer of any competitively sensitive information, as it does not require the purchaser to input any information regarding its customer;⁶²⁹ and
- (b) an established transfer price based on the underlying cost of the equipment, which would be blind to the identity of the entity making the reservation, and which the Parties consider would prevent them from margin squeezing the purchaser as this strategy would not be economic.⁶³⁰

9.127 The Parties also described a number of additional factors and mechanisms that would mitigate or eliminate any risks associated with the stock access provision, described in more detail below.

9.128 In addition, the Parties highlighted that the purchaser would likely be able to supplement the stock access provision by sub-renting from other TME rental suppliers if necessary (albeit not at cost price).⁶³¹

- *Third parties*⁶³²

9.129 With regard to the provision of central services, most respondents considered that this was something that the purchaser would be likely to provide, particularly if it already operated within TME rental.⁶³³

9.130 [X] noted that it would be difficult to implement behavioural remedies over an extended period. However, it considered that a transitional arrangement providing access to a wider stock pool of the Parties would be required in order for a remedy to be effective, since the Parties have types of equipment that differ from most (if not all) other companies in the UK. It considered that this should include the option to look back at historical contracts and include this stock too. In terms of duration, it noted that this would depend on the specific details, but 24 months appeared sensible. [X] also supported an option to purchase stock, noting that if this equipment had been sub-rented to

⁶²⁸ [X]

⁶²⁹ [X]

⁶³⁰ Described as covering [X] ([X]).

⁶³¹ [X]

⁶³² We note that these comments were made in the context of a proposed divestment package of Electro Rent UK as specified in the Remedies Notice rather than the more detailed package in paragraph 9.70 above.

⁶³³ For example, [X].

the purchaser for an extended term (to fulfil its contracts), it is likely that Electro Rent/Microlease was not relying on this stock itself.⁶³⁴

- 9.131 [X] supported the proposed stock access included in the Remedies Notice, and considered that ‘a year or two’ would be an appropriate duration.⁶³⁵
- 9.132 [X] noted the issues with stand-alone behavioural remedies in principle (eg that competing for business against the Parties with their own equipment would be ‘virtually impossible’). However, a short-term behavioural provision would allow the purchaser access to a broader pool of stock for a period (at an acceptable rate) and would allow a purchaser to understand the level of stock required to maintain the business in the future, which would be beneficial. A starting point duration for this would be 12 months although, depending on the identity of the purchaser, this may need to be extended. Similarly, the option to purchase assets at book value would be necessary.⁶³⁶
- 9.133 In addition, [X] noted that for the transition period it would be necessary to have as much protection as possible from the Parties due to a combination of their size, the level of investment they have available, and their knowledge of their ex-customers’ requirements (and Electro Rent UK’s capability of offering, and pricing). Therefore, the Parties could immediately go after the customers they lost as part of the divestment and, given the generally short nature of the relevant contracts, could easily take the customers back.⁶³⁷
- 9.134 [X] noted that the need for transitional supporting provisions may depend on both the divestment package and the identity of the purchaser. If the purchaser was smaller than Electro Rent Europe, it may need access to stock for ‘a few years’. In addition, it supported an option-to-purchase approach, and considered that a figure slightly over book value (eg [X]%) would reflect a reasonable price. However, it also noted that there may be substantial practical issues with implementing a stock access remedy, for example, when items are lost or customers wish to purchase them, as well as a need to protect the visibility of the availability of stock, which is an important competitive parameter.⁶³⁸
- 9.135 [X] stated that although a stock access remedy may be helpful at times, it would be too risky to rely on for core business. In particular, there are service aspects, such as availability and speed of delivery, over which the Parties

⁶³⁴ [X]

⁶³⁵ [X]

⁶³⁶ [X]

⁶³⁷ [X]

⁶³⁸ [X]

would retain control. In addition, as a smaller competitor, relying on sub-renting would limit the ability to differentiate a competitive offering. Therefore, the divested company would need to own its own core stock.⁶³⁹

Our views

9.136 After consideration, we rejected the use of a stand-alone behavioural remedy as we consider it to be an ineffective remedy for addressing the SLC. A major part of this assessment related to the long/unlimited duration that would be required to replicate pre-merger competitive conditions, and the view that these are best addressed through the design of the divestment package (including suitability requirements on the purchaser). However, the risks associated with distortions in the market are substantially lower if the provisions would only be in place for a limited time.

9.137 In our view transitional supporting provisions should only be used in order to ensure the effectiveness of the remedy, and the durations of each should reflect this. Of the specific points raised, we consider that:

- (a) **Stock access:** This would be required to allow the purchaser access to Electro Rent's global pool of stock, which may be required to fulfil customer contracts in the short term (particularly as its existing stock pool may not exactly overlap with the requirements of the Parties' customers). The price of accessing this stock should be reflective of Electro Rent's own costs. To ensure that ongoing contracts are not cut short, sub-rental agreements established during this period should continue until completion. The appropriate duration for stock access is a period of up to 24 months from the completion of the sale process, as this balances the need for transitional support against the risk of distortions arising from a longer period (such as the 36 months most recently proposed by the Parties).
- (b) **Right to purchase:** the option to purchase from Electro Rent any such additional inventory that it has rented to customers is necessary to allow for continuing competition after the end of the stock access remedy, and in particular to ensure that existing customer contracts relying on the stock access remedy are not jeopardised. We expect the Parties to negotiate in good faith and reach a commercial agreement that fairly reflects the legitimate interests of both parties.⁶⁴⁰ The appropriate duration

⁶³⁹ [X]

⁶⁴⁰ We note that the Parties proposed that the cost of this should be the 'repeatable price', while third parties proposed book price or slightly above book price (eg [X]%).

for this would match the stock access provision above (ie a period of up to 24 months).

