

# Anticipated acquisition by Vitec Investments Limited of Autocue Group Limited

**ME/6449-14**

The CMA's decision on reference under section 33(1) given on 30 September 2014. Full text of the decision published on 10 November 2014.

**Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.**

## Summary

1. Vitec Investments Limited (**VIL**) and Autocue Group Limited (**Autocue**) (together the **Parties**) both supply teleprompting equipment, in the case of Vitec, through its subsidiaries Autoscript Limited (**Autoscript**) and Vitec Videocom Limited.
2. A teleprompter is an electronic display device that prompts a person when they are speaking and performs a similar function to cue cards. The equipment consists of both hardware and software. This equipment is typically used in broadcasting, at conferences and in the production of corporate videos.
3. On 10 April 2014, VIL signed an agreement to acquire the entire issued share capital of Autocue (**the Merger**). The Competition and Markets Authority (**CMA**) therefore considers that the Parties will cease to be distinct. The CMA also considers that the share of supply test is met and that, therefore, a relevant merger situation has been created.
4. The CMA has assessed the impact of the Merger on the basis of the following frames of reference: the UK market for:
  - sales of teleprompter equipment
  - short-term hire of teleprompter equipment and operator services
  - long-term hire of teleprompter equipment and operator services

5. With regards to the market for the sale of teleprompting equipment, we found evidence that Autocue and Autoscript are the closest competitors in this market. We could not rule out that there is a realistic prospect that the Merger will result in a substantial lessening of competition (**SLC**) in the sale of teleprompter equipment in the UK. However, we did not find it necessary to conclude on this point (see paragraphs 10 to 12 below).
6. With regards to the market for the short-term teleprompting hire, in which Autocue has only a small presence, we found that a significant number of short-term hire firms provide services across a wide range of customers and will continue to constrain the merged entity post-Merger. The CMA concluded that the Merger does not give rise to a realistic prospect of an SLC.
7. We also considered whether the merged entity would have the ability to increase the price it charges (or decrease the quality) to downstream short-term hire rivals for teleprompting equipment, in turn making it harder for rival short-term hire suppliers to compete.
8. We consider that the Parties' ability to foreclose rival short-term hire firms is generally limited because teleprompters do not appear to constitute a large input cost for a short-term hire firm and because short-term hire companies appear to be able, in general, to switch to an alternative brand of teleprompter.
9. In the long-term hire market, there is a very small number of customers. We have not identified any current long-term hire contracts other than those of the Parties. As with the teleprompter sales market, we could not rule out that there is a realistic prospect that the Merger will result in an SLC in long-term hire in the UK. However, we did not find it necessary to conclude on this point (see paragraphs 10 to 12 below).
10. Though the CMA was not able to rule out the possibility that the test for reference may be met in this case, it has not been necessary for the CMA to reach a definitive conclusion in this respect because the CMA considers it appropriate to exercise its discretion to apply the 'de minimis' exception to the duty to refer.
11. The total value of the affected markets where we have identified prima facie competition concerns is less than £3 million. Where, in a phase 1 merger review, the annual value in the UK of the market(s) concerned is, in aggregate, less than £3 million, the CMA will generally not consider a reference justified provided that there is in principle not a clear-cut undertaking in lieu of reference available.

12. The CMA considers that there is no such clear-cut undertaking in lieu available and that the public cost of a reference would be greater than the impact of the Merger on consumers. To the extent that its duty to refer may be met, it is appropriate to exercise its discretion to apply the 'de minimis' exception in this case.

