

## Anticipated acquisition by Keysight Technologies, Inc. of Spirent Communications plc

### Decision to impose a penalty on Keysight Technologies, Inc. under section 110 of the Enterprise Act 2002

#### Decision

1. Following consideration of all relevant circumstances and having regard to its guidance on administrative penalties,<sup>1</sup> the Competition and Markets Authority (the **CMA**) gives notice<sup>2</sup> to Keysight Technologies, Inc. (**Keysight**) that it has decided to impose a penalty on Keysight under section 110 of the Enterprise Act 2002 (the **Act**) because it finds that Keysight has, without reasonable excuse, failed to comply in full with the requirements imposed on it by the notice issued to Keysight under section 109 of the Act on 4 September 2024 (the **First Notice**).<sup>3</sup> The penalty is a fixed amount of £25,000.
2. On 14 March 2025, the CMA issued a provisional penalty notice to Keysight as it was of the provisional view that Keysight had not complied in full with the First Notice and the CMA was considering imposing a penalty under section 110 of the Act. Keysight, through its legal representatives, Wilmer Hale, in a letter dated 28 March 2025, made representations to the effect that Keysight had fully complied with the First Notice and that a penalty was not warranted.
3. Having considered Keysight's representations, the CMA has decided to issue this penalty notice to Keysight for the reasons set out below.

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<sup>1</sup> [Administrative penalties: Statement of Policy on the CMA's approach](#) (2014 – 2024 version) (**CMA4**).

<sup>2</sup> In accordance with [CMA4](#), paragraph 5.2.

<sup>3</sup> The Notice is appended at Annex A.

## A. Executive summary

### *Failure to comply in full with the Notice*

4. On 17 July 2024, Keysight and Spirent Communications plc (**Spirent**) (together the **Parties**) sent a draft merger notice to the CMA in relation to the anticipated acquisition by Keysight of Spirent (the **Merger**). An inquiry into the Merger was opened by the CMA on 16 January 2025.
5. The CMA decided on 4 September 2024 to issue the First Notice for the purpose of investigating the Merger and deciding what, if any, action should be taken if, following its review, it decided that the Merger gave rise to a relevant merger situation that may be expected to result in a substantial lessening of competition within any market or markets in the UK.
6. Questions 3 and 4 of the First Notice required Keysight to produce all internal documents prepared between 28 June 2022 and 29 May 2024 which discuss or analyse Keysight's offering for positioning, navigation and timing / Global Navigation Satellite Systems (**PNT/GNSS**) testing solutions (including products not yet marketed) or entry or expansion by Keysight into the PNT/GNSS testing solutions segment.
7. In accordance with the First Notice's deadline, Keysight provided 4 documents in response to questions 3 and 4 of the First Notice on 23 September 2024. After enquiries by the CMA as to why so few documents had been produced, Keysight provided a further 7 documents on 11 October 2024, 18 days later.
8. On 29 October 2024, the CMA issued a second notice under s 109 of the Act to Keysight (the **Second Notice**). Questions 1 and 2 of the Second Notice required Keysight to provide the same type and subject matter of documents as those required in questions 3 and 4 of the First Notice, but over a longer timeframe of between 28 June 2020 and 29 May 2024.
9. On 12 November 2024, Keysight provided 115 documents in response to questions 1 and 2 of the Second Notice. The CMA considers that approximately 66 of those documents should have been provided in response to the First Notice.
10. The CMA finds that Keysight did not produce all responsive documents required by the First Notice within the specified timeframe and therefore failed to comply in full with the requirements of the First Notice. In total, 73 documents were provided after the deadline set out in the First Notice

(comprising of the 7 documents provided on 11 October 2024 and 66 documents provided in on 12 November 2024).

11. This failure to produce all documents required to be produced by the First Notice was serious. The documents in question were highly pertinent to the CMA's conclusion in the phase 1 decision that the Merger raises significant competition concerns as a result of the loss of future competition in the supply of GNSS testing solutions globally. The failure to comply was therefore capable of having an adverse impact on the CMA's investigation, in particular the ability to obtain evidence relevant to the determination of issues being investigated.
12. Had the CMA not made further enquiries with Keysight and re-requested this category of documents in the Second Notice, a significant number of documents responsive to the First Notice may never have been provided by Keysight.

### ***Without reasonable excuse***

13. Having considered Keysight's representations, the CMA does not consider that Keysight has a reasonable excuse for its failure to comply with the First Notice, nor is the CMA aware of any facts beyond the control of Keysight, or any significant and genuinely unforeseeable or unusual event which led to non-compliance with the First Notice. Accordingly, the CMA finds that Keysight has no reasonable excuse for its failure to comply in full with the First Notice.

### ***Decision to impose a penalty***

14. The CMA finds that it is appropriate and proportionate to impose a fixed penalty on Keysight in the interests of deterrence.
15. The CMA has the power to issue a fine of up to £30,000 in this case.<sup>4</sup> For the avoidance of doubt, the new penalty regime introduced by the Digital Markets, Competition and Consumers Act 2024 (the **DMCC Act**) does not apply in this case.<sup>5</sup>

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<sup>4</sup> Section 111(4)(a).

<sup>5</sup> The CMA now has enhanced fining powers under the Act for breaches of investigatory requirements, brought into force by paragraph 17 of Schedule 10 to the DMCC Act. However, paragraph 14 of the Schedule to the Digital Markets, Competition and Consumers Act 2024 (Commencement No.1 and Savings and Transitional Provisions) Regulations 2024 (SI 2024/1226) provides that these amendments have no effect where the relevant act or omission occurred before 1 January 2025. The higher penalties available under the DMCC Act would apply to future cases where parties have provided incomplete responses to section 109 notices.

16. The CMA finds that a penalty of £25,000 is an appropriate and proportionate penalty.

## B. Factual background

### Context

17. Both Keysight and Spirent are suppliers of testing and measurement equipment for communications ('TME').
18. On 22 March 2024, Keysight submitted an initial offer to acquire sole control of Spirent.<sup>6</sup> This initial offer was subsequently approved by Spirent's board on 27 March 2024,<sup>7</sup> and on 28 March 2024 Keysight agreed to acquire sole control of Spirent by way of a public offer for all of Spirent's issued (or to be issued) share capital.<sup>8</sup>
19. On 17 July 2024, the Parties sent a draft merger notice in relation to the anticipated merger (the **Initial DMN**). In it, the Parties submitted that that there was no realistic prospect of a substantial lessening of competition in the TME market based on horizontal effects. In support of this, the Parties stated *inter alia* that Spirent's PNT/GNSS capabilities would complement Keysight's business, which did not include GNSS testing solutions.<sup>9</sup> The Parties noted for completeness however Keysight's collaboration with Syntony GNSS (**Syntony**), including its right to resell Syntony's GNSS testing product (the **Constellator**).
20. On 4 September 2024, at the CMA's request, the Parties submitted a revised draft merger notice (the **Revised DMN**). Relevantly, the Revised DMN contained further information about the relationship between Keysight and Syntony, including their contractual arrangements in relation to the Constellator under a Joint Development and Supply Agreement (**JDSA**).
21. On 16 January 2025, the CMA confirmed it had received a completed merger notice and commenced a phase 1 inquiry into the Merger.<sup>10</sup>
22. As a part of its inquiry, the CMA sent a paper to the Parties on 13 February 2025 setting out the core arguments and evidence in favour of

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<sup>6</sup> Parties' response to the CMA's RFI 1, paragraph 12.