- (c) **Back office systems:** This has generally been rejected by third parties as only being necessary if the purchaser did not already have its own back office systems in place. However, given the possibility that a purchaser may not have its own systems and/or the transfer of all relevant information may take a period of time, we consider that this option should be available to the purchaser for a short transitional period of no more than six months.
- (d) **Calibration services:** This would be necessary if the purchaser did not already have its own arrangements in place. Therefore, we consider that this option should be available to the purchaser for a short transitional period of no more than six months.
- (e) **Warranties:** This would be necessary if the stock transferred as part of the divestment ceased to be covered by its existing warranties, and so could risk the ongoing operations of the purchaser. Therefore, we consider that the Parties should offer to provide equivalent warranties to those currently covering each item, lasting the outstanding duration of the items' existing warranties (eg via back-to-back agreements with the original warranty provider(s)).
- (f) **Vendor non-compete provision:** Standard provisions, which restrict the Parties' ability to compete for certain customers for a relatively short defined period, may be negotiated between the Parties and the purchaser as part of the transaction in order to protect the value of the acquired business. We note that any such agreement that is included in the divestment would be subject to the CMA's approval as part of its duties to devise and implement a suitable remedy.
- (g) **Additional staff transfer:** In order for this provision to have the intended effect, the Parties would need to offer sufficient incentives (and structured in the correct manner) that the staff in question would continue to offer the necessary level of support to the divested business. In addition, the Parties would not be able to guarantee that its existing staff would be willing to transfer to a purchaser (in particular since most Electro Rent staff are currently based outside of the UK). This would introduce substantial complexity and uncertainty into the provisions. We therefore consider that it is not appropriate to include a provision to this effect, but will instead ensure that the divested business is properly supported in this regard through assessing the capabilities of the purchaser (discussed in

paragraphs 9.186 to 9.189 below), taking into account any additional experienced staff available to the purchaser.

- 9.138 The required duration of each of these supporting provisions may differ depending on the individual needs of a purchaser, but we consider that requiring the option for the durations specified should ensure sufficient time for a purchaser to develop/adapt its internal capabilities, and protect the effectiveness of the remedy.
- 9.139 We note that the reliance on Electro Rent's pre-existing systems (eg controlling access to Electro Rent group's global stock) minimises design risks, and simplifies the process of ongoing monitoring (albeit, we would require the systems described to remain in place, without detrimental changes, for the duration of the transitional supporting provisions).
- 9.140 In the remedies working paper and remedies supplementary working paper, we raised a number of concerns associated with the implementation of the stock access provision. We agreed with the Parties that any risks associated with the stock access provision would be reduced if it was relied on less frequently (eg if the divestment package includes a sufficient level of stock). However, to the extent that this provision is still required at times, we needed to consider whether any residual concerns would undermine its efficacy or risk causing distortions. In particular, we considered that:⁶⁴¹
- (a) non-price elements (eg speed of delivery) would not be controlled and so could be degraded; and
 - (b) the provisions might allow for the transfer of competitively-sensitive information between the Parties and the purchaser (eg the purchaser would have access to information on the Parties' stock availability, while the Parties would have information on a large part of a competitor's costs when bidding for a customer, and any customer details required by the web portal ordering system).
- 9.141 The Parties responded to these points, stating that:
- (a) non-price aspects of the arrangement would be protected by a service level agreement with the purchaser, and could be overseen by a monitoring trustee if necessary.⁶⁴²

⁶⁴¹ [REDACTED]
⁶⁴² [REDACTED]

- (b) there is insufficient information to result in distortions in the market. In particular, lack of information on when the Parties and purchaser would be bidding against each other, and the pricing strategies each would adopt, would prevent or limit the ability to exploit any transferred knowledge.⁶⁴³

9.142 We consider that the potential concerns associated with the stock access provision are relatively common with these forms of remedy, and can often be managed (if not eliminated) through careful design and implementation. In this case, much of the work has already been completed (eg through using an existing system and cost-transfer price), and so would largely rely on the continuation of existing practices and systems. In addition, since there would be sufficient stock included in the divestment package, a purchaser would only need to rely on the stock access provision occasionally in order to supplement its own stock. Therefore, we consider that the residual risks can be sufficiently managed through the inclusion of a service level agreement, which can be best defined through discussion with the purchaser, and would be subject to CMA approval.

