

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

Final Undertakings given by Electro Rent Corporation and Electro Rent Europe NV to the Competition and Markets Authority pursuant to section 82 of the Enterprise Act 2002

Background

- A. On 19 October 2017, the Competition and Markets Authority (the '**CMA**'), in accordance with [section 22\(1\)](#) of the Enterprise Act 2002 (the '**Act**'), referred the completed acquisition by Electro Rent Corporation ('**Electro Rent**') of Test Equipment Asset Management Limited (known as '**Microlease**') and Microlease, Inc. (the '**Merger**') to a group of CMA panel members to determine, pursuant to [section 35](#) of the Act ('the **Reference**')
- (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition in any market or markets in the United Kingdom ('**UK**') for goods or services.
- B. On 7 November 2017 the CMA made an [Interim Order](#)¹ applying to Electro Rent, Electro Rent Europe NV (including its UK branch) ('**Electro Rent Europe**') and Microlease (the '**Parties**') requiring the Parties to hold the business of Electro Rent and Electro Rent Europe (the '**Electro Rent business**') separate from the business of Microlease (the '**Microlease business**') until the Reference was finally determined.
- C. On 17 May 2018 the CMA published a report pursuant to [section 38](#) of the Act (the '**Report**') which concluded that:
- (a) the Merger has created a relevant merger situation;

¹ The [Interim Order](#) replaced the Interim Enforcement Order (the '**IEO**') made by the CMA on 1 February 2017 at phase 1.

- (b) the creation of that situation has resulted in, and may be expected to result in a substantial lessening of competition ('**SLC**') in the market for test measurement equipment ('**TME**') for rental in the UK; and
 - (c) the CMA should take action to remedy the SLC and any adverse effects arising from it.
- D. The CMA, having regard to its findings, requires the divestiture of the UK activities of the Electro Rent business.
- E. [✂]
- F. Now therefore each of Electro Rent and Electro Rent Europe give to the CMA on behalf of itself and, where relevant, its Subsidiaries and Affiliates, the following Final Undertakings pursuant to [section 82](#) of the Act for the purpose of remedying, mitigating or preventing the SLC identified in the Report and any adverse effects arising from it.

1. Interpretation

- 1.1. The purpose of these Final Undertakings is to give effect to the Remedy in the Report and they shall be construed accordingly.
- 1.2. Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report (as appropriate).
- 1.3. The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 1.4. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 1.5. References to recitals, paragraphs, subparagraphs, annexes and schedules are references to the recitals to, paragraphs and subparagraphs of, annexes and schedules to these Final Undertakings unless otherwise stated.
- 1.6. Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate.
- 1.7. The Annexes form part of these Final Undertakings.

1.8. The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.

1.9. Further in these Final Undertakings:

‘the Act’	means the Enterprise Act 2002;
‘Affiliate’	means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
‘Approved Purchaser’	means any purchaser approved by the CMA pursuant to the Purchaser Approval Criteria set out in Annex 3;
[✂]	[✂]
‘Approved Timetable’	means the timetable notified by the CMA to Electro Rent and Electro Rent Europe in accordance with paragraph 9.1;
‘Asset Maintenance Undertakings’	means those undertakings set out in paragraph 5;
‘Associated Person’	means a person who is an associated person within the meaning of section 127 of the Act;
‘business’	has the meaning given by section 129(1) and (3) of the Act;
‘Commencement Date’	means the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act;

‘Confidential Information’	means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature;
‘control’	includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise, as defined in section 26 of the Act;
‘Directions’	means written directions given by the CMA as set out in paragraph 4.3;
‘Divestiture Period’	means the period of [§] beginning on the Commencement Date or such longer period as the CMA may approve on request;
[§]	[§]
‘Electro Rent business’	means the business conducted by Electro Rent and Electro Rent Europe;
‘Electro Rent’	means Electro Rent Corporation;
‘Electro Rent Europe’	means Electro Rent Europe NV;
‘Electro Rent UK’	means the assets and activities of the Electro Rent business carried on in or directed towards the UK, including the provision of TME to customers located within the UK and ancillary activities, and including but not limited to those matters listed in Annex 1;
‘Key Staff’	means staff who are in positions of executive or managerial responsibility and/or whose performance affects the viability of the relevant business, which for the avoidance of doubt includes all staff employed by the Electro Rent