<sup>7</sup> Parties' response to the CMA's RFI 1, paragraph 18.

<sup>8</sup> Completed merger notice, paragraph 58.

<sup>9</sup> At paragraphs 46 and 97.

<sup>10</sup> Commencement Notice 'Anticipated Acquisition by Keysight Technologies, Inc of Spirent Communications plc' dated 16 January 2025.

reference for a phase 2 consideration (the **Issues Paper**). The Parties provided written and oral representations on the Issues Paper in response.

23. On 13 March 2025, the CMA issued its decision on the phase 1 Merger inquiry (the **Decision**). The Decision concluded that the Merger gives rise to a realistic prospect of a substantial lessening of competition in five TME markets, including in the GNSS testing solutions market. Nevertheless, the CMA concluded that it was not appropriate to refer the Merger to a phase 2 investigation on the basis that the markets concerned are not of sufficient importance to justify the making of a reference.

### ***The First Notice***

24. Under section 109 of the Act, the CMA has the power to issue a notice requiring a person to provide documents and information for the purpose of assisting the CMA in carrying out any functions in connection with a matter that is the subject of a possible reference under section 33 of the Act.
25. On 28 August 2024, the CMA invited comments on a draft version of the First Notice. The draft was in the same form as the issued copy of the First Notice. Keysight requested that the CMA provide it with a later response deadline and reduce the timeframe of the internal documents responsive to questions 3 and 4 - both of which the CMA accepted.
26. On 4 September 2024, the CMA issued the First Notice to Keysight. Questions 3 and 4 of the First Notice required Keysight to comply with the following requests before 4pm UK time on 23 September 2024:
- (i) *3. Provide Internal Documents prepared between 28 June 2022 and 29 May 2024 which discuss or analyse Keysight's offering for PNT/GNSS testing solutions (including products not yet marketed).*
  - (ii) *4. Please provide Internal Documents prepared between 28 June 2022 and 29 May 2024 which discuss or analyse entry or expansion by Keysight into the PNT/GNSS testing solutions segment.*
27. On 23 September 2024 at around 9.30pm, Keysight's lawyers responded to the First Notice and produced 4 documents in relation to questions 3 and 4.<sup>11</sup>
28. Enclosed with the First Notice response was a statement setting out the methodology Keysight used to collate the documents (the Methodological

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<sup>11</sup> KEYS-CMA-00000001 to KEYS-CMA-000000141; KEYS-CMA-00000015; KEYS-CMA-00000032; and KEYS-CMA-00000073.

Statement). The statement identified a staff member in the Communication Solutions Group, High Frequency Measurements as the likely custodian of responsive documents to questions 3 and 4 and explained that Keysight's lawyers had instructed the staff member to search for documents via a videoconference meeting and email, having provided advice on the categories of potentially responsive documents and related guidance.

29. On 7 October 2024, the CMA emailed Keysight, requesting an explanation by 4pm on 9 October 2024 as to why such a small number of documents had been produced in response to questions 3 and 4, and whether other documents of the nature requested may exist if the timeframe was widened or more custodians were included in the request.
30. On 9 October 2024, Keysight's lawyers responded that they had located some further responsive documents which they would provide, alongside any further documents that might be found, by 11 October 2024. They explained that these further documents were the result of:
  - (a) identifying an additional relevant custodian;
  - (b) finding two strategic documents;
  - (c) the original custodian, finding two additional responsive documents;  
and
  - (d) asking other potential custodians if they had responsive documents, some of whom did.
31. Keysight further explained that the low number of documents provided in response to questions 3 and 4 was due to the fact that some documents were provided in response to question 1 of the First Notice and because documents analysing transaction complementarities related to GNSS testing solutions had already been provided to the CMA.
32. On 11 October 2024, Keysight produced an additional 7 documents in response to questions 3 and 4.<sup>12</sup> This included the JDSA between Syntony and Keysight, which set out, *inter alia*, the main obligations in their cooperation and a strategic planning review.
33. On 13 October 2024, Keysight sent a further email to the CMA enclosing a document setting out further context and detail in relation to some of the documents provided in response to questions 3 and 4 of the First Notice.

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<sup>12</sup> KEYS-CMA-00006677; KEYS-CMA-00006688; KEYS-CMA-00006759; KEYS-CMA-00006826; KEYS-CMA-00006831; KEYS-CMA-00006857 and KEYS-CMA-00006858.

This document did not however further explain why these documents were not provided by the deadline.

### ***The Second Notice***

34. On 29 October 2024, the CMA issued the Second Notice to Keysight. Again, Keysight was provided with a draft of the Second Notice prior to issue and made no comments as to the substance of the draft. The deadline for responding to the Second Notice was 12 November 2024.
35. Questions 1 and 2 of the Second Notice requested the same category of internal documents sought in questions 3 and 4 of the First Notice but over a longer time-period:
  - (i) *1. Provide Internal Documents prepared between 28 June 2020 and 29 May 2024 which discuss or analyse Keysight's offering for PNT/GNSS testing solutions (including products not yet marketed).*
  - (ii) *2. Please provide Internal Documents prepared between 28 June 2020 and 29 May 2024 which discuss or analyse entry or expansion by Keysight into the PNT/GNSS testing solutions segment.*
36. On 12 November 2024, Keysight responded to the Second Notice, producing 115 documents in response to questions 1 and 2. A number of these documents discussed Keysight's plans to expand in the GNSS testing sector through its collaboration with Syntony.
37. Again, a methodological statement was enclosed with Keysight's response to the Second Notice. In relation to question 1 and 2, this statement explained that:
  - (a) Keysight's lawyers identified and instructed 6 potential custodians. The custodians were asked to send all potentially relevant documents to their lawyers for review.
  - (b) All documents relating to the original custodian were collected by a specialist e-discovery third-party vendor for review. Keysight's lawyers ran a keyword search over the collated documents and then manually reviewed those identified as containing the relevant keywords.
  - (c) Some responsive documents were found to contain privileged material, and that material had been withheld accordingly. The statement also explained Keysight's document retention policies, which relevantly required all electronic documents to be preserved.

38. Of the 115 documents provided in response to questions 1 and 2 of the Second Notice, the CMA considers that approximately 66 of these documents should have been provided in response to the First Notice. The original custodian is listed as the custodian of many of these documents. Annex B contains a list of these documents, their custodian and their creation dates.

## **C. Legal assessment**

### ***Relevant legislation***

39. Section 110(1) of the Act provides that where the CMA considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 109 of the Act, it may impose a penalty of such amount as it considers appropriate (in accordance with section 111 of the Act).
40. The CMA has the power to issue a fine of up to £30,000.<sup>13</sup> For the avoidance of doubt, the new penalty regime introduced by DMCC Act, which permits a maximum penalty of up to 1% of the total value of the turnover both in and outside the United Kingdom of the enterprises owned or controlled by the recipient of the relevant notice, only applies to conduct that took place on or after 1 January 2025 and therefore does not apply in this case.<sup>14</sup>
41. The CMA concludes that the statutory requirements for imposing a penalty under section 110 of the Act are met, and that the imposition of a penalty in a fixed amount of £25,000 is appropriate and proportionate in this case.