9.143 Therefore, we consider it necessary to include the following transitional supporting provisions (for use at the election of the purchaser) alongside the divestment of either Electro Rent Europe (described in paragraph 9.58 above) or Electro Rent UK (described in paragraph 9.70 above):

- (a) a stock access remedy including access to all of Electro Rent group's global inventory for a period of up to two years at a price reflective of Electro Rent's own costs (with any agreements established during this period continuing until completion, and also including a service level agreement to be negotiated between the Parties and purchaser, and subject to CMA approval);
- (b) the Parties to provide the purchaser the right to purchase sub-rented stock for a period up to two years (in line with the stock access above);
- (c) the Parties to provide the purchaser with back office systems such as finance, IT and procurement for a period of up to six months;
- (d) the Parties to provide the purchaser with access to calibration services (including by acting as an agent where external services are required) for a period of up to six months; and

⁶⁴³ [§]. The Parties also proposed including a margin squeeze test, which could be overseen by a monitoring trustee, if necessary.

- (e) the Parties to provide warranties for all stock transferred to the purchaser during the divestment, equivalent to the warranties covering each item and for the existing term.

The proportionality of effective remedies

9.144 We have concluded that the following remedy options would be effective in addressing the SLC and the adverse effects that has or may be expected to result from it:

- (a) Divestment of the Microlease Companies to a suitable purchaser;
- (b) Divestment of Electro Rent Europe to a suitable purchaser (see paragraph 9.187 below), and including the option for effective transitional supporting provisions (see paragraphs 9.118 to 9.143 above); and
- (c) Divestment of Electro Rent UK to a suitable purchaser (see paragraph 9.187 below), and including the option for effective transitional supporting provisions (see paragraphs 9.118 to 9.143 above).

9.145 Having identified the remedy options that would be effective in addressing the SLC, we now consider whether each option would be reasonable and proportionate. In that regard, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. If the CMA is choosing between remedies that it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁶⁴⁴

9.146 When considering the costs associated with a remedy, the CMA's considerations may include (but are not limited to):

- (a) Distortions in market outcomes, compliance costs and monitoring costs. These types of cost might be incurred by the Parties, third parties or the CMA.⁶⁴⁵
- (b) The loss of any RCBs that may arise from the merger, which are foregone as a result of the remedy.⁶⁴⁶

⁶⁴⁴ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 1.9.

⁶⁴⁵ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraphs 1.10 and 1.11.

⁶⁴⁶ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraphs 1.11 and 1.14–1.20.

9.147 As stated in paragraph 9.3 above, when considering the costs associated with a remedy, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture since in the case of a completed merger, the merger parties have taken the foreseeable risk that the CMA may require divestiture,⁶⁴⁷ and so the divestiture costs are in essence avoidable. In addition, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the Parties than costs that will be imposed on other relevant entities.⁶⁴⁸

Views of parties

The Parties

9.148 The Parties stated that requiring the divestment of either the Microlease Companies or Electro Rent Europe would be ‘manifestly disproportionate’,⁶⁴⁹ although subsequently noted that the divestment of Electro Rent Europe would be less onerous than the divestment of the Microlease Companies.⁶⁵⁰

9.149 The Parties consider that the divestment of Electro Rent UK, or the use of a behavioural price cap remedy, would be effective (see paragraphs 9.73 to 9.81 above, and paragraphs 9.21 to 9.25 above respectively), and either of these would be proportionate, unlike either of the alternative structural remedies.⁶⁵¹

9.150 The Parties also stated that in several important respects, the divestment of either the Microlease Companies or Electro Rent Europe would go far beyond removing the overlap giving rise to the SLC that the CMA had provisionally identified and would therefore be manifestly disproportionate, highlighting their views that these options would:⁶⁵²

- (a) Involve the sale of businesses in product markets outside of TME rental, including the sale of used TME, TME leasing, and asset management services by the Microlease Companies; and sale of new and used TME by Electro Rent Europe.

⁶⁴⁷ *Intercontinental Exchange, Inc v Competition and Markets Authority and NASDAQ Stockholm AB* [2017] CAT 6 at 101.

⁶⁴⁸ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 1.10.

⁶⁴⁹ [Response to Remedies Notice](#), paragraph 10; [X].

⁶⁵⁰ [X]

⁶⁵¹ [Response to Remedies Notice](#), paragraphs 5, 8, and 17.

⁶⁵² [Response to Remedies Notice](#), paragraphs 9-10; [X].

- (b) Involve the sale of businesses in geographic markets outside the UK, including companies incorporated outside the UK, and those that had already received derogations from the Interim Order.
- (c) Involve the sale of businesses holding stock which was not used to serve UK customers.
- (d) Involve the sale of integrated European businesses, including their hubs, which serve customers across Europe and are integrated operationally such that it would be inefficient and costly to separate any UK-specific elements of each.
- (e) Jeopardise the Parties' [REDACTED].

9.151 For many of these points, the Parties illustrated the scale of the annual revenues involved, most of which were substantially above the £[REDACTED] million annual revenues generated by Electro Rent UK from TME rental.⁶⁵³

9.152 The Parties also noted that divesting the Microlease Companies (and to a lesser extent Electro Rent Europe) would likely result in [REDACTED]. This is because the [REDACTED].⁶⁵⁴

9.153 The Parties also stated that [REDACTED], due to the forced nature of the transaction.⁶⁵⁵

Our views

9.154 We have a statutory duty to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it.⁶⁵⁶

9.155 When designing each of the three separate potential remedy options we have found to be effective, we have selected the narrowest parts of the business that have all the necessary assets to compete effectively (as discussed in paragraphs 9.113 to 9.117 above). The Microlease Companies and Electro Rent Europe are separate legal entities that provide the UK operations for each business. By contrast, Electro Rent UK is a collection of assets that Electro Rent uses to serve UK customers. In the case of the divestment of

⁶⁵³ Electro Rent UK generates £[REDACTED] million of revenue from UK TME rental operations; the Microlease Companies generate £[REDACTED] million of revenue from TME non-rental operations; Electro Rent Europe generates £[REDACTED] million of revenue from new and used TME sales operations; the Microlease Companies generate £[REDACTED] million of revenue outside the UK; Electro Rent Europe generates £[REDACTED] million of revenue outside the UK ([Response to Remedies Notice](#), paragraph 10).