	business in the UK;
‘Microlease’	means Test Equipment Asset Management Limited;
‘Microlease business’	means the business of Microlease and its Subsidiaries and Affiliates;
[✂]	[✂]
‘Microlease Limited’	means the UK registered Subsidiary of Microlease;
‘Monitoring Trustee’	means a person appointed in accordance with paragraph 6;
‘ordinary course of business’	means customary commercial transactions and practices in the day-to-day supply of its services;
‘Purchaser Approval Criteria’	means the criteria set out in Annex 3;
‘Related Person’	means any Subsidiary, Affiliate or Associated Person;
‘Report’	means the report entitled “Completed Acquisition by Electro Rent Corporation of Test Equipment Asset Management Limited and Microlease, Inc.” published by the CMA on 17 May 2018;
‘SLC’	means the substantial lessening of competition and adverse effects identified by the CMA in the Report;
‘Subsidiary’	has the meaning given by section 1159 of the Companies Act 2006;
‘Transitional Arrangements’	means the arrangements listed in Annex 2;
‘UK’	means the United Kingdom of Great Britain and Northern Ireland;
‘Working Day’	means a day that is not a Saturday or Sunday or a bank holiday in England.

2. Commencement

- 2.1. These Final Undertakings will come into force on the Commencement Date in accordance with [section 82\(2\)](#) of the Act.

3. Divestiture Undertakings

- 3.1. Electro Rent and Electro Rent Europe give the following undertakings:

- 3.1.1. To use best endeavours:

3.1.1.1. to procure the divestiture of Electro Rent UK represented by the matters listed in Annex 1 of these Final Undertakings to an Approved Purchaser within the Divestiture Period having due regard to the findings in the Report; and

3.1.1.2. to offer the Transitional Arrangements as detailed in Annex 2 of these Final Undertakings and then provide those that may be required by an Approved Purchaser.

- 3.1.2. To identify potential purchasers of Electro Rent UK within two months of the Commencement Date.

3.1.3. To provide the CMA with information within two months of the Commencement Date, and such other information reasonably required by the CMA within any deadline set by the CMA, to demonstrate that a potential purchaser meets the Purchaser Approval Criteria and will operate Electro Rent UK as an effective and financially viable competitor in the supply of TME rental in the UK and that Electro Rent UK is being offered and sold in a manner consistent with these Final Undertakings.

- 3.2. In the event that the divestiture of Electro Rent UK has not been, or will not be, achieved within the Divestiture Period, Electro Rent undertakes [✂].

- 3.3. Electro Rent and Electro Rent Europe shall be deemed to have divested Electro Rent UK to an Approved Purchaser within the Divestiture Period in accordance with paragraph 3.1.1 if, by the end of the Divestiture Period and to the satisfaction of the CMA, they have:

3.3.1. completed the transfer of assets and activities to the Approved Purchaser as detailed in Annex 1 of these Final Undertakings;

3.3.2. agreed to implement suitable transitional arrangements with the Approved Purchaser in accordance with Annex 2 of these Final Undertakings;

- 3.3.3. used best endeavours to secure the novation of all customer and supplier contracts to the Approved Purchaser, to enable the Approved Purchaser to operate Electro Rent UK as an effective and financially viable competitor in the supply of TME rental in the UK; and
- 3.3.4. removed the UK branch of Electro Rent Europe from the Companies House register and otherwise discontinued its operation.
- 3.4. Electro Rent and Electro Rent Europe undertake to inform the CMA as soon as practicable, and in any event within one Working Day, when divestiture of Electro Rent UK has had heads of terms agreed, when it has been agreed, and when it has been completed.
- 3.5. Electro Rent and Electro Rent Europe undertake to inform the CMA as soon as practicable, and in any event within three Working Days of becoming aware, if they will not, or believe they are unlikely to, achieve divestiture of Electro Rent UK within the Divestiture Period.
- 3.6. [✂]
- 3.6.1. [✂]
- 3.6.2. [✂]
- 3.6.3. [✂]
- 3.6.4. [✂]
- 3.6.5. [✂]
- 3.7. [✂]
- 3.7.1. [✂]
- 3.7.2. [✂]
- 3.7.3. [✂]
- 3.8. [✂]
- 3.9. [✂]
- 4. Additional Obligations**
- 4.1 Electro Rent and Electro Rent Europe undertake to provide the CMA with sufficient information regarding each potential purchaser having regard to the

criteria set out in Annex 3 to enable the CMA to give its approval of that potential purchaser, which shall not be unreasonably withheld.