### ***Decision***

13. This merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (**the Act**).

## **Assessment**

### ***Parties***

14. VIL is a wholly owned subsidiary of The Vitec Group plc (**Vitec**). Vitec is an international group active in the following business areas: (i) the manufacture and distribution of photography and video equipment; (ii) provision of equipment, hire, workflow design and technical support to TV production teams and film crews; (iii) the military, aerospace and government market and (iv) through its Videocom division, the manufacture and supply of broadcast equipment for use in video content for media industries. Of particular relevance to this case is VIL's subsidiary, Autoscript, which sits within the Videocom division and is active in the supply of teleprompting hardware and software, primarily to broadcasters. It supplies end customers both directly and via distributors, resellers and systems integrators. Vitec also provide short- and long-term teleprompting hire services (including one or more of hardware, software and operators) to broadcasters.
15. Autocue is active (i) in the supply of teleprompting hardware and software primarily to broadcasters, either directly, or via distributors, resellers and systems integrators and (ii) the provision of short- and long-term rolling teleprompting services (including hardware, software and operators) to broadcasters. [✂]

### ***Transaction***

16. On 10 April 2014, VIL signed an agreement to acquire the entire issued share capital of Autocue. The Merger is conditional on the CMA confirming that it will not refer the transaction to a phase 2 investigation [✂].

## ***Jurisdiction***

17. The CMA gave notice under section 96(2A) on 4 August 2014 following receipt of a statutory merger notice, and the statutory deadline for a decision by the CMA under section 34ZA(1) of the Act is 30 September 2014.
18. As a result of the Merger, the enterprises of Vitec and Autocue will cease to be distinct.
19. The Parties overlap in the supply of teleprompting equipment, short-term hire services and long-term hire services. The Parties have a combined share of supply of [40–50]% in the sale of teleprompting equipment (increment [20–30]%). The CMA therefore considers that the share of supply test in section 23 of the Act is met in this case.
20. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## ***Counterfactual***

21. The CMA assesses the merger's impact relative to the situation that would prevail absent the merger (that is, the counterfactual). In practice, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, there is a realistic prospect of a different counterfactual.<sup>1</sup> In this case, there is no evidence supporting a different counterfactual, and the Parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

## ***Frame of reference***

22. The purpose of market definition is to provide a framework for the CMA's competitive assessment. It is a useful tool but not an end in itself and identifying the relevant market involves an element of judgement.
23. There are normally two dimensions to the definition of the relevant market: a product dimension and a geographic dimension.
24. The Parties state that they overlap in the supply of teleprompting:

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<sup>1</sup> See [Merger Assessment Guidelines](#), paragraph 4.3.5 et seq.

- equipment
- short-term hire services
- long-term hire services

25. We consider each of these candidate frames of reference in turn.

*Product scope*

*Supply of teleprompting equipment ('teleprompter sales')*

- *Background*

26. A teleprompter is an electronic display device that prompts a person when they are speaking and performs a similar function to cue cards. The equipment consists of both hardware and software.
27. The hardware used will differ slightly for each style of teleprompter.<sup>2</sup> However, a typical teleprompter set-up may include:
- a monitor (which projects the text)
  - glass (on which the text is reflected to the speaker)
  - hood (reduces unwanted reflections)
  - hand/foot controllers (to control the scrolling of the text)
28. The Parties manufacture teleprompters. [X]<sup>3</sup> The Parties provide pre- and post-sale support. Post-sale support may include technical support and provision of spare or replacement parts.
29. Teleprompter software, at its most basic level, allows text to be uploaded, displayed on the monitor, and scrolled through. More advanced editing or integration capabilities may be required by customers running live events or operating large newsrooms.

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<sup>2</sup> The CMA understands that there are three main styles of teleprompter: 'through-the-lens' (where text is projected on to partially reflective glass mounted in front of a camera); 'straight-read' (where a monitor is mounted above or below the lens); and 'Presidential-style' (where text is displayed on a standalone stand/glass for presenters speaking to an audience).