⁶⁵⁴ [REDACTED]

⁶⁵⁵ [REDACTED]

⁶⁵⁶ [Section 35\(4\)](#) of the Act.

Electro Rent Europe or the divestment of Electro Rent UK to a suitable purchaser, both these remedy options additionally require the inclusion of transitional behavioural provisions to ensure that they will be effective.

9.156 The three effective remedy options identified consist of the businesses and/or assets that the Parties use to supply the market in which we found the Merger was expected to result in an SLC, and so represent the assets that a purchaser will need to compete effectively in this market. Although these assets may also be used by the Parties to serve markets other than that affected by the SLC, with this particularly being the case for the divestment of Microlease Companies and Electro Rent Europe (eg due to the level of integration between UK and non-UK operations in these businesses), we consider that we cannot further narrow the assets to be divested without potentially reducing the effectiveness of these remedy options (as discussed in paragraphs 9.114 to 9.117 above). This approach is consistent with the CMA's guidance,⁶⁵⁷ and CMA decisional practice.⁶⁵⁸ We also note that including the full set of assets relied on by the business is specifically noted as being an important factor in determining remedy effectiveness in evaluations of merger remedies by the CMA and other competition authorities.⁶⁵⁹

9.157 We also note the judgments of the CAT recognising that the CMA has:

...a wide margin of appreciation in the selection of the remedy which it considers would be effective in remedying the SLC found. In general it is not obliged on proportionality grounds to select a remedy which is not effective to remedy the SLC. Proportionality is most relevant when looking at remedies which would be effective. Whilst significant costs may have to be incurred as a result of divestiture, these may have to

⁶⁵⁷ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.7 notes that 'the [CMA] will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap', and paragraph 3.10 notes that relying on a package of assets risks that the CMA 'may have less assurance that the purchaser will be supplied with all it requires to operate competitively'.

⁶⁵⁸ For example, in [AkzoNobel / Metlac Holding](#) (2012), the Competition Commission prohibited the merger (affecting all assets of the business), even though the businesses also operated in markets where no SLC was found (see paragraphs 78-83 of the relevant final decision); in [Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust / Poole Hospital NHS Foundation Trust](#) (2013), the Competition Commission prohibited the merger (affecting all assets of the business), even though the markets in which SLCs were found accounted for less than 30% of either businesses' clinical sales (see paragraphs 67 and 9.206 of the relevant final report); in [Cygnit Health Care / Cambian Adult Services division](#) (2017), the CMA required the merging parties to divest one of four sites, which included a number that were multi-treatment facilities and so provided services in markets where no SLC was found (see paragraphs 14.47 and 14.139 of the relevant final report).

⁶⁵⁹ For example, see [Understanding Past Merger Remedies \(April 2017\)](#), paragraphs 87, 93, and 103.

be borne if behavioural or other structural remedies would not be effective.⁶⁶⁰

9.158 When considering whether the effective remedy options would be proportionate, we place little weight on the Parties' submissions around the level of cost associated with the divestment options. Paragraph 9.146 above sets out the CMA's guidance on the relevant costs of a remedy, and we consider that the evidence provided indicates very few, if any, of the Parties' points are relevant to our assessment:

- (a) The Parties took a commercial risk in completing the Merger without seeking CMA approval. Therefore, in line with established case law and our guidance, we do not consider the cost to the Parties of divestment to be a relevant consideration in our assessment of the proportionality of the different options.⁶⁶¹
- (b) We consider that the structure or [redacted] of a merger are not factors on which the CMA should place weight in its assessment. These are decisions that the companies in question are best placed to assess, and accordingly they should bear the risk of their decisions (in full knowledge of the competition law regime, and associated potential actions). In addition, adopting any alternative approach would result in perverse incentives on companies to conduct mergers in ways designed to frustrate or limit the CMA's options for remedial action.
- (c) With regard to the potential [redacted], we consider that the scale and opportunities of the future business should not be at risk from divestment, as the business would retain the capabilities and potential that underpin its competitive strengths. In addition, the scale would not be dependent purely on the divestment package, but also on the purchaser. [redacted] would indicate that a potential purchaser is not suitable, and that the remedy would not be effective as a result, rather than representing a cost of the divestment itself.
- (d) We note that we have not received any evidence of RCBs⁶⁶² arising from the Merger that would be foregone as a consequence of any of the

⁶⁶⁰ *Ryanair Holdings plc v Competition Commission* [2014] CAT 3, paragraph 185 and *Intercontinental Exchange Inc v Competition and Markets Authority* [2017] CAT 6, paragraph 309(3).