### ***Statutory requirements for imposing a penalty under section 110 of the Act***

#### ***Failure to comply in full with the requirements of the Notice***

42. On the basis of the facts set out above, the CMA finds that Keysight failed to comply in full with the requirements in questions 3 and 4 of the First Notice.
43. In their letter dated 28 March 2025, Keysight's legal representatives argued that Keysight had fully complied with the First Notice as the wording of that notice did not oblige Keysight to produce "all" internal documents falling

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<sup>13</sup> Section 111(4)(a).

<sup>14</sup> See section 111(4A) of the Act and Digital Markets, Competition and Consumers Act 2024 (Commencement No.1 and Savings and Transitional Provisions) Regulations 2024 (SI 2024/1226).



within the scope of questions 1 and 2. Keysight's lawyers further noted that given Keysight provided the Search Methodology "*Keysight did not claim that it had searched everywhere within Keysight to locate potentially responsive documents (and made clear to the case team that it had not done that) as the First Notice did not require this.*"

44. The CMA considers that the omitted documents were clearly responsive both on the plain reading of the Notice as drafted and also on a purposive interpretation of the Notice. It is evident both from the plain language of the First Notice, as well as the formal nature of a s 109 notice, that the CMA intended Keysight to produce all documents that fell within the scope of the descriptors in the notice, rather than a selection. The First Notice required Keysight to produce "*the documents*" that fell within the descriptions set out in questions 1 – 4 of Annex A, which, giving the request its natural meaning, ought to have been read as encompassing all the documents falling within this scope. The CMA does not consider that there was any reasonable room for interpretative uncertainty in respect of the scope of the Notice and considers Keysight's failure to produce all documents responsive to it to be unjustifiable. Keysight's explanation for its approach appears to proceed on the mistaken premise that Keysight had discretion in choosing what documents to produce in response.
45. The CMA also notes that Keysight did not indicate any issues with understanding the scope of questions 3 and 4 when asked to comment on a draft of the First Notice, nor when challenged as to why so few documents were produced in response. Paragraph 4.5 of the CMA's Statement of Policy on the CMA's approach to administrative penalties (**CMA4**) dated January 2014 makes clear that it is the responsibility of the recipient to ensure that requests are fully understood and raise any queries or concerns.
46. The CMA does not consider that Keysight's non-compliance is remedied or mitigated by the fact that Keysight provided the Search Methodology alongside its response to the First Notice. Keysight was obliged under the First Notice to provide a description of the searches it used to comply with the First Notice.<sup>15</sup> Further, and contrary to Keysight's representation that it made clear to the case team it had not searched everywhere, the Search Methodology only sets out the steps Keysight took and does not explain other steps that Keysight could have taken to further search for responsive documents. For example, it does not explain that there were other staff members who may have had responsive documents in their possession.

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<sup>15</sup> First Notice, annex 1, paragraph 1.

The CMA does not know Keysight's internal record-keeping processes and cannot be expected to identify for Keysight what internal steps it needed to take to fully comply with the First Notice. Rather, it was for Keysight to determine the appropriate internal steps needed to comply with the First Notice.

47. In its letter dated 28 March 2025, Keysight also argued that the CMA had included in its assessment documents that Keysight provided that it was not strictly obliged to provide. Keysight identified specific documents it saw as falling outside the scope of the First Notice. Having considered these representations, the CMA has removed from its count, documents that the CMA considers Keysight was not obliged to provide under the terms of the First (or Second) Notice, including:
- (a) draft versions of documents, where a more finalised version has been produced.<sup>16</sup> The First Notice did not specify that draft versions were required, and CMA100: Guidance on requests for internal documents in merger investigations dated 15 January 2019 (**CMA100**) provides that “[u]nless otherwise stated, requests for internal documents will cover the final (or most recent) versions of a responsive document and not any drafts (or previous versions) of the document”.<sup>17</sup>
  - (b) duplicates of documents already produced.<sup>18</sup> Duplicate is not defined in the First Notice or in CMA100. However, CMA100 makes clear that parties are required to disclose documents in their entirety, including the parts of a document that deal with matters that are not specified in the request.<sup>19</sup> The CMA therefore considers that documents will only be duplicates where they are the same in their entirety. It is not sufficient for documents to contain the same relevant information.
48. In some cases, the CMA, having considered Keysight's representations in relation to an individual document, has nevertheless concluded that the document is responsive to the First Notice. The CMA's reasons for these decisions are set out in Annex B.

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<sup>16</sup> This includes KEYS-CMA-00009161 and KEYS-CMA-00009655 which Keysight identified as being drafts of documents otherwise disclosed to the CMA at paragraphs 19 and 22 of their letter dated 28 March 2025.

<sup>17</sup> At paragraph 23(i).

<sup>18</sup> This includes KEYS-CMA-00007545, KEYS-CMA-00009433, KEYS-CMA-00009947 which Keysight in their letter dated 28 March 2025 identified were duplicates of other documents produced to the CMA.

<sup>19</sup> [CMA100](#), paragraph 23(g).

### *Without reasonable excuse*

49. Section 110 of the Act provides that penalties can be imposed if a failure to comply is '*without reasonable excuse*'. The Competition Appeal Tribunal (the **CAT**) considered this concept in *Electro Rent* and confirmed that an objective test should be applied as to whether any excuse put forward is reasonable.<sup>20</sup>
50. In this context, CMA4 provides that '*[t]he circumstances that constitute a reasonable excuse are not fixed and the CMA will consider whether any reasons for failure to comply amount to a reasonable excuse on a case-by-case basis. However, the CMA will consider whether a significant and genuinely unforeseeable or unusual event and/or an event beyond [a person's] control has caused the failure and the failure would not otherwise have taken place.*'<sup>21</sup>
51. The CMA is not aware of any facts beyond the control of Keysight, or the result of a significant and genuinely unforeseeable or unusual event<sup>22</sup> which led to non-compliance with the First Notice, or any further facts that are capable of amounting to a reasonable excuse.
52. The CMA therefore finds that Keysight has no reasonable excuse for its failure to comply in full with the First Notice.

### **D. Appropriateness of imposing a penalty at the level proposed**

53. The CMA considers that Keysight did not take compliance with the First Notice sufficiently seriously. The CMA therefore considers that it is appropriate to impose a fixed penalty of £25,000.

### ***Appropriateness of imposing a penalty***

54. Having had regard to its statutory duties and CMA4, and having considered all relevant facts, the CMA finds that the imposition of a fixed penalty is appropriate. In reaching this view, the CMA has considered the seriousness of Keysight's failure to comply with the First Notice in full and the need to achieve deterrence.
55. Requests for information and documents are a key tool for the CMA to collect the information it needs to carry out its functions in merger control investigations. The failure in this case was significant and serious. The

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<sup>20</sup> [Electro Rent Corporation v CMA](#) [2019] CAT4 (***Electro Rent***) at paragraph 69.