<sup>3</sup> [X]

- *CMA approach to defining the product market*
30. In identifying the relevant product market the CMA will pay particular regard to demand-side factors (ie the behaviour of customers in response to price or quality changes and its effects). It may also consider supply-side factors (the capabilities and reactions of suppliers in the short term) and other market characteristics.<sup>4</sup>
31. In this case the CMA has considered whether the following might constitute separate frames of reference:
- teleprompting software and/or teleprompting hardware
  - budget/mid-range/high-end teleprompters
  - sales channel
  - *Teleprompting software and/or teleprompting hardware*
32. We considered whether teleprompting software and hardware packages formed part of a single product market. We considered that this would be the case if a sufficient proportion of customers have a preference to purchase them together and if suppliers compete to supply packages of both.
33. In general, teleprompting software from one manufacturer is compatible with hardware from another. However, a high proportion of the Parties' sales of teleprompting equipment (around [X] % of Autocue sales and [X] % of Autoscript sales) are packages of software and hardware. A competitor explained that although it is possible to buy hardware and software separately, customers generally prefer to buy them together.
34. On the supply side, all of the rival suppliers of equipment listed by the Parties (see Table 1) supply both hardware and software, although they may sell them separately as well as together in packages.
35. The conditions of competition for the supply of hardware and software did not appear to be materially different.
36. On the basis of the above, the CMA considers that the appropriate frame of reference with which to assess the Merger is the supply of teleprompting equipment (including both hardware and software) and we have carried out our assessment on this basis.

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<sup>4</sup> See the [Merger Assessment Guidelines](#), paragraph 5.2.6.

- *Budget/mid-range/high-end teleprompters*

37. We considered whether it would be appropriate to delineate the market with respect to teleprompter packages that might be classified as: budget/mid-range/high-end (or some other similar classification). A third party confirmed that there is a spectrum of teleprompters of different quality/functionality (they described teleprompters as either being basic, professional or master).
38. On the demand side, the Parties indicate that customers have different preferences depending on their requirements. For instance, customers of high-end equipment may require high-brightness monitors (for use under studio lights) and software with enhanced functionality such as live editing and/or newsroom functionality. Conversely, mid/lower-end customers may place greater value on the weight of the teleprompter itself and the ease of setup.
39. Despite these differences, the Parties submit that there is generally limited differentiation between teleprompters and no clear distinction between budget, mid and high-end solutions. Whereas high-functionality teleprompters used to be made bespoke for each customer, the Parties say that high-end hardware increasingly consists of off-the-shelf components similar to teleprompters lower down the quality spectrum. The Parties also argue that even basic software meets the needs of most customers.
40. The Parties therefore assert that the appropriate frame of reference should consist of all teleprompting solutions.
41. The Parties provide some evidence that customers are willing to substitute between budget and high-end teleprompting solutions. [REDACTED]
42. [REDACTED]
43. [REDACTED]
44. The CMA placed limited weight on this evidence. This is because the Parties argued that the majority of revenue growth in the teleprompting industry has come from non-traditional broadcasters. [REDACTED]<sup>5</sup> The CMA considers therefore that sales of the Autocue cut-price teleprompter range may reflect growth in demand for budget products, including from large broadcasters, but not necessarily substitutability between budget and higher-end products. [REDACTED]
45. The Parties identify two niche areas where customers require significantly more advanced software and would be unlikely to substitute to a budget

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<sup>5</sup> [REDACTED]

option. These include customers working in newsrooms or live events. They explain that these customers require software that allows for live script editing and/or a teleprompter that can integrate with a suite of newsroom software and equipment.

46. However, the Parties' teleprompter packages vary in price and there is little evidence to allow us to conclude to what extent customers (or specific types of customer) would be willing and able to switch between budget, mid and high-end teleprompter options in response to a 5% price rise. This would suggest that it would be appropriate to leave open the question of whether, for instance, a budget teleprompter may be within a separate market to a mid-range teleprompter.
47. On the supply side, the Parties classified their own and their competitors' teleprompter propositions as including: budget, mid and/or high-end solutions. These classifications were not defined and are considered indicative only. Our investigation indicated that some competitors sell a complete range of teleprompting packages while others focus on just part of the market. Autoscript itself does not sell a budget range of teleprompters.
48. In summary, the CMA noted that, on the demand side, customers may not be able or willing to substitute between teleprompter packages of different quality/functionality. However, both Parties and some competitors supply a range of teleprompter packages. The CMA did not consider that the impact of the Merger would be sufficiently different with respect to the supply of budget, mid or high-end teleprompters to lead us to assess it on the basis of separate product frames of reference. The CMA has therefore assessed the Merger with respect to the overall supply of teleprompting packages although differences in quality/functionality and price were taken into account within the competitive assessment.