- 4.2 The CMA will advise Electro Rent whether any potential purchaser is an Approved Purchaser within a reasonable time of the CMA concluding it has received sufficient information under paragraph 3.1.3 [✂].
- 4.3 Electro Rent and Electro Rent Europe undertake to comply with any Directions the CMA may issue relating to these Final Undertakings and will promptly take such steps as may be specified or described in the Directions.
- 4.4 Any delay by the CMA in making a written Direction shall not affect the obligations of Electro Rent or Electro Rent Europe at such time as the CMA makes any written Direction under paragraph 4.3.
- 4.5 Electro Rent and Electro Rent Europe undertake that they, and to procure that any Related Person, will not for a period of ten years from the date the divestiture of Electro Rent UK is completed, bring under common ownership or control in whole or in part Electro Rent UK or any asset of Electro Rent UK without the prior written consent of the CMA except for individual items of TME sold by Electro Rent UK in the ordinary course of business.
- 4.6 [✂]

5. Asset Maintenance Undertakings

- 5.1 Electro Rent and Electro Rent Europe undertake that until the divestiture of Electro Rent UK [✂] is completed, except with the express written consent of the CMA, it will not take any action which might:
 - (a) lead to the integration of the Microlease business with the Electro Rent business;
 - (b) transfer the ownership or control of the Electro Rent business or the Microlease business or any of their Related Persons except in the course of complying with these Final Undertakings;
 - (c) otherwise impair the ability of the Microlease business or the Electro Rent business to compete independently in any of the markets affected by the transaction.
- 5.2 Electro Rent and Electro Rent Europe undertake that until the divestiture of Electro Rent UK [✂] is completed, they will procure that, except with the prior written consent of the CMA:

- (a) the Microlease business is carried on separately from the Electro Rent business and the Microlease business's separate sales or brand identity is maintained;
- (b) the Microlease business and the Electro Rent business are maintained as going concerns and sufficient resources are made available for the development of the Microlease business and the Electro Rent business, on the basis of their respective pre-Merger business plans;
- (c) it will continue to provide the necessary transitional support services to ensure the customer and supplier contracts, employees, support services, assets and inventory as detailed in Annex 1 of these Final Undertakings to allow an Approved Purchaser to run Electro Rent UK as a viable and competitive concern are maintained;
- (d) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within the Microlease business or the Electro Rent business;
- (e) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;
- (f) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Microlease business and the Electro Rent business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Microlease business or the Electro Rent business are disposed of; and
 - (iii) no interest in the assets of the Microlease business or the Electro Rent business is created or disposed of;
- (g) there is no integration of the information technology of the Microlease or Electro Rent businesses, and the software and hardware platforms of the Microlease business shall remain essentially unchanged, except for routine changes and maintenance;
- (h) the customer and supplier lists of the Electro Rent and Microlease businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in

relation to the Microlease business will be carried out by the Microlease business alone and for the avoidance of doubt the Electro Rent business will not negotiate on behalf of the Microlease business (and vice versa) or enter into any joint agreements with the Microlease business (and vice versa);

- (i) all existing contracts of the Microlease business and the Electro Rent business continue to be serviced by the business to which they were awarded;
- (j) no changes are made to Key Staff of the Microlease business or Electro Rent business;
- (k) no Key Staff are transferred between the Microlease business and the Electro Rent business;
- (l) all reasonable steps are taken to encourage all Key Staff to remain with the Microlease business and the Electro Rent business; and
- (m) no Confidential Information shall pass, directly or indirectly, from the Microlease business on the one hand (or any of its employees, directors, agents or Related Persons) to the Electro Rent business on the other hand (or any of its employees, directors, agents, or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations).