<sup>21</sup> [CMA4](#), paragraph 4.4.

<sup>22</sup> [CMA4](#), paragraph 4.4.

timely availability and receipt of complete and accurate information is crucial to enable the CMA to make evidence-based decisions in this respect and, more generally, for the quality and effectiveness of its work.

56. The CMA considers that it is of utmost importance to the CMA's ability to conduct effective investigations that parties have due regard to the requirements imposed on them by, among other things, section 109 of the Act. The CMA considers that the imposition of an administrative penalty under section 110 of the Act is critical to achieve deterrence; to impress both on Keysight in this specific case, and more widely on those who may be subject to investigatory requirements in future, the seriousness of a failure, without a reasonable excuse, to comply with a notice issued under section 109 of the Act.
57. The CMA has had regard to the fact that the CMA cleared the Merger on 13 March 2025 on the basis of the de minimis exception, however it does not consider that this impacts on the seriousness of the breach. It is necessary to deter undertakings in the future from failing to provide responsive documents, which in another case may be highly relevant or even determinative of a merger investigation. The CMA as a public authority exercising a statutory function must be assured that it has carried out effective information gathering so that it, third parties and the general public can be satisfied that it has carried out a thorough investigation and has reached an accurate and evidence-based conclusion. Failure to comply with statutory notices is capable of decreasing not only the effectiveness of, but also confidence in, the investigative process.
58. In its letter dated 28 March 2025, Keysight submitted that it is inappropriate for the CMA to impose a fine given that Keysight was transparent in the steps it took to comply with the Notice and had cooperated with the CMA throughout the Merger Investigation, including complying with other requests for information. As above, the CMA does not consider that provision of the Search Methodology mitigates Keysight's non-compliance, particularly given that Keysight was obliged to provide this. Further, the fact that Keysight complied with other section 109 notices and requests for information as a part of the Merger Investigation does not excuse, nor mitigate, its non-compliance with the First Notice, particularly given that some of these other responses were also received after the relevant deadline, albeit the delay in those cases was less serious.<sup>23</sup>

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<sup>23</sup> For example, Keysight responded to the CMA's first request for information dated 1 August 2024 after the deadline of 15 August 2024, in various parts on the 19<sup>th</sup>, 23<sup>rd</sup> and 29<sup>th</sup> of August.

59. Consistent with its statutory duties and CMA4, the CMA has assessed all relevant circumstances to determine the appropriate level of penalty in this case.

*Aggravating/mitigating factors*

60. The CMA considers that the following aggravating factors are present in this matter:
61. A significant number of documents responsive to the First Notice (approximately 73) were not provided in accordance with the relevant deadline.
62. Those documents that were not provided were highly pertinent to the Merger inquiry, and included, amongst other things, the JDSA between Syntony and Keysight as well as documents discussing Keysight's plans to expand in GNSS through its collaboration with Syntony. In the Decision, the CMA concluded that there is a realistic prospect the Merger gives rise to a substantial lessening of competition arising from the loss of future competition in the global supply of GNSS testing solutions. The CMA considered that the evidence showed that, despite the Parties' submissions, Keysight is active in GNSS testing solutions and, in the absence of the Merger, would have expanded in GNSS in collaboration with Syntony, which is a concentrated market. In support of these conclusions, the CMA relied on, amongst other evidence, approximately one sixth of the omitted documents in the Issues Letter<sup>24</sup> and over one tenth in the Decision.<sup>25</sup> The omitted documents used in the Issues Letter in relation to Keysight's plans and actions to expand in GNSS testing accounted for more almost two thirds of the Keysight internal documents used in that context.
63. During the investigation the CMA had proceeded for approximately 1.5 months on the basis of incomplete information in relation to a theory of harm due to the omitted documents. Had these documents not been provided, there was a real risk that the inquiry could have reached incorrect conclusions.

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<sup>24</sup> As compared against Keysight documents used in section 4.3.5 of the Issues Paper. The following omitted documents were relied on in that section: KEYS-CMA-00007255, KEYS-CMA-00007421, KEYS-CMA-00006688, KEYS-CMA-00006826, KEYS-CMA-00006831 (referred to in the Issues Paper as KSP-000000418), KEYS-CMA-00007222, KEYS-CMA-00007261, KEYS-CMA-00007349, KEYS-CMA-00009493, KEYS-CMA-00009565, KEYS-CMA-00009771 and KEYS-CMA-00009778.

<sup>25</sup> As compared against Keysight documents used in section 5.3.5 of the Decision. The following omitted documents were relied on in that section: KEYS-CMA-00006831, KEYS-CMA-00006688, KEYS-CMA-00006826, KEYS-CMA-00007222, KEYS-CMA-00007349, KEYS-CMA-00007421, KEYS-CMA-00009493 and KEYS-CMA-00009565.

64. The absence of these documents might have been expected to help the Parties' case as it related to a theory of harm that they identified in the DMN but stated was not present as no overlap existed. In the DMN, the Parties submitted that there was no realistic prospect of a substantial lessening of competition in the TME market based on horizontal effects, stating (amongst other things) that Keysight did not offer GNSS solutions and that Spirent's GNSS capabilities would complement Keysight's business.<sup>26</sup> Keysight also confirmed to the CMA in an earlier RFI that it had no plans to expand into or develop products for GNSS testing.<sup>27</sup> The documents sought were internal documents and therefore the CMA may not have been able to obtain all of them from elsewhere.
65. Keysight did not take compliance sufficiently seriously. They did not fully correct their omission when prompted by the CMA on 7 October 2024 and then failed to offer any pro-active explanation when the documents were ultimately provided in response to the Second Notice. The initial production of four documents was extremely small in the circumstances, and it therefore should have been obvious to Keysight and its external advisors that the original search had been inadequate.
66. Further, Keysight representations as to its interpretation of the First Notice, and in particular its comment that it did not claim to have searched everywhere to locate potentially responsive documents,<sup>28</sup> suggests that Keysight was aware, at the time of responding to the First Notice, of the potential existence of other responsive documents.
67. Finally, there was delay and inconvenience to the inquiry as the CMA had to follow up informally and in the Second Notice.
68. The CMA is not aware of any mitigating factors relevant to Keysight's failure to comply in full with the First Notice.

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<sup>26</sup> Initial DMN, at paragraphs 46 and 97. While noting Keysight's share in Syntony, and Joint Development and Supply Agreement in connection with its GNSS Constellator.

<sup>27</sup> Revised DMN, at paragraph 282.

<sup>28</sup> At paragraph 6.

### *Financial resources available to Keysight*

69. The CMA has had regard to the financial resources available to Keysight.
70. In determining the appropriate level of penalty, the CMA has considered Keysight's published annual report and accounts. The 2024 annual report indicates that Keysight's net income was \$614m in 2024.<sup>29</sup>
71. This shows that Keysight has significant resources available in respect of the imposition of a fixed penalty of £25,000 for the failure to comply in full with the First Notice. In addition, the CMA considers that it is appropriate and proportionate to impose a penalty at this level, having regard to Keysight's size and financial position.