⁶⁶¹ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 1.10. This approach has been endorsed in *Intercontinental Exchange, Inc. v CMA & Or* [2017] CAT 6 (*ICE/Trayport*) at 309, *BAA Limited v CC & Anor* [2012] CAT 3 (*BAA*) at 76.

⁶⁶² Section 30 of the Act defines these as benefits in the form of lower prices, higher quality or greater choice of goods or services or greater innovation in such goods or services. [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraphs 1.14-1.15.

effective remedies. In line with our guidance, we would expect merger parties to provide evidence of any RCBs.⁶⁶³ In this case, the Parties did not provide any evidence of the existence of these at any point, or that any would be lost as a result of the remedial options.⁶⁶⁴

9.159 We also note the Parties' views that any additional costs from the effect of any divestment [§] would be passed onto customers. The CMA considers that the dynamic effects of competition in a competitive market would ensure that customers are protected from inefficient costs. The longer-term benefits of strong competition would outweigh any short-term effects of higher [§] costs.

Comparison of effective remedies

9.160 We note the Parties' views on the potentially effective remedies:⁶⁶⁵

- (a) the divestment of the Microlease Companies would be the most onerous;
- (b) the divestment of Electro Rent Europe would be very onerous, albeit somewhat less onerous than divestment of the Microlease Companies; and
- (c) the divestment of Electro Rent UK would be proportionate.

9.161 For completeness, we note that some of the effective remedy options would involve additional associated relevant costs; however, we would expect these to be low:

- (a) Potential distortions arising from the transitional supporting provisions, although, given the relatively short duration and nature of these behavioural interventions, any such distortions are likely to be limited (as discussed in paragraph 9.111 above).
- (b) The ongoing monitoring costs incurred by the CMA could be mitigated through the use of a monitoring trustee, which would result in the Parties' bearing most of the costs of this monitoring (which they consider not to be significant).⁶⁶⁶

⁶⁶³ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 1.17.

⁶⁶⁴ [§]

⁶⁶⁵ [§]

⁶⁶⁶ [§]

Proportionate remedy to the SLC and its adverse effects

- 9.162 We considered which of the effective remedy options discussed in paragraph 9.144 above represented a proportionate remedy to the SLC and its adverse effects by looking at the relevant costs associated with each to ensure they were not disproportionate to the scale of the SLC and its resulting adverse effects.⁶⁶⁷
- 9.163 As discussed in Chapter 6 above (eg paragraphs 6.152 to 6.159), the evidence we received indicated that in many situations customers would no longer have any choice between competing TME rental suppliers following the Merger. For these situations, the loss of competition would be expected to result in substantial adverse effects for these customers. In addition, the loss of a close competitor in other circumstances (even when a small number of other options exists) is also likely to produce worse outcomes for customers when compared with the counterfactual.
- 9.164 In terms of the relevant costs associated with each of the effective remedies:
- (a) **For the divestment of the Microlease Companies:** As noted in paragraph 9.158 above, there are no relevant costs associated with this remedy beyond the process itself, as there would be no market distortions, no costs of compliance, no costs of monitoring, and no loss of RCBs. As discussed in paragraph 9.158 above, when considering whether this divestment would be proportionate, we put no weight on any divestment costs borne by the Parties as a result of having completed the Merger without seeking CMA approval.
 - (b) **For the divestment of Electro Rent Europe:** The costs of monitoring (and risk of distortions) would be low due to the limited scope of behavioural supporting provisions, and their relatively short duration, as discussed in paragraph 9.161 above. All other relevant cost considerations would be equivalent to those discussed for the Microlease Companies above.
 - (c) **For the divestment of Electro Rent UK:** All relevant cost considerations would be equivalent to those for Electro Rent Europe above, since it would require the same transitional supporting provisions and monitoring by the CMA.

⁶⁶⁷ Our guidance sets out the relevant costs for our consideration are costs to third parties such as ongoing compliance costs or, loss of any RCBs. See [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraphs 1.10-1.11.

- 9.165 Although we are not currently able to quantify precisely either component (the scale of the SLC or relevant costs), in our view, based on the evidence we have received, the relevant costs associated with any of the proposed divestment remedies are relatively low, while the adverse effects on customers that would be expected to arise from the SLC are likely to be substantial.
- 9.166 Whether a remedy under section 35 of the Act is proportionate must be considered in the context of the statutory scheme as a whole. In accordance with the statutory scheme in the Act, we have decided that there is an SLC, that action should be taken to remedy it, and that the only effective remedies are structural in nature. It is inherent in such a statutory scheme that in order to secure the public interest, the Parties will lose their freedom of choice as to the composition of the divestment package. Having regard to the low level of relevant costs identified with each remedy option, we consider that each option is feasible to remedy the SLC and its resulting adverse effects.
- 9.167 On the basis of the above, we do not consider that any of these remedy options represent the extreme circumstances discussed in our guidance (eg if the costs imposed by the remedy on third parties were likely to be greater than the likely scale of adverse effects) which would warrant us not pursuing these effective remedy options.⁶⁶⁸
- 9.168 Therefore, we consider that each of the effective options described in paragraph 9.144 above would be proportionate to the SLC and its adverse effects, noting the Parties' views on relative intrusiveness, which should be considered when comparing between effective remedy options.