- *Sales channels*

49. The CMA may sometimes define relevant markets for separate customer groups if the effects on the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and require a separate analysis.
50. The Parties sell teleprompting equipment to intermediaries (eg resellers, systems integrators) and, less frequently, directly to customers. The CMA understands that a reseller is an intermediary that generally supplies the teleprompter as a standalone product. A systems integrator may tender for a contract to install an entire news or production studio or just certain elements of it (eg teleprompters). They may take responsibility for integration and

installation of component parts of a studio. Autocue said that some organisations act as both resellers and systems integrators and a distinction cannot always be drawn.

51. A competitor told us that end-customers may purchase from an intermediary due to a lack of in-house engineering resources. A systems integrator confirmed that their customers value their product integration knowledge and that provide installation services and training. A teleprompter purchased through a third party is also more likely to be part of a wider studio purchase/refit, of which the teleprompter may be a relatively minor element.
52. The Parties stated that the majority of sales are made through a third party. Data from the Parties indicated that [X]% of Autoscript's teleprompter sales and [X]% of Autocue's teleprompter sales were to an intermediary. The Parties considered that this focus on sales to intermediaries is typical of the market and not, for instance, evidence that they have a significantly higher share of sales in a particular sales channel.
53. The CMA notes that competition may vary by sales channel. For instance, intermediaries purchase greater volumes than individual customers so are able to negotiate greater discounts. A systems integrator confirmed that one reason customers buy teleprompters from them is that they have greater buying power.
54. The CMA has carried out its assessment using a frame of reference that includes both sales to intermediaries and directly to end-user customers as it did not consider the differences between sales channels to be sufficient to affect the competitive assessment of this Merger.

*Teleprompting short-term hire services ('short-term hire')*

55. The Parties both hire out teleprompting equipment and operators for short periods of a few weeks/months.
56. The Parties told us that for large broadcasters of production studios filming, for instance, a TV series, it is not economic to purchase equipment outright or to hire operators themselves. For example, due to fluctuating staff or equipment requirements.

57. In [a substantial majority] of cases, the Parties' teleprompting hire includes hardware, software and operators.<sup>6</sup> The majority of suppliers listed by the Parties provide operators as well as equipment.
58. On this basis, we considered that it would be unnecessary to separately assess the supply of equipment and the supply of operators. For the purposes of our assessment the teleprompting short-term hire services frame of reference includes equipment and operators.

*Teleprompting long-term hire services ('long-term hire')*

59. The Parties both supply teleprompting services to broadcasters for multi-year contracts. Long-term hire includes the hire of equipment and/or operators on a multiyear or rolling contract basis.
60. The Parties told us that there are a very limited number of customers that buy these services from the Parties – specifically, [X]. No other long-term hire customers were identified. In contrast to customers of short-term hire, these customer's requirements are relatively stable and they need equipment and operators all year round.
61. Given that, on the demand side, the requirements of customers of long-term hire are different, the CMA has assessed long-term hire as a separate frame of reference from other short-term hire services for the purposes of this Merger.

*Conclusion on product scope*

62. For the reasons set out above, we have assessed the impact of the Merger on the basis of the following product frames of reference:
- sales of teleprompter equipment
  - short-term hire of teleprompter equipment and operator services
  - long-term hire of teleprompter equipment and operator services

*Geographic scope*

*Teleprompter sales*

63. The Parties state that the relevant geographic market is the UK.

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<sup>6</sup> Operators are either employed directly or, often, working freelance for the short-term hire firm.