### ***Conclusion on the imposition of a penalty***

72. The statutory maximum for a fixed penalty is £30,000 and the CMA considers it appropriate to impose a penalty towards the higher end of the statutory maximum because of the seriousness of the failure and the identification of a number of aggravating factors as outlined at paras 53 to 58. In particular, the responsive documents that were not provided in accordance with the relevant deadline were highly pertinent to the Merger inquiry. The CMA is not aware of any countervailing mitigating factors.
73. As outlined above at paras 49 to 50, as well as reflecting the seriousness of a breach, the purpose of imposing a penalty is also to ensure a sufficient deterrent effect in light of a low statutory cap.
74. Therefore, in all the circumstances, the CMA considers that the imposition of a fixed penalty of £25,000 is appropriate on the basis that it: (i) would reflect the seriousness of Keysight's failure to comply in full with the First Notice, (ii) would act as a deterrent to Keysight and other persons in the future, and (iii) is not disproportionate in this case with reference to the financial resources available to Keysight.
75. It is noted that the penalty amount is the same as that proposed in the Provisional Decision. In reaching this decision, the CMA has carefully considered whether the penalty ought to be reduced in light of the CMA's acceptance of Keysight's representation that 7 of the documents identified in the Provisional Decision were not required under the terms of the First Notice (but were nevertheless produced in response to the Second Notice).

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<sup>29</sup> [2024\\_keysight\\_annual-report.pdf](#)

The CMA does not consider it is necessary, nor appropriate, to reduce the penalty to account of this. Rather, the CMA remains of the view that a fixed penalty of £25,000 is appropriate for the reasons outlined above, and in particular given the pertinence of the omitted documents to the Merger Investigation.

#### **E. Next steps**

76. The CMA has decided to issue this penalty notice for the reasons set out above.
77. Keysight is required to pay the penalty in a single payment, by cheque or bank transfer to an account specified to Keysight by the CMA, by close of banking business on the date which is 28 days from the date of service of this penalty notice on Keysight.
78. Keysight has the following rights in relation to any final penalty the CMA may decide to impose:
  - a. Keysight may pay the penalty or different portions of it earlier than the date by which it is required to be paid.
  - b. Pursuant to section 112(3) of the Act, Keysight has the right to apply to the CMA within 14 days of the date on which any final notice is served on Keysight for the CMA to specify different dates by which the penalty or different portions of it, are to be paid.
  - c. Pursuant to section 114 of the Act, Keysight has the right to apply to the CAT against any decision the CMA reaches in response to an application as described in the preceding paragraph, within the period of 28 days starting with the day on which Keysight is notified of the CMA's decision.
  - d. Pursuant to section 114 of the Act, Keysight has the right to apply to the CAT within the period of 28 days starting with the day on which the final notice is served on Keysight in relation to:
    - i. the imposition or nature of the penalty;
    - ii. the amount of the penalty; or
    - iii. the date by which the penalty is required to be paid or (as the case may be) the different dates by which portions of the penalty are required to be paid.
  - e. If Keysight applies to the CMA pursuant to section 112(3) of the Act for the CMA to specify a different date by which the penalty is to be paid, then the



period of 28 days referred to in relation to (d)(iii) above shall start with the day on which Keysight is notified of the CMA's decision on the section 112(3) application.

- f. Where a penalty, or any portion of such penalty, has not been paid by the date on which it is required to be paid and there is no pending appeal under section 114 of the Act, the CMA may recover any of the penalty and any interest which has not been paid; in England and Wales such penalty and interest may be recovered as a civil debt due to the CMA.<sup>30</sup>

**Sorcha O'Carroll**

Senior Director, Mergers

Date: 9 April 2025

**Competition and Markets Authority**

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<sup>30</sup> Section 115 of the Act. Section 113 of the Act covers (among other matters) the interest payable if the whole or any portion of a penalty is not paid by the date by which it is required to be paid.

## **ANNEX A – First Notice**

[<]  
Wilmer Cutler Pickering Hale and Dorr LLP  
49 Park Lane  
London  
W1K 1PS

From: [<]

Our ref: ME/7112/24

By **EMAIL** to [<]

4 September 2024

## **ANTICIPATED ACQUISITION BY KEYSIGHT TECHNOLOGIES, INC. OF SPIRENT COMMUNICATIONS PLC**

Dear [<]

The Competition and Markets Authority (**CMA**) is currently reviewing the anticipated acquisition by Keysight Technologies, Inc. (**Keysight**) and Spirent Communications plc (the **Merger**) under the merger control provisions of the Enterprise Act 2002 (the **Act**). The CMA is under a duty pursuant to [section 33](#) of the Act to refer the Merger to an in-depth Phase 2 assessment if, following its review, it believes that it is or may be the case that the Merger gives rise to a relevant merger situation that may be expected to result in a substantial lessening of competition within any market or markets in the UK.

Under [section 109](#) of the Act, the CMA has the power to issue a notice requiring a person to provide documents and information for the purpose of assisting the CMA in carrying out any functions in connection with a matter that is the subject of a possible reference under [section 33](#) of the Act.

For the purpose of the CMA's review of the Merger, I am now serving Keysight with the attached notice (the **Notice**) made by the CMA in exercise of its powers under [section 109](#) of the Act.

The Notice requires Keysight to produce the documents and supply the information specified or described in Annex 1 to the Notice by **4pm UK time on 11 September 2024 for Question 2; and 4pm UK time on 23 September 2024 for Questions 1, 3 and 4.**

The requested information should be provided to the CMA by email to [<]. Any documents should be provided in accordance with the Guidance on requests for internal documents in

merger investigations (CMA100) published on 15 January 2019<sup>1</sup> and the instructions set out in Appendix C of the Process Letter sent by the CMA on 10 January.

If Keysight fails to comply with the requirements of the Notice without reasonable excuse, the CMA may impose a financial penalty on Keysight under the powers in [section 110](#) of the Act. The financial penalty may be a fixed amount, an amount calculated by reference to a daily rate, or a combination of the two. Further information can be found in the CMA's Administrative penalties: Statement of Policy on the CMA's approach (CMA4), published in January 2014.<sup>2</sup>

It is a criminal offence under [section 117](#) of the Act to give the CMA information, knowingly or recklessly, which is false or misleading in a material respect.

If you have any questions, please contact [X].

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We would be very happy to discuss this request.

Yours sincerely

[X]

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<sup>1</sup> Available at <https://www.gov.uk/government/publications/internal-documents-in-merger-investigations>.

<sup>2</sup> Available at <https://www.gov.uk/government/publications/administrative-penalties-statement-of-policy-on-the-cmas-approach>.