Conclusion on proportionality

- 9.169 We have found each of the options discussed in paragraph 9.144 above would be an effective and proportionate remedy to the SLC and its resulting adverse effects we have identified.
- 9.170 Taking into account the submissions from the Parties, we consider that the divestment of Electro Rent UK to a suitable purchaser (discussed in paragraph 9.187 below) and with transitional supporting provisions (discussed in paragraph 9.144(c) above) would be the least onerous and least intrusive remedy of the effective and proportionate remedies we have identified.

⁶⁶⁸ See [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 1.12.

Remedy implementation

9.171 Having identified the effective and proportionate remedy option or options, we now consider their implementation. This has a number of interrelated aspects. We start by describing the risks associated with the disposal of Electro Rent UK, Electro Rent Europe and the Microlease Companies. We then consider issues relating to purchaser suitability and jurisdictional implications, and finally the timescale that should be allowed for any disposal to take place.

Divestiture risks

9.172 The incentives of merger parties may serve to increase the risks of divestiture. Although merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves. Parties may therefore have, on balance, an incentive to make divestitures to weaker competitors of less competitive assets and may also allow the competitiveness of divestiture packages to decline during the divestiture process.⁶⁶⁹

Composition risk

9.173 Having specified the scope of the effective divestment packages, this should remedy the SLC and its adverse effects. However, the Electro Rent Europe and Electro Rent UK divestiture packages have higher levels of composition risk due to their existing support from the wider group companies with regard to aspects of their day-to-day operations.

9.174 This supports the need for the transitional, behavioural provisions discussed in paragraph 9.143 above, since otherwise a purchaser would need to be able to replicate these support services almost immediately.

9.175 As discussed in paragraph 9.53 above, a divestment of the Microlease Companies is less reliant on other parts of the Parties' business, and so would have lower associated composition risk.

Asset risk

9.176 In the context of the Merger, asset risk would be most likely to materialise through the degradation of the business (intentional or otherwise) via:

⁶⁶⁹ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.4.

- (a) Loss of customer contracts, or reducing quality of services;
- (b) Insufficient maintenance of physical assets;
- (c) Key staff leaving; and/or
- (d) Loss of access to stock (eg via transfer to international parts of the business).

9.177 As noted in paragraph 9.106 above, since the start of the CMA investigation, the Parties have been subject to an Interim Order aimed at preventing pre-emptive action through any potential asset degradation.⁶⁷⁰ Since November 2017, compliance with the Interim Order has been overseen by a Monitoring Trustee.⁶⁷¹

9.178 The CMA will therefore maintain its ongoing enforcement of the Interim Order (or equivalent replacement). This will include ensuring that effective asset maintenance obligations are put in place during the divestment process to minimise the risk of any degradation of the divestment package.

Purchaser risk

9.179 Purchaser risk would apply if a suitable purchaser is not available or if, following the divestment, the purchaser acted in such a way that the competition that is expected to be substantially lessened as a result of the merger is not restored.

9.180 We consider that the scope for purchaser risk is reasonably high in this case, and higher for the divestment of Electro Rent UK or Electro Rent Europe for the following reasons:

- (a) The criteria on purchasers are more specific than we typically require, which may limit the number of suitable purchasers;
- (b) A number of the interested potential purchasers identified to date is small and hence more exposed to changes in circumstances (as occurred during the phase 1 UIL process); and
- (c) Specialist knowledge represents a barrier to entry, which may limit ability or credibility of a non-specialist purchaser to compete (see paragraphs 7.20 to 7.21 above).

⁶⁷⁰ [Initial enforcement order](#) dated 1 February 2017, as [varied](#) on 6 February 2017; [Interim order](#) dated 7 November 2017.

⁶⁷¹ [Directions to appoint monitoring trustee](#) dated 7 November 2017.

9.181 We consider that divestiture risk in general, and these purchaser risks in particular, can be mitigated by specifying the characteristics of an effective divestiture process and setting out the criteria that we will apply to establish purchaser suitability in the divestiture package. In particular, we propose to require:

- (a) a transparent and open sale process (including the use of appropriate professional advisors) to identify and investigate potential purchasers;
- (b) CMA oversight of the divestment process, including the continued use of a monitoring trustee;
- (c) the suitability of potential purchasers to be approved by the CMA;
- (d) the final divestiture proposed by the Parties, including the identity of the purchaser, be subject to approval by the CMA;
- (e) the final divestment be completed in accordance with any order issued or undertakings accepted; and
- (f) the option for the CMA to appoint a Divestiture Trustee.

9.182 Based on this approach, and given the flexibility in disposal price, in our view, purchaser risk is capable of being managed effectively. The next section considers further criteria that we will take into consideration in the assessment of a suitable purchaser.

Purchaser suitability

9.183 For any divestment remedy, the CMA requires the sale to be to a suitable purchaser in order for the remedy to be effective.

9.184 The Parties stated they had received a number of expressions of interest for purchasing Electro Rent UK even without having promoted the sale.⁶⁷² They considered that [REDACTED].⁶⁷³

9.185 We consider the suitability of each potential purchaser on a case-by-case basis and each potential purchaser on its own merits in any divestment. In this case, the criteria to determine a suitable purchaser for Electro Rent UK or Electro Rent Europe are more specific because of the nature of the business

⁶⁷² [REDACTED]

⁶⁷³ [REDACTED]

than in most other merger cases. We have, accordingly, specified these criteria in advance.