6 Monitoring Trustee – Appointment

- 6.1 Electro Rent and Electro Rent Europe undertake to secure the appointment or retention of an independent Monitoring Trustee to perform the functions in paragraph 7 of these Final Undertakings. The Monitoring Trustee must possess appropriate qualifications and experience to carry out his functions. The Monitoring Trustee must be under an obligation to carry out his functions to the best of his abilities. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging his duties under these Final Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA. Electro Rent and Electro Rent Europe shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out his functions.

- 6.3 The appointment of the Monitoring Trustee and their terms and conditions must be approved by the CMA. Electro Rent and Electro Rent Europe shall inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that they propose to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed, Electro Rent and Electro Rent Europe shall provide the CMA with a copy of the agreed terms and conditions of appointment.
- 6.4 If the proposed Monitoring Trustee is rejected by the CMA, Electro Rent and Electro Rent Europe shall submit the names of at least two further persons within two Working Days starting with the date on which they were informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 6.2 and 6.3 above.
- 6.5 The provisions of paragraph 6.6 below shall apply if:
- 6.5.1 Electro Rent and Electro Rent Europe fail to nominate persons in accordance with paragraphs 6.3 or 6.4 above; or
 - 6.5.2 those further persons nominated in accordance with paragraphs 6.3 or 6.4 above are rejected by the CMA; or
 - 6.5.3 Electro Rent and Electro Rent Europe are unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
- 6.6 The CMA shall nominate one or more persons to act as Monitoring Trustee, and Electro Rent and Electro Rent Europe shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.
- 6.7 The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out below in paragraph 7 and 9 and that the Monitoring Trustee will monitor the compliance of each of Electro Rent and Electro Rent Europe with its obligations under these Final Undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as he reasonably considers necessary to carry out his functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out his functions under these Final Undertakings.

7 Monitoring Trustee – replacement, discharge and reappointment

- 7.1 Electro Rent acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require Electro Rent to replace the Monitoring Trustee.
- 7.2 If the Monitoring Trustee is removed under paragraph 7.1 above, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in paragraph 6 above.

8 Monitoring Trustee Functions – Divestiture of Electro Rent UK

- 8.1 The Monitoring Trustee's functions as set out in this paragraph are to monitor and review compliance with these Final Undertakings and progress towards the divestiture of Electro Rent UK, and shall in particular include:
- 8.1.1 monitoring compliance with the Asset Maintenance Undertakings set out in paragraph 5 above; and
 - 8.1.2 monitoring the progress made against the Approved Timetable towards divestiture of Electro Rent UK, and the steps that have otherwise been taken to comply with these Final Undertakings including:
 - 8.1.2.1 the steps that have been taken towards the preparation of agreements for disposal of Electro Rent UK and the persons to whom such agreements have been distributed;
 - 8.1.2.2 where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between Electro Rent and Electro Rent Europe and their financial or other advisers and possible purchasers or their financial or other advisers in connection with the disposal process; and
 - 8.1.2.3 in instances where the Monitoring Trustee reasonably considers there to be a risk that Electro Rent and/or Electro Rent Europe will not meet a step in the Approved Timetable, the Monitoring Trustee may attend meetings between Electro Rent and/or Electro Rent Europe and possible purchasers in connection with the disposal process.

- 8.2 The Monitoring Trustee will promptly inform the CMA of any material developments in connection with these Final Undertakings and will provide a written report to the CMA every two weeks, the first report to be submitted not later than [date].
- 8.3 If the Monitoring Trustee advises the CMA that Electro Rent UK is unlikely to be sold within the Divestiture Period, or the Divestiture Period expires without agreement by the Approved Purchaser to acquire Electro Rent UK, then the CMA will consult the Monitoring Trustee about the progress of negotiations and, unless satisfied that negotiations will conclude successfully within a further reasonable period, will issue Directions to Electro Rent and Electro Rent Europe [X].