# ANTICIPATED ACQUISITION BY KEYSIGHT TECHNOLOGIES, INC. OF SPIRENT COMMUNICATIONS PLC

## NOTICE UNDER SECTION 109 OF THE ENTERPRISE ACT 2002

### Notice

1. Acting under [section 109](#) of the Enterprise Act 2002 (the **Act**) and for the purpose of an investigation into the anticipated acquisition by Keysight Technologies, Inc. and Spirent Communications plc (the **Merger**), a permitted purpose under [section 109\(A1\)](#) of the Act the Competition and Markets Authority (**CMA**) hereby gives notice to Keysight Technologies, Inc. (**Keysight**) at 1400 Fountaingrove Parkway Santa Rosa California, 95403, United States 1 that it is required to produce the documents and supply the information specified or described in the attached Annex 1 to this Notice.
2. Keysight is required to produce the documents and supply the information specified or described in Annex 1 to this Notice on or before **4pm UK time on 11 September 2024 for Question 2; and 4pm UK time on 23 September 2024 for Questions 1, 3 and 4.** The requested information should be provided to the CMA by email to [redacted]. Any documents should be provided in accordance with the Guidance on requests for internal documents in merger investigations (CMA100) published on 15 January 2019<sup>3</sup> and the instructions set out in Appendix C of the Process Letter sent by the CMA on 10 January.
3. Keysight is not required to produce any documents or supply any information which it would not be compelled to produce or supply in civil proceedings before the High Court in England and Wales or Northern Ireland or before the Court of Session in Scotland.
4. Any reference in this Notice to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.

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<sup>3</sup> Available at <https://www.gov.uk/government/publications/internal-documents-in-merger-investigations>.

## Consequences of not complying with this Notice

### Non-compliance with this Notice

5. Under section 110 of the Act, where the CMA considers that a person has, without reasonable excuse, failed to comply with any requirement of this Notice it may impose a penalty of such amount as it considers appropriate. The amount of such penalty may be a fixed amount or an amount calculated by reference to a daily rate or a combination of a fixed amount and an amount calculated by reference to a daily rate.
6. Such a penalty is subject to the following limits:
  - (a) In the case of a fixed amount, such amount shall not exceed £30,000.
  - (b) In the case of an amount calculated by reference to a daily rate, such amount per day shall not exceed £15,000.
  - (c) In the case of a fixed amount and an amount calculated by reference to a daily rate, the fixed amount shall not exceed £30,000 and the amount calculated by reference to a daily rate shall not exceed £15,000 per day.
7. Any penalty imposed by reference to a daily rate shall not take account of any days prior to the service of the notice of the penalty and the amount of the penalty payable shall cease to accumulate at the beginning of:
  - (a) the day on which the requirement of this Notice is satisfied
  - (b) if earlier, the relevant day as defined in [section 110A](#) of the Act, namely the day when the CMA decides on whether the Merger is referred to an in-depth Phase 2 assessment under [section 33](#) of the Act.

### Intentional obstruction or delay

8. Under [section 110\(3\)](#) of the Act, where the CMA considers that a person has intentionally obstructed or delayed another person in the exercise of his powers under [section 109\(6\)](#) of the Act, it may impose a fixed amount penalty. Such penalty shall not exceed £30,000.
9. No penalty shall be imposed by virtue of sections [110\(1\)](#) and [110\(3\)](#) of the Act where more than four weeks have passed since the relevant day, as defined in [section 110A](#) of the Act (see paragraph 7(b) above). This provision does not apply in relation to any variation or substitution of a penalty which is permitted by the Act.

## **Suppression or destruction of documents**

10. Under [section 110\(5\)](#) of the Act, an offence is committed where documents required to be produced in accordance with this Notice are intentionally altered, suppressed or destroyed. A person who commits an offence under this section shall be liable:
- (a) on summary conviction, to a fine;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

## **False or misleading information**

11. It is a criminal offence under [section 117](#) of the Act for a person to supply the CMA with information which is false or misleading in a material respect if that person:
- (a) knows the information is false or misleading in a material respect; or
  - (b) is reckless as to whether the information is false or misleading in a material respect.
12. Under [section 117\(3\)](#) of the Act, a person who commits an offence under this section shall be liable:
- (a) on summary conviction, to a fine;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

## **Statement of Policy on Penalties**

13. The CMA shall have regard to its Administrative penalties: Statement of Policy on the CMA's approach (CMA4), published in January 2014.<sup>4</sup>

[✂]

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<sup>4</sup> Statement of Policy on the CMA's approach ([CMA4](#)), January 2014.

# ANNEX 1 TO SECTION 109 NOTICE

Produce the documents and supply the information specified or described in this Annex 1 to the Notice by **4pm UK time on 11 September 2024 for Question 2; and 4pm UK time on 23 September 2024 for Questions 1, 3 and 4.**

## METHODOLOGY

1. For questions 1, 3 and 4 in this Annex 1, Keysight should provide a detailed description of the methodology used to identify and produce the documents responsive to the relevant question. This description should identify:
  - (a) The identity of relevant custodians whose documents have been reviewed along with the role/job title of those custodians (taking into account changes in custodians' roles within the time period specified in the question) and the basis on which these custodians were selected (for example, in terms of relevant organisation structure and decision-making processes of the business, which explains why a custodian would be likely to have access to responsive documents).
  - (b) The manner in which instructions were conveyed to each custodian (ie by phone, or in writing) and the content of such instructions.
  - (c) For each custodian:
    - (i) The parts of the custodian's IT environment which were searched (for example, email, local folders, shared folders, cloud services, external media etc) and why.
    - (ii) The approach taken to retrieving the data in the custodian's IT environment.
    - (iii) The time parameters used for the review of potentially responsive documents.
    - (iv) The search terms used to identify responsive documents (including any Boolean search terms used), including:
      - (1) How these search terms were determined and by whom.
      - (2) Whether these search terms were used alone or in combination.
      - (3) Whether search terms were case sensitive.
    - (v) How many documents were returned through the electronic searches (broken down by search term).



- (vi) Details of any manual review process, including:
  - (1) Who conducted the manual review of documents?
  - (2) How many documents per custodian were selected as relevant?
  - (3) The basis for this 'relevance' review (for example, was there a materiality threshold?).
- (d) Any measures taken to ensure that potentially responsive documents have not been altered, suppressed or destroyed.
- (e) The approach adopted (if applicable) to documents that are not text searchable.
- (f) The approach adopted (if applicable) to family items (for example attachments) in responsive emails.
- (g) The approach adopted to the transfer of metadata of digital material (such as document created dates etc).
- (h) The approach adopted (if applicable) to remove duplicate or draft files.
- (i) The approach adopted (if applicable) to redact or remove any documents (or sections of documents) that Keysight considers contain material that is protected by legal professional privilege in England and Wales, together with a log identifying each redaction and explaining the basis on which that material has been identified as being subject to legal professional privilege.

## INDEX

2. When responding to this Notice, provide a document index which sets out for each responsive document produced to the CMA:
  - (a) a unique document/annex number;
  - (b) the file name;
  - (c) the document title;
  - (d) the date of the document;
  - (e) the question(s) to which the document is responsive;
  - (f) the purpose of the document;
  - (g) the team or individual it was produced by (if not shown on the face of the document); and

- (h) the team or individual it was produced for (if not shown on the face of the document).

## DEFINITIONS

**‘Act’** refers to the Enterprise Act 2002.

**‘CMA’** refers to the Competition and Markets Authority.

**‘Internal Documents’** (unless otherwise specified) includes documents in any form:

- including, but not limited to, minutes, presentations, reports, Word documents, pdfs, Excel files, studies, internal analysis, analyst reports, customer surveys, electronic documents, or documents stored on proprietary systems, and email attachments, but excludes internal and external emails and information stored on social media accounts like Twitter or Facebook, chats, instant messages, text messages and messaging applications. Where various iterations of the same document were created, the final version, or the latest draft version, of the document should be provided where possible;
- which are in the possession of Keysight; and
- have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or the shareholders’ meeting of Keysight (whether prepared internally or by external consultants).
- All internal documents submitted to the CMA in response to this Notice must be in English. If the original internal documents responsive to this Notice are drafted in a foreign language, the Parties must translate them to English.