9.186 The CMA's guidance sets out its approach to considering purchaser suitability, including four broad criteria:⁶⁷⁴

- (a) Independence – The purchaser should have no significant connection to the merger parties that may compromise the purchaser's incentives to compete with the merged entity.
- (b) Capability – The purchaser must have access to appropriate financial resources, expertise and assets to enable the divested business to be an effective competitor in the market. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor.
- (c) Commitment to relevant market – The CMA will satisfy itself that the purchaser has an appropriate business plan and objectives for competing in the relevant market(s).
- (d) Absence of competitive or regulatory concerns – Divestiture to the purchaser should not create a realistic prospect of further competition or regulatory concerns.

9.187 In this case, we consider it is necessary to set out more specific requirements for the 'capability' of a suitable purchaser for Electro Rent Europe or Electro Rent UK:

- (a) When assessing the capability of a potential purchaser of either Electro Rent Europe or Electro Rent UK, our view is that the purchaser will be required:
 - (i) to be currently active within TME rental (in the UK or internationally), or be able to demonstrate the ability to provide the necessary capabilities to be active upon purchase (eg by access to an experienced management team);
 - (ii) to have a robust business plan, and a detailed explanation of how acquiring the divestment package will help achieve this plan. This should demonstrate how the proposed business will compete with the Parties on an ongoing basis; and

⁶⁷⁴ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.15.

(iii) to have access to sufficient existing financial capital to support its business plan and future investments.

(b) In addition to the above, a potential purchaser of Electro Rent UK will need sufficient management and operational staff that are experienced within the TME rental industry (including sales and technical support staff). If such staff are not already in place, we expect a purchaser to be able to demonstrate that it has the necessary capabilities upon purchase (eg being able to recruit experienced staff within a short period).

9.188 These criteria aim to ensure that any purchaser of Electro Rent UK or Electro Rent Europe (taking into account the required transitional supporting provisions) is able to provide the business with a sufficient level of support broadly equivalent to that which the wider Electro Rent group currently provides and could apply a competitive constraint on the Parties beyond the transitional period. These criteria will be in addition to the standard suitability criteria discussed in paragraph 9.186 above.

9.189 A potential purchaser for the Microlease Companies will be assessed against the standard suitability criteria discussed in paragraph 9.186 above.

[REDACTED]

9.190 [REDACTED]⁶⁷⁵

9.191 [REDACTED]

9.192 [REDACTED]

9.193 [REDACTED]⁶⁷⁶

Jurisdiction

9.194 We are satisfied that we have jurisdiction to require Electro Rent Corporation to implement the remedies we have identified, on the basis that it carries on business in the UK.⁶⁷⁷ However, we note the Parties' reservations regarding our jurisdiction to require Electro Rent Corporation (a company registered in the US) to divest Electro Rent Europe (Electro Rent Europe NV is registered in Belgium).⁶⁷⁸

⁶⁷⁵ [REDACTED]

⁶⁷⁶ [REDACTED]

⁶⁷⁷ *Akzo Nobel N.V. v Competition Commission & Ors* [2014] [EWCA Civ 482](#) establishes the test for 'carrying on business in the UK'.

⁶⁷⁸ [Response to Remedies Notice](#), footnote 7.

9.195 We have found that Electro Rent Corporation carries on the business of supply of TME for rental in the UK. Our assessment that Electro Rent Corporation carries on business in the UK is based on the facts (as acknowledged by the Parties) that:

- (a) all material procurement, expenditure and customer credit decisions concerning Electro Rent Europe NV, which includes the UK branch, are made by Electro Rent Corporation;
- (b) the equipment repair, recalibration and back office activities of Electro Rent Europe NV, which includes the UK branch, are mostly performed by Electro Rent Corporation; and
- (c) a significant proportion of the equipment available to Electro Rent Europe NV, which includes the UK branch, for supply to customers in the UK is provided by Electro Rent Corporation.⁶⁷⁹

9.196 We also note that on 16 March 2018, the Chief Financial Officer of Electro Rent Corporation took action directly concerned with Electro Rent's business in the UK by [REDACTED] without discussion with staff in Electro Rent UK itself.

9.197 Based on this evidence we have concluded that Electro Rent Corporation is sufficiently involved in the business of supply of TME for rental in the UK to be subject to [section 86\(1\)\(c\)](#) of the Act, ie 'a person carrying on business in the UK'.

Divestiture process

9.198 An effective divestiture process should protect the competitive potential of the divestiture package before disposal, and enable a suitable purchaser to be secured in an acceptable timescale. Further, the divestiture process should also allow prospective purchasers to make an appropriate acquisition decision.⁶⁸⁰

⁶⁷⁹ [REDACTED]

⁶⁸⁰ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.20.

Views of parties

- *The Parties*

9.199 The Parties stated that they were intending to appoint an external corporate finance house to support the divestment process, and that this was the same one involved in the Merger so it was already familiar with the business.⁶⁸¹

9.200 In terms of timings, the Parties stated that six months should be sufficient time to complete the divestment process for Electro Rent UK.⁶⁸²

9.201 [REDACTED]⁶⁸³

- *Third parties*

9.202 A number of third parties asked the CMA about the timings and process for implementing any necessary remedies, but none of these respondents proposed any details in this regard.