64. The Parties told the CMA that teleprompters made in the US and China can be shipped to and used in the UK.
65. They state that lead times are not an important factor where a teleprompter is part of a studio refit and local resellers can, in any case, hold stocks of teleprompters that further enables a global supply chain. The CMA notes that evidence on the Parties' own supply chain and sales is consistent with there being a global supply chain: [✂].
66. The CMA's market investigation indicated that teleprompters from overseas are supplied to UK customers, however, there were mixed views on the overall market penetration of overseas suppliers. One intermediary said that Chinese products are getting 'ever better and are cheaper'. Another named Prompter People (a US brand albeit with a UK office in Milton Keynes) as their second choice supplier. However, these systems integrators indicated that they only supplied overseas end-customers. Conversely, three intermediaries described Autocue and Autoscript as the leading teleprompter brands and indicated that other teleprompter brands (including but not limited to overseas brands) were a weaker constraint.
67. A competitor told the CMA that some customers, such as short-term hire firms, require a UK manufacturer who can provide appropriate customer support. They pointed out that firms in the US have not branched out into Europe and this could be due to the greater language complexity requirements of European customers, or that the UK market is small and relationship based. Although some smaller short-term hire firms said that they used overseas brands the majority of short-term hire firms appear to primarily use UK brands.
68. On a cautious basis, the CMA has therefore assessed the impact of the Merger on teleprompter sales on the basis of a UK frame of reference. This assessment took into account the constraint from all suppliers, including those based in the UK and imports from overseas.

#### *Short-term hire*

69. The Parties submit that the relevant geographic market is the UK. Their core client bases for short-term hire are in London, however, they can provide these services to customers all over the UK.
70. They told us that sometimes customers will demand the same operator wherever they are filming in the UK and they may be willing to pay associated

expenses.<sup>7</sup> However, the Parties state that there are occasions when an operator may need to get to a customer location within a short timeframe. In these instances, the short-term hire firm needs to have operators that are in the locality or can get there quickly.

71. Autoscript said that they might tender for a job in any region due to their ability to hire a local operator, however, they have previously had difficulty locating local operators.
72. Suppliers who cannot locate local operators can therefore be at a disadvantage to firms that can. Autoscript refer to travel costs (and time) as being a disadvantage in such instances and a competitor said they can be at a disadvantage compared to local firms who do not incur hotel costs.
73. However, there do not appear to be large costs for a supplier expanding its presence into another local area: a firm needs no dedicated business premise and Autocue employs a hire manager who works from home in Scotland.
74. Given the above, the CMA has, on a cautious basis, considered the impact of the Merger on short-term hire on the basis of a UK geographic market.

#### *Long-term hire*

75. The Parties submit that the relevant geographic market is the UK. They argue that geographic location has no impact on the provision of long-term hire. Autocue explains that while operators need to be on site, the contract holder itself does not need to be locally based. Indeed, spare equipment may be kept on site and the customers' staff may be trained in the set-up and de-rig of teleprompters. Further technical support is available by telephone or via quarterly maintenance visits.
76. The CMA further considered that the larger value and length of these contracts might suggest that location is likely to be a less significant factor in the choice of a long-term teleprompter supplier than in the choice of a short-term teleprompter supplier.
77. Given the above, the CMA has assessed the impact of the Merger on long-term hire on the basis of a UK geographic market.

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<sup>7</sup> Autocue said they have fulfilled rental jobs outside the UK with London-based operators.

### *Summary on geographic scope*

78. The CMA has assessed the Merger on the basis of a UK geographic market for each of:
- sales of teleprompter equipment
  - short-term hire of teleprompter equipment and operator services
  - long-term hire of teleprompter equipment and operator services

### ***Horizontal issues***

#### *Theory of harm*

79. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices on its own and without needing to coordinate with its rivals.