9 Divestiture Reporting Obligations

- 9.1 Electro Rent and Electro Rent Europe undertake that within the period of five Working Days from the Commencement Date they shall provide a written report to the CMA setting out the timetable that they propose to adopt to ensure the divestiture of Electro Rent UK. The CMA will either approve this timetable as proposed or require reasonable amendments to it and will notify Electro Rent and Electro Rent Europe of the Approved Timetable.
- 9.2 The report provided under paragraph 9.1 shall also outline the progress that Electro Rent and Electro Rent Europe have made towards the divestiture of Electro Rent UK, and the steps that have otherwise been taken to comply with these Final Undertakings, and shall in particular report on:
- 9.2.1 the status of any discussions that have been held with potential purchasers of Electro Rent UK;
 - 9.2.2 the progress that has been made towards agreeing heads of terms (if applicable);
 - 9.2.3 the steps that have been taken towards reaching an agreed sales agreement and the persons to whom any agreement has been distributed; and
 - 9.2.4 such other matters as may be directed by the CMA from time to time.
- 9.3 Thereafter Electro Rent and Electro Rent Europe will provide similar reports to the CMA every two weeks, or at such other interval as agreed by the CMA, until the divestiture of Electro Rent UK has been completed. The reports will include an update on the progress that has been made against the Approved Timetable and, with the consent of the CMA, such reports may be provided through the Monitoring Trustee.

- 9.4 Electro Rent and Electro Rent Europe undertake that in the report to the CMA pursuant to paragraphs 9.1 to 9.3 they shall provide to the CMA:
- 9.4.1 the total number of persons who have lodged a formal bid for the acquisition of Electro Rent UK since the publication of the Report;
 - 9.4.2 the name, address, email address, contact point and telephone number of each person who has lodged a formal bid for the acquisition of Electro Rent UK since the publication of the Report and subsequently been short-listed by Electro Rent and Electro Rent Europe as a preferred purchaser; and
 - 9.4.3 details of the efforts taken by Electro Rent and Electro Rent Europe and their financial advisers to solicit purchasers for Electro Rent UK.
- 9.5 In the event that Electro Rent and Electro Rent Europe do not meet a step as set out in the Approved Timetable, or are otherwise delayed in implementing the divestiture required pursuant to these Final Undertakings, Electro Rent and Electro Rent Europe undertake to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than two Working Days from becoming aware that a step in the Approved Timetable has not been met.
- 9.6 [✂]
- 9.7 [✂]
- 9.7.1 [✂]
 - 9.7.2 [✂]
 - 9.7.3 [✂]
 - 9.7.4 [✂]
 - 9.7.5 [✂]
- 9.8 [✂]
- 9.9 [✂]
- 9.9.1 [✂]
 - 9.9.2 [✂]
 - 9.9.3 [✂]

9.10 [✂]

10 [✂]

10.1 [✂]

10.2 [✂]

11 **Divestiture Trustee – appointment**

11.1 Electro Rent and Electro Rent Europe recognise and acknowledge that the CMA may direct the appointment of a Divestiture Trustee in the circumstances described in paragraph **Error! Reference source not found.** or in the event the Monitoring Trustee advises the CMA that Electro Rent and Electro Rent Europe are unable to, or he has reason to suspect that they will not, procure the divestiture Electro Rent UK.

11.2 Electro Rent undertakes that on the Direction of the CMA and in accordance with such Directions given as to timing, Electro Rent shall submit to the CMA for approval a list of persons from whom they propose to appoint a Divestiture Trustee with sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 11.3 below and shall include among other things:

11.2.1 the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil its duties; and

11.2.2 a schedule of the steps to be taken to give effect to the mandate.

11.3 Each person on the list referred to in paragraph 11.2 shall be independent of and unconnected to Electro Rent, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.

11.4 The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its duties. If only one name is approved, Electro Rent shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, Electro Rent shall be free to choose the Divestiture Trustee to be appointed from among the names approved. Electro Rent undertakes to appoint the

Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.