Our views

9.203 We consider that the Parties' proposed approach of using an external corporate finance house would be suitable in supporting the divestment process.

9.204 Based on previous CMA experience, and the Parties' submissions, we consider that [REDACTED] from when the reference is finally determined in accordance with [section 79\(2\)\(e\)](#) of the Act (ie following publication of a report containing the decision that the merger is expected to result in an SLC and the CMA has decided to accept an undertaking or make an order, when the undertaking is accepted or the order is made) will be a sufficient period of time in which to complete a divestment.

9.205 We also considered the length of time that the Parties should have to investigate the number and suitability of potential purchasers. The Parties proposed a period of three months from the publication of the Final Report. When making our decision, we will normally define timings with reference to the final determination of the reference, which is when the CMA accepts an undertaking or makes an order.⁶⁸⁴ Even in the case of straightforward

⁶⁸¹ [REDACTED]

⁶⁸² [REDACTED]

⁶⁸³ [REDACTED]

⁶⁸⁴ [Section 79\(2\)\(e\)](#) of the Act.

divestment remedies it is likely to take around eight weeks⁶⁸⁵ following the publication of the Final Report for the reference to be finally determined,⁶⁸⁶ and the Parties will be able to use this time to investigate a potential suitable purchaser if necessary.

9.206 We therefore consider the following timelines from the final determination of the reference in accordance with section 79(2)(e) to be appropriate:

- (a) [X] to identify potential purchasers for Electro Rent UK following which the CMA will assess each potential purchaser to determine if they meet the suitable purchaser criteria;
- (b) Following determination of suitable purchasers, [X] in which to complete the divestment making a total of [X] to complete the divestment of Electro Rent UK.

9.207 [X]

9.208 If the Parties cannot, or if we have reason to expect that they will not, complete the required divestment to a suitable purchaser within the period specified then we may appoint a Divestiture Trustee in order to ensure that the remedies are effective.⁶⁸⁷

Decision on remedies

9.209 We have determined that each of the options stated in paragraph 9.144 above would be an effective and proportionate remedy to the SLC that we have found. The divestment of Electro Rent UK to a suitable purchaser and with transitional supporting provisions would be the least onerous, but is subject to a higher than normal level of risk, in particular if no suitable purchaser can be found. Therefore, if the divestment of Electro Rent UK is not feasible, alternative remedy options remain available to us, [X]

9.210 We have therefore decided that the following will represent an effective and proportionate remedies package, and so require the Parties to:

- (a) Divest Electro Rent UK (as described in paragraph 9.70 above) to a suitable purchaser that fulfils all the necessary requirements (set out in paragraphs 9.186 to 9.189 above), and including the transitional supporting provisions set out in paragraph 9.143 above.

⁶⁸⁵ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 1.27.

⁶⁸⁶ The statutory deadline for this period is 12 weeks, subject to extension by six weeks if there are special reasons to do so; [Mergers – the CMA's jurisdiction and procedure \(CMA2\)](#), page 98.

⁶⁸⁷ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.26.

(b) [✂]

(c) [✂]

(d) [✂]

9.211 The transitional supporting provisions will ensure that the divested company will continue to receive an equivalent level of support as it currently receives from the Electro Rent group, and so the duration of these transitional arrangements is dependent on the needs of the purchaser. The specific durations will therefore be subject to commercial negotiations with the buyer, but we require these to be sufficiently long to enable the buyer to operate the divested business effectively after the divestiture. We do not expect the transitional arrangements to exceed the durations described in paragraph 9.143 above.

9.212 The price of the services (and associated service levels) to be provided by the Parties to the buyer of the divested business as part of any transitional arrangements will be subject to commercial negotiations with the purchaser, and the CMA will review them as part of the approval of the terms of the divestiture.

9.213 Furthermore, we have decided that the following is required:

- (a) a transparent and open sale process (including the use of appropriate professional advisors) to identify and investigate potential purchasers;
- (b) CMA oversight of the divestment process, including the continued use of a monitoring trustee;
- (c) the suitability of potential purchasers to be approved by the CMA;
- (d) the final divestiture proposed by the Parties, including the identity of the purchaser, be subject to approval by the CMA;
- (e) the final divestment be completed in accordance with any order issued or undertakings accepted; and
- (f) the option for the CMA to appoint a Divestiture Trustee.

9.214 As part of our consideration of purchaser suitability and in line with our guidance, the purchaser, which will need to be approved by the CMA, will need to demonstrate that it has capability, commitment and credible plans to continue to operate in the TME rental market in the UK, and in doing so apply a competitive constraint on the Parties.

- 9.215 In line with our guidance and standard approach, we will prohibit the Parties from subsequently purchasing assets or shareholdings sold as part of a divestiture package or acquiring material influence over them for a period of 10 years in order to maintain the competitive structure of the relevant market.⁶⁸⁸ This prohibition will not apply to individual items of TME sold in the ordinary course of business.
- 9.216 We expect to implement the structural remedy by seeking suitable undertakings from the Parties. We will make an Order if we are unable to obtain suitable undertakings from the Parties.

⁶⁸⁸ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), paragraph 3.8.