#### *Teleprompter sales*

##### *Shares of supply*

80. The Parties estimated that they have [30–40]% (increment of [10–20]%) share of teleprompting sales in the UK with Portaprompt estimated to be the next largest supplier accounting for 22%. Other suppliers were estimated to be significantly smaller than this.
81. The CMA has verified some competitor revenue figures and several of these were substantially lower than the Parties' own estimates. On the basis of these verified figures the CMA estimates that the Parties have a market share of [40–50]% (+[20–30]%). However, the CMA was not able to check revenue figures of several third parties and there was evidence that Autocue and Autoscript may have a higher combined market share than this.<sup>8</sup>

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<sup>8</sup> For instance, a short-term hire competitor estimated that the Parties have 80–90% of the supply of all teleprompting equipment. [X]

TABLE 1 Market shares in teleprompting sales in the UK, 2013

	Revenue (£m)	Market share (%)
Autoscript	[redacted]	[20–30]
Autocue	[redacted]	[20–30]
Datavideo	[redacted]	[10–20]
Portaprompt	[redacted]	[0–10]
Prompter People	[redacted]	[0–10]
Ikan	[redacted]	[0–10]
Proprompter	[redacted]	[0–10]
Listec	[redacted]	[0–10]
Datavision	[redacted]	[0–10]
Telescript	[redacted]	[0–10]
Mirror Image	[redacted]	[0–10]
Others	[redacted]	[0–10]
<b>Total</b>	<b>[redacted]</b>	<b>100</b>

Source: Parties' estimates and third party revenues.

82. The Parties originally estimated that the market size for the supply of teleprompting equipment was £[redacted] million. A rival estimated that the UK market is worth around £[redacted] million. Based on the Parties' estimates and those verified by third parties the CMA estimates that the value of teleprompting sales was around £[redacted] million in 2013. The CMA has therefore assessed the closeness of competition between the Parties' products.

*Closeness of competition*

83. If the products of the merger firms are close substitutes, unilateral effects are more likely because the merged firm will recapture a significant share of the sales lost in response to a price increase, making the price rise less costly.<sup>9</sup>

- *The Parties' views*

84. [redacted]<sup>10</sup>

- *Third party views*

85. A competing teleprompter supplier and the majority of intermediaries that responded to the CMA said that Autocue and Autoscript are close competitors in teleprompting sales.

86. Two of these intermediaries described the Parties as the market leading brands due to their long history, customer relationships (including use by the BBC) and the quality of their teleprompter systems that work well in newsrooms. The CMA heard from third parties of examples of switching

<sup>9</sup> See the [Merger Assessment Guidelines](#), Section 5.4.

<sup>10</sup> [redacted]

between the Parties' products in response to a price rise by one and the Parties lowering their price in response to each other's offers to customers.

- *Internal documents*

87. A Vitec strategy document relating to its Videocom division dated September 2013 (Vitec Strategy Document) supported the Parties' proposition that Autoscript is stronger in higher-end teleprompters, stating that [REDACTED].

88. [REDACTED]<sup>11</sup>

89. [REDACTED]

90. The CMA considers, based on the evidence, that the Parties are each other's closest competitors. We now assess the extent of competition from other competitors active in the supply of teleprompters in the UK.

*Remaining constraints from competitors*

- *The Parties' views*

91. The Parties submit that there are a large number of rival suppliers competing in the supply of lower value teleprompters and still a significant number in the supply of high-functionality teleprompters.

- *Views of third parties*

92. Conversely, competitors indicated that the number of closely competing rivals may be limited. For instance, two competitors named only the Parties and one or two other firms as being close competitors to themselves.