- 11.5 If all the proposed Divestiture Trustees are rejected by the CMA, Electro Rent shall submit the names of at least two further persons within two Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 11.3 and 11.4 above.
- 11.6 The provisions of paragraph 11.7 below shall apply only if:
- 11.6.1 Electro Rent fails to nominate persons in accordance with paragraph 11.3 above;
 - 11.6.2 Those further persons nominated by Electro Rent in accordance with paragraph 11.5 above are rejected by the CMA; or
 - 11.6.3 Electro Rent is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
- 11.7 The CMA shall nominate one or more persons to act as a Divestiture Trustee, and Electro Rent shall appoint or cause to be appointed such Divestiture Trustee within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

12 Divestiture Trustee – Functions

- 12.1 Electro Rent and Electro Rent Europe undertake to enable the Divestiture Trustee to carry out its duties and to provide such co-operation and resources as the Divestiture Trustee may reasonably require.
- 12.2 Electro Rent and Electro Rent Europe recognise and acknowledge that:
- 12.2.1 the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written Directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty to the divestiture of Electro Rent UK [✂];
 - 12.2.2 [✂]
 - 12.2.3 the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the divestiture of Electro Rent UK [✂] such terms and conditions as the CMA considers appropriate; and

- 12.2.4 the Divestiture Trustee shall protect the legitimate financial interests of Electro Rent subject to the Divestiture Trustee's overriding obligations to implement the divestiture of Electro Rent UK [X].
- 12.3 Electro Rent and Electro Rent Europe recognise and acknowledge that the Divestiture Trustee shall take such steps and measures as it considers necessary to divest Electro Rent UK [X] and to that end the Divestiture Trustee may give written directions to Electro Rent. Electro Rent undertakes to comply with such directions or to procure compliance with such directions as are within its powers and to take such steps within its competence as the Divestiture Trustee may specify.
- 12.4 Electro Rent and Electro Rent Europe recognise and acknowledge that in the divestiture of Electro Rent UK [X], the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of Electro Rent or Electro Rent Europe. Electro Rent and Electro Rent Europe undertake that they shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

13 Divestiture Trustee – duties and obligations of Electro Rent

- 13.1 Electro Rent and Electro Rent Europe undertake to provide the Divestiture Trustee with such cooperation, assistance and information (including the production of financial or other information, whether or not such information is in existence at the time of the request, relevant to the divestiture of Electro Rent UK [X] but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require.
- 13.2 Electro Rent and Electro Rent Europe recognise and acknowledge that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the divestiture of Electro Rent UK [X] (save where material is properly the subject of legal privilege) and Electro Rent and Electro Rent Europe undertake to provide the Divestiture Trustee upon reasonable request with copies of any such items. On the reasonable request of the Divestiture Trustee, Electro Rent and Electro Rent Europe undertake to make available to the Divestiture Trustee one or more offices on its premises, and ensure personnel where necessary are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary for divestiture of Electro Rent UK [X], subject in each case to the Divestiture Trustee's compliance with Electro Rent's internal policies.

- 13.3 Electro Rent and Electro Rent Europe undertake to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to divest Electro Rent UK [X] including by the appointment of advisers to assist with the disposal process. Electro Rent and Electro Rent Europe undertake that upon the reasonable request of the Divestiture Trustee Electro Rent shall execute the documents required to divest Electro Rent UK [X].
- 13.4 Electro Rent and Electro Rent Europe undertake to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the duty to divest Electro Rent UK [X] and Electro Rent and Electro Rent Europe recognise and acknowledge that the Divestiture Trustee, its employees, agents or advisers shall have no liability to Electro Rent or any of its Subsidiaries or Affiliates for any liabilities arising out of the proper performance of the duty to divest Electro Rent UK [X], except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 13.5 Electro Rent and Electro Rent Europe undertake that at their expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee reasonably considers the appointment of such advisers necessary for the divestiture of Electro Rent UK [X], provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Before appointing any such advisers, the Divestiture Trustee will consider using the advisers already appointed by Electro Rent and Electro Rent Europe. Should Electro Rent and Electro Rent Europe refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Electro Rent and Electro Rent Europe, approve and direct the appointment of such advisers.
- 13.6 Electro Rent and Electro Rent Europe undertake to make no objection to the divestiture of Electro Rent UK [X] save on the grounds of bad faith by the Divestiture Trustee. Where Electro Rent or Electro Rent Europe wish to make an objection on the grounds of bad faith by the Divestiture Trustee, they shall submit to the CMA a notice setting out its objections within two Working Days from the day on which it becomes aware of the fact or facts giving rise to its objection.

14 Divestiture Trustee – replacement, discharge and reappointment

- 14.1 Electro Rent and Electro Rent Europe acknowledge that if the Divestiture Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may,

after consulting the Divestiture Trustee, require Electro Rent and Electro Rent Europe to replace the Divestiture Trustee.