**‘Keysight’** refers to Keysight Technologies, Inc. and all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002.

**‘Merger’** refers to the anticipated acquisition by Keysight of Spirent.

**‘Parties’** refers to Keysight and Spirent.

**‘Spirent’** refers to Spirent Communications, Plc and all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002.

Unless the context otherwise requires, words in the singular include the plural and vice versa.

## NOTES

- (i) A requirement to provide an Internal Document shall be construed as a requirement to provide a copy of the Internal Document.
- (j) If some or all Internal Documents, which are responsive to a question in this Annex 1, have already been provided to the CMA in any previous submissions to the CMA, in the response Keysight should state (i) the name of the Internal Documents already provided, (ii) when the Internal Documents were provided and the question(s)/notice(s)/request(s) in response to which they were provided.

## QUESTIONS

1. Provide Internal Documents responsive to Question 9 of the DMN prepared between 28 June 2022 and 5 March 2024.
2. We note you have provided Keysight's strategic plan for FY-24-FY-26, please provide Keysight's previous two finalised strategic plans.
3. Provide Internal Documents prepared between 28 June 2022 and 29 May 2024 which discuss or analyse Keysight's offering for PNT/GNSS testing solutions (including products not yet marketed).
4. Please provide Internal Documents prepared between 28 June 2022 and 29 May 2024 which discuss or analyse entry or expansion by Keysight into the PNT/GNSS testing solutions segment.

**ANNEX B – list of documents responsive to the First Notice that were provided for the first time in response to the Second Notice**

	DocID	Creation Date (M/D/Y)	Representation made by Keysight (if any)	CMA's response to Keysight's representation (where applicable)
01	KEYS-CMA-00007043	8/2/2023		
02	KEYS-CMA-00007059	9/9/2022		
03	KEYS-CMA-00007090	02/05/2023	This document is not responsive to the First Notice because it does not substantively discuss Keysight's offering in or plans to enter or expand in PNT/GNSS, rather it purely contained certain words that were captured by the search terms. <sup>31</sup>	This document is responsive to question 2 of the First Notice as it discusses Keysight's strategies for GNSS/PNT offerings as they relate to 'megatrends' in consumer behaviour. For example, on page 2, Keysight describes their strategy in response to [§<] and on page 22 Keysight states that the [§<]. The CMA also notes that in providing this document in response to the Second Notice, it appears that Keysight were also of the view that it was responsive.
04	KEYS-CMA-00007145	06/13/2023		
05	KEYS-CMA-00007159	12/03/2023	This document is not responsive to the First Notice because it does not substantively discuss Keysight's offering in or plans to enter or expand in PNT/GNSS, rather it purely contained certain words that were captured by the search terms. <sup>32</sup>	This is an investment presentation for [§<], which is a PNT offering. This document is responsive to question 4 as it discusses Keysight's potential entry or expansion into the PNT/GNSS testing solutions segment, [§<]. The CMA also notes that in providing this document in response to the Second Notice, it appears that Keysight were also of the view that it was responsive.
06	KEYS-CMA-00007222	03/22/2024		
07	KEYS-CMA-00007228	09/09/2022	This document is not responsive to the First Notice as it is the latter	CMA100 states that, unless otherwise specified, recipients of a notice do not need to provide

<sup>31</sup> Keysight's letter dated 28 March 2025 at paragraph 18.

<sup>32</sup> At paragraph 18.

	DocID	Creation Date (M/D/Y)	Representation made by Keysight (if any)	CMA's response to Keysight's representation (where applicable)
			version of KEYS-CMA-00003167, a document that was also produced in response to the First Notice. <sup>33</sup>	drafts, where a more finalised version has also been provided. <sup>34</sup> However, this does not disoblige the recipient from providing the final or more finalised version of the document.
08	KEYS-CMA-00007251	03/26/2024		
09	KEYS-CMA-00007255	10/24/2022		
10	KEYS-CMA-00007261	01/20/2023		
11	KEYS-CMA-00007315	01/26/2024		
12	KEYS-CMA-00007317	04/19/2024		
13	KEYS-CMA-00007349	02/21/2024		
14	KEYS-CMA-00007421	11/21/2022		
15	KEYS-CMA-00007440	03/24/2024		
16	KEYS-CMA-00007445	02/13/2023		
17	KEYS-CMA-00007538	02/13/2023		
18	KEYS-CMA-00007550	08/25/2022	This document is not responsive as it has been publicly disclosed.	The CMA considers that this document was responsive to the First Notice. Part of the purpose of s 109 notices is to enable the CMA to enable it gather information as quickly possible <sup>35</sup> and to give effect to this, recipients of s 109 notices are required to (unless otherwise specified) provide all documents that fall within the scope of the notice, regardless of whether such documents were already accessible to the CMA. In this case, "Internal Documents" was defined in the First

<sup>33</sup> At paragraph 19.

<sup>34</sup> CMA100, paragraph 23(i).

<sup>35</sup> CMA100, paragraph 3.

	DocID	Creation Date (M/D/Y)	Representation made by Keysight (if any)	CMA's response to Keysight's representation (where applicable)
				Notice as documents which are in the possession of Keysight that have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or the shareholders' meeting of Keysight (whether prepared internally or by external consultants) <sup>36</sup> . Neither the terms of the First Notice, nor CMA100, excluded documents that have been publicly disclosed.
19	KEYS-CMA-00007562	03/17/2024		
20	KEYS-CMA-00007563	01/31/2024		
21	KEYS-CMA-00007948	11/10/2022		
22	KEYS-CMA-00008259	03/29/2023		
23	KEYS-CMA-00008260	02/13/2023		
24	KEYS-CMA-00008346	06/08/2023		
25	KEYS-CMA-00008519	10/12/2022		
26	KEYS-CMA-00008821	10/11/2022		
27	KEYS-CMA-00008824	12/12/2023		
28	KEYS-CMA-00008849	10/26/2022		
29	KEYS-CMA-00008851	03/14/2023		
30	KEYS-CMA-00009023	02/13/2024		
31	KEYS-CMA-00009102	10/24/2022		
32	KEYS-CMA-00009203	03/26/2024		

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<sup>36</sup> This was noted as including, but not limited to, minutes, presentations, reports, Word documents, pdfs, Excel files, studies, internal analysis, analyst reports, customer surveys, electronic documents, or documents stored on proprietary systems, and email attachments, but excludes internal and external emails and information stored on social media accounts like Twitter or Facebook, chats, instant messages, text messages and messaging applications.