93. Other than the merging Parties, Portaprompt is the only established UK-based manufacturer of teleprompters. Its UK sales revenues were around [REDACTED]. It has a significant presence in the short-term rental market. It is a long-established brand and many third parties were familiar with its product line. Portaprompt said that it was in close competition with both of the Parties in the market for the sale of teleprompters as well as [other manufacturers]. Portaprompt stated that it sells budget, mid and high-end hardware and software [REDACTED].

94. CueScript are a very recent new entrant to the UK market. Some third parties were aware of the company and many saw it as a credible potential supplier. One competitor commented that CueScript was likely to have connections at

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<sup>11</sup> [REDACTED]

broadcast companies due to the past experience of its management.<sup>12</sup> One end-customer commented that it would be 'comfortable' using CueScript in future and 'had faith' that their products would be comparable.

95. The CMA acknowledges that CueScript has launched its service in the UK but that this entry has only recently occurred. The CMA considers it is not possible (or appropriate) to conclude on the level of constraint that it currently imposes on the Parties. The CMA instead considered the constraint that CueScript may exert through its ability to expand going forward. These issues are assessed in a consideration of barriers to entry and expansion (see paragraphs 108 to 116 below).
96. Some customers also indicated that the credible supplier set was limited. For instance, an intermediary told the CMA that Autoscript and Autocue are the major brands and others, such as Portaprompt and Prompter People, are less well known and less respected. They said that they were not aware of another teleprompter supplier that could offer an advanced newsroom system comparable to the Parties' own propositions. Consequently they said that they are not able to use the threat of switching to these other brands to get discounts from Autocue or Autoscript as the other brands are inferior.
97. The same third party did, however, suggest that other brands of teleprompter may be more credible when it is required for a non-newsroom system, eg for use with a light entertainment TV show. For these applications the customer did not believe that there are major differences between the different brands of teleprompters. They noted that although other brands are cheaper than Autocue and Autoscript, a further 5% price increase might result in them switching to these cheaper brands.
98. Another intermediary indicated that they only ever purchased from Autocue and Autoscript. It was able to list three alternative suppliers to the Parties (DataVideo, Telmax and Ikan) but it had never used them and did not know much about them.
99. Conversely, some intermediaries indicated that significant choice did remain. For instance, as stated in paragraph 66, some referred to products from China and Prompter People. The latter also said that new cheaper entrants are emerging. The CMA notes, however, that these two customers indicated that they supply end-customers based overseas rather than in the UK.

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<sup>12</sup> For instance, the [CueScript website](#) states that Brian Larter, Director at CueScript, has previously worked at both Autoscript and Autocue.

- *Internal documents*

100. The Parties' internal documents indicate that the number of competitors and level of competition may vary according to whether the teleprompter is budget, mid or high-end.
101. [✂]
102. [✂]
103. [✂]
104. The CMA considers that these internal documents are consistent with choice being limited in the supply of high-end teleprompters but there being more choice of supplier of the lower-end ranges of teleprompters. The CMA places some weight on these documents but notes that the Autocue Business Plan was prepared quite recently, in 2014, and not clearly before merger discussions had begun. Further, it is not clear that the Parties internal documents always relate specifically to the UK competitive situation rather than, for instance, competition globally.

*Conclusion on effect of the Merger*

105. The Parties are the largest UK suppliers of teleprompting equipment. Third parties and internal documents indicated that they are close competitors, particularly in the supply of high-end teleprompters. There is some evidence to suggest that there may be greater competition towards the budget end of the market compared to the higher end.
106. On balance, the CMA considered that the evidence is not at a level where it can rule out concerns that the merged entity may have the ability to increase price or worsen non-price aspects (such as quality) of its teleprompting equipment. Although the CMA considers that the evidence suggests the impact of the Merger may be greatest in the supply of high-end teleprompters there is insufficient evidence to conclude that there would not be adverse effects on competition across the quality range.
107. The CMA therefore considers below whether there is sufficient prospect of entry or expansion to constrain the merged entity post-Merger such that this may prevent a realistic prospect of an SLC resulting from the Merger.