- 14.2 If the Divestiture Trustee is removed under paragraph 14.1 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has affected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraph 10 above.
- 14.3 Electro Rent and Electro Rent Europe recognise and acknowledge that, other than in accordance with paragraph 14.1 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

15 [✂]

15.1 [✂]

15.2 [✂]

15.3 [✂]

16 Variations to these Final Undertakings

- 16.1 The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with [sections 82\(2\)](#) and [82\(5\)](#) of the Act.
- 16.2 Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.
- 16.3 The consent of the CMA shall not be unreasonably withheld.

17 General obligations to provide information to the CMA

- 17.1 Electro Rent and Electro Rent Europe undertake that it shall promptly provide to the CMA such information and such co-operation as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under [sections 82, 83, 93\(6\)](#) and [94](#) of the Act.
- 17.2 Electro Rent and Electro Rent Europe undertake that should it at any time be in breach of any provision of these Final Undertakings, it will notify the CMA within two Working Days starting with the date it becomes aware of the

breach to advise the CMA that there has been a breach and of all the circumstances of that breach.

- 17.3 Where any person, including a Monitoring Trustee [✂] must provide information to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, Electro Rent and Electro Rent Europe undertake that it will take reasonable steps within its power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of Electro Rent or Electro Rent Europe to any person other than to the CMA, without the prior written consent of both the CMA and Electro Rent.

18 Acceptance of service

- 18.1 Electro Rent and Electro Rent Europe hereby authorise Latham & Watkins (London) LLP (**'Latham & Watkins'**), whose address for service is 99 Bishopsgate, London EC2M 3XF to accept on their behalf service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to Electro Rent or Electro Rent Europe or their Subsidiaries or Affiliates in connection with proceedings in court in the UK).
- 18.2 Unless Electro Rent or Electro Rent Europe (as the case may be) informs the CMA that Latham & Watkins has ceased to have authority and has informed the CMA of an alternative to accept and acknowledge service on their behalf, any document, order, request, notification or other communication connected with these Final Undertakings shall be deemed to have been validly served on Electro Rent or Electro Rent Europe if it is served on Latham & Watkins, and service or receipt shall be deemed to be acknowledged by them if it is acknowledged by email from Latham & Watkins to the CMA.
- 18.3 Paragraph 18.1 has effect irrespective of whether, as between Electro Rent and/or Electro Rent Europe and Latham & Watkins, Latham & Watkins has or continues to have any authority to accept and acknowledge service on behalf of them (unless they inform the CMA that Latham & Watkins has ceased to have authority to accept and acknowledge service on their behalf), and no failure or mistake by Latham & Watkins (including a failure to notify Electro Rent or Electro Rent Europe of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

19 Effect of invalidity

- 19.1 Electro Rent and Electro Rent Europe undertake that should any provision of these Final Undertakings be contrary to law or invalid for any reason, they shall continue to observe the remaining provisions.

20 Extension of time

- 20.1 Electro Rent and Electro Rent Europe recognise and acknowledge that the CMA may, where it considers it appropriate, in response to a written request from Electro Rent or Electro Rent Europe showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Final Undertakings within which Electro Rent, Electro Rent Europe, the Monitoring Trustee [✂] must take action.

21 Undertakings given jointly and severally

- 21.1 Where undertakings in these Final Undertakings are given by both Electro Rent and Electro Rent Europe, they are given jointly and severally.

22 Governing law

- 22.1 These Final Undertakings shall be governed by and construed in all respects in accordance with English law.
- 22.2 Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