	DocID	Creation Date (M/D/Y)	Representation made by Keysight (if any)	CMA's response to Keysight's representation (where applicable)
33	KEYS-CMA-00009271	03/22/2024	The relevant slide in KEYS-CMA-00009271 is a duplicate of the slide in KEY-CMA-00007222. <sup>37</sup>	While the CMA accepts that the documents contain the same material on the slide title "GNSS Growth Strategy", these documents are not duplicates. Keysight was therefore obliged to produce both documents in response to the First Notice.
34	KEYS-CMA-00009276	07/14/2023		
35	KEYS-CMA-00009412	10/24/2022		
36	KEYS-CMA-00009414	10/12/2022		
37	KEYS-CMA-00009427	12/03/2022		
38	KEYS-CMA-00009429	10/27/2022	This is the final signed [✕]. This does did not even exist when Keysight responded to the First Notice.	It is unclear to the CMA on what basis Keysight makes this representation. Both the document and the index provided by Keysight provide a creation/execution date of [✕], making it responsive to the First Notice.
39	KEYS-CMA-00009432	03/17/2024		
40	KEYS-CMA-00009461	02/13/2023		
41	KEYS-CMA-00009493	02/27/2024		
42	KEYS-CMA-00009565	01/02/2024		
43	KEYS-CMA-00009591	06/07/2023		
44	KEYS-CMA-00009615	05/09/2023	This document is not responsive to the First Notice as it is a duplicate of KEYS-CMA-00009591.	While the CMA accepts that the documents contain similar material, they are not duplicates. Keysight was therefore obliged to produce both documents in response to the First Notice.
45	KEYS-CMA-00009637	08/28/2023		
46	KEYS-CMA-00009657	10/28/2022	This document is not responsive as it has been publicly disclosed.	The CMA considers that this document was responsive to the First Notice. Part of the purpose

<sup>37</sup> Keysight's letter dated 28 March 2025 at paragraph 20.

	DocID	Creation Date (M/D/Y)	Representation made by Keysight (if any)	CMA's response to Keysight's representation (where applicable)
				of s 109 notices is to enable the CMA to enable it gather information as quickly possible <sup>38</sup> and to give effect to this, recipients of s 109 notices are required to (unless otherwise specified) provide all documents that fall within the scope of the notice, regardless of whether such documents were already accessible to the CMA. In this case, "Internal Documents" was defined in the First Notice as documents which are in the possession of Keysight that have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or the shareholders' meeting of Keysight (whether prepared internally or by external consultants) <sup>39</sup> . Neither the terms of the First Notice, nor CMA100, excluded documents that have been publicly disclosed.
47	KEYS-CMA-00009659	11/03/2023		
48	KEYS-CMA-00009693	04/13/2023		
49	KEYS-CMA-00009711	10/04/2023	This document is not responsive to the First Notice as the relevant slide in KEYS-CMA-00009771 is a duplicate of the slide in KEYS-CMA-00009659. <sup>40</sup>	While the CMA accepts that the documents contain the same material on the slide title "GNSS Growth Strategy", these documents are not duplicates. Keysight was therefore obliged to produce both documents in response to the First Notice.
50	KEYS-CMA-00009746	02/07/2024	This document is not responsive to the First Notice as the relevant slide	While the CMA accepts that the documents contain the same material on the slide title "GNSS

<sup>38</sup> CMA100, paragraph 3.

<sup>39</sup> This was noted as including, but not limited to, minutes, presentations, reports, Word documents, pdfs, Excel files, studies, internal analysis, analyst reports, customer surveys, electronic documents, or documents stored on proprietary systems, and email attachments, but excludes internal and external emails and information stored on social media accounts like Twitter or Facebook, chats, instant messages, text messages and messaging applications.

<sup>40</sup> At paragraph 20.



	DocID	Creation Date (M/D/Y)	Representation made by Keysight (if any)	CMA's response to Keysight's representation (where applicable)
			in KEYS-CMA-00009746 is a duplicate of the slide in KEYS-CMA-00009659. <sup>41</sup>	Growth Strategy", these documents are not duplicates. Keysight was therefore obliged to produce both documents in response to the First Notice.
51	KEYS-CMA-00009771	04/12/2023		
52	KEYS-CMA-00009778	03/01/2024		
53	KEYS-CMA-00009782	05/17/2023	This document is not responsive to the First Notice as the relevant slide in KEYS-CMA-00009782 is a duplicate of the slide in KEYS-CMA-00009659. <sup>42</sup>	While the CMA accepts that the documents contain the same material on the slide title "GNSS Growth Strategy", these documents are not duplicates. Keysight was therefore obliged to produce both documents in response to the First Notice.
54	KEYS-CMA-00009811	03/27/2024		
55	KEYS-CMA-00009827	03/22/2023	This document is not responsive to the First Notice as the relevant slide in KEYS-CMA-00009827 is a duplicate of the slide in KEYS-CMA-00009659. <sup>43</sup>	While the CMA accepts that the documents contain the same material on the slide title "GNSS Growth Strategy", these documents are not duplicates. Keysight was therefore obliged to produce both documents in response to the First Notice.
56	KEYS-CMA-00009858	08/17/2023	This document is not responsive to the First Notice the relevant slide in KEYS-CMA-00009858 is a duplicate of the slide in KEYS-CMA-00009659. <sup>44</sup>	While the CMA accepts that the documents contain the same material on the slide title "GNSS Growth Strategy", these documents are not duplicates. Keysight was therefore obliged to produce both documents in response to the First Notice.

<sup>41</sup> At paragraph 20.

<sup>42</sup> At paragraph 20.

<sup>43</sup> At paragraph 20.

<sup>44</sup> At paragraph 20.

	DocID	Creation Date (M/D/Y)	Representation made by Keysight (if any)	CMA's response to Keysight's representation (where applicable)
57	KEYS-CMA-00009894	06/08/2023		
58	KEYS-CMA-00009913	02/04/2024		
59	KEYS-CMA-00009915	06/27/2023	This document is not responsive to the First Notice as the relevant slide in KEYS-CMA-00009915 is a duplicate of the slide in KEYS-CMA-00009659. <sup>45</sup>	While the CMA accepts that the documents contain the same material on the slide title "GNSS Growth Strategy", these documents are not duplicates. Keysight was therefore obliged to produce both documents in response to the First Notice.
60	KEYS-CMA-00010014	01/22/2024	This document is not responsive to the First Notice as the relevant slide in KEYS-CMA-000010014 is a duplicate of the slide in KEYS-CMA-00009659. <sup>46</sup>	While the CMA accepts that the documents contain the same material on the slide title "GNSS Growth Strategy", these documents are not duplicates. Keysight was therefore obliged to produce both documents in response to the First Notice.
61	KEYS-CMA-00010109	09/01/2022		
62	KEYS-CMA-00010039	05/22/2023		
63	KEYS-CMA-00010178	03/05/2024	This document is not responsive to the First Notice as the relevant slide in KEYS-CMA-000010178 is a duplicate of the slide in KEYS-CMA-00009659. <sup>47</sup>	While the CMA accepts that the documents contain the same material on the slide title "GNSS Growth Strategy", these documents are not duplicates. Keysight was therefore obliged to produce both documents in response to the First Notice.
64	KEYS-CMA-00010212	02/22/2024		
65	KEYS-CMA-00012323	06/21/2023		
66	KEYS-CMA-00012336	03/24/2023		

<sup>45</sup> At paragraph 20.

<sup>46</sup> At paragraph 20.

<sup>47</sup> At paragraph 20.