*Entry and expansion*

108. Competition in the market may be affected as new firms enter, or the merged firm's rivals take actions enhancing their ability to compete against the

merged firm. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient. This in turn may depend on whether barriers to entry (or expansion) are high or low. In terms of timeliness, the CMA's guidelines indicates that the CMA will look for entry to occur within two years.<sup>13</sup>

- *The Parties' views*

109. The Parties submitted that there is opportunity for new entrants and expansion into the supply of teleprompting equipment in the UK.

- *Third party views*

110. Some third party comments indicated that there are barriers to entry for a supplier based outside the UK in serving end-customers based in the UK. A competitor identified that, though there are other manufacturers in the US, China, and to a lesser extent Europe, these overseas suppliers may find it difficult to break into the UK market without connections at broadcast companies. Another competitor pointed out that firms in the US have not branched out into Europe and this may be due to the greater language complexity<sup>14</sup> required by UK and European customers. They also considered that potential entrants may be deterred by the small size of the UK market and that it is relationship based. On this basis the CMA does not consider that entry is sufficiently likely, timely or sufficient to mitigate any SLC arising due to the Merger.

111. CueScript are a very recent new entrant to the UK market and we considered whether their ability to expand may mitigate the potential loss of competition arising due to the Merger.

112. CueScript formed in January 2014 and officially launched in April 2014. They describe themselves as a global company that initially launched in North America with a high-end teleprompter proposition. [REDACTED] They launched in Europe and the rest of the world at the IBC conference held in September 2014. They told us that their hardware and software range is towards the high-end of the spectrum [REDACTED]. CueScript is run by Brian Larter who has previously worked at both Autocue and, in a senior position, Autoscript and they say that they have contacts throughout the distribution channels.

113. Some third parties were aware of CueScript's recent entry and considered that they were likely to be a credible player in the market. Conversely, one

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<sup>13</sup> [Merger Assessment Guidelines](#), paragraph 5.8.1 ff.

<sup>14</sup> For example, some of the BBC's foreign news channels require teleprompters to use different alphabets.

short-term hire firm thought that it could take several years for CueScript to achieve a complete range of products including proprietary software that would be appropriate for live TV.

- *Internal documents*

114. [✂]

115. [✂]

- *Conclusion on entry and expansion*

116. There are barriers to entry for overseas suppliers such as the small market size and the relationship based nature of the UK. There is evidence to indicate that CueScript is likely to be a credible competitor to the Parties, however, there is no evidence to show over what time period CueScript will grow or how much of a constraint it will pose to the merged entity. As such, on the evidence available to it, the CMA has insufficient evidence to demonstrate that any entry or expansion by overseas suppliers or CueScript would be sufficient to offset the loss of close competition between the Parties arising as a consequence of the Merger.

*Third party views*

117. Views from third parties on the Merger (with specific regard to teleprompting sales) have been taken into account where appropriate in the competitive assessment above. In addition, these third parties gave their overall views on the Merger.
118. The majority of intermediaries that provided submissions were concerned that the Merger would result in higher prices. One said that the Parties may position Autoscript and Autocue as premium European brands, increasing prices to national broadcasters and other customers for whom 'not being seen to cut corners is more important than price'. Another complained that their ability to negotiate price would be limited if Vitec owned the two leading brands. Two customers compared the Parties' post-merger position in the teleprompter market as comparable to the tripod market where Vitec is seen to own the leading brands and already charges a premium.
119. Conversely, one intermediary was largely unconcerned by the acquisition except for the potential that the rate of innovation in teleprompters may slow if Autocue and Autoscript 'corner the market'.

120. Rivals generally saw the Merger as an opportunity. One competitor thought that Vitec will have more market power, especially as their broadcast products are sometimes bundled. However, they and another saw the Merger as an opportunity insofar that they may be considered to a greater extent by customers who will want a choice of supplier.

*Conclusion on