FOR AND ON BEHALF OF ELECTRO RENT

.....
Signed

.....
Name

.....
Title

.....
Date

FOR AND ON BEHALF OF ELECTRO RENT EUROPE

.....
Signed

.....
Name

.....
Title

.....
Date

Annex 1: Matters included within Electro Rent UK

- (i) A lease or sublease for the business premises of the Electro Rent business in the UK, on terms equivalent to those which were in place at the time of the Merger.²
- (ii) 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.
- (iii) Staff of the Electro Rent business in the UK, to be transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- (iv) Existing supplier contracts in respect of the Electro Rent business in the UK, including all relevant preferred rental partnerships.
- (v) Existing contracts to serve customers of the Electro Rent business in the UK, and the rights to fulfil these.
- (vi) Relevant historical customer information for the Electro Rent business in the UK, including contact details, enquiry, order and invoicing history.
- (vii) Relevant historical operational information, including finance, tax, IT, legal, procurement and human resources records, for the Electro Rent business in the UK.
- (viii) All TME stock on rent or committed to customers of the Electro Rent business in the UK as at the completion of the divestiture, plus the purchaser's choice of additional TME stock of the Electro Rent business, such that the total amount of TME stock is worth at least £7.5 million based on original equipment cost.
- (ix) 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.
- (x) The intellectual property and Confidential Information of the Electro Rent business in the UK.
- (xi) Either the Microlease or Livingston brand (at the purchaser's election) in the UK, including any trade marks, copyright material, patents, registered designs and brand names.

² [X]

Annex 2: Transitional Arrangements

- (i) A stock access agreement enabling the Approved Purchaser to access all of the global stock inventory of Electro Rent and its Subsidiaries and Affiliates for customer contracts within a period of up to two years following completion of the purchase of Electro Rent UK, at a price equivalent to the intra-group transfer price that would have been paid by Electro Rent Subsidiaries or Affiliates using the methodology and systems in place at the date of the Report;
- (ii) A service level agreement for this stock access agreement to be negotiated between Electro Rent and the Approved Purchaser;
- (iii) To provide the Approved Purchaser the right to purchase sub-rented stock for a period up to two years at a price to be agreed between Electro Rent and the Approved Purchaser;
- (iv) To provide the Approved Purchaser with back office systems such as finance, IT and procurement for a period of up to six months;
- (v) To provide the Approved Purchaser with access to Electro Rent's calibration services (including by acting as an agent where external services are required) for a period of up to six months; and
- (vi) To provide warranties for all stock transferred to the purchaser during the divestiture, equivalent to the warranties covering each item and for the existing term. For the avoidance of doubt this does not include the warranting by Electro Rent for stock on which the warranties have expired.

Annex 3: Purchaser Suitability Criteria

These Purchaser Suitability Criteria are to be construed as consistent with and giving effect to paragraphs 9.186 to 9.188 of the Report.

1. Independence

- 1.1. An Approved Purchaser should not have any significant connection (for example financial, management, shared directorships, equity interests, reciprocal commercial arrangements) to Electro Rent or Microlease that may compromise the Approved Purchaser's incentives to compete with Electro Rent or Microlease.

2. Capability

- 2.1. An Approved Purchaser must have access to appropriate financial resources, expertise and assets to enable the divestiture business to be an effective competitor in the market for supply of TME rental in the UK. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor in this market.
- 2.2. When assessing the capability of a potential purchaser of Electro Rent UK [X], an Approved Purchaser must:
 - 2.2.1. 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);
 - 2.2.2. have a robust business plan, and a detailed explanation of how acquiring the divestiture package will help achieve this plan. This should demonstrate how the proposed business will compete with the Parties on an ongoing basis; and
 - 2.2.3. have access to sufficient existing financial capital to support its business plan and future investments.
- 2.3. An Approved Purchaser of Electro Rent UK must demonstrate to the satisfaction of the CMA that it has sufficient management and operational staff (including sales and technical support) that are experienced in the supply of TME rental or to demonstrate that it has the necessary capabilities upon completion of the divestiture to be able to recruit experienced staff within a short period.

3. Commitment to relevant market

3.1. An Approved Purchaser must demonstrate to the satisfaction of the CMA that it has commitment and credible plans for competing in the market for supply of TME rental in the UK, evidenced by:

3.1.1. A business plan to maintain and operate a viable business actively competing in the market for supply of TME rental in the UK;

3.1.2. Managerial, operational and technical capability to support such a business plan.

4. Absence of competitive or regulatory concerns

4.1. An Approved Purchaser should not give rise to a material risk that completion of the sale will not remedy the SLC and the adverse effects arising from it.

4.2. An Approved Purchaser should not give rise to a realistic prospect of competition or regulatory concerns in the market for supply of TME rental in the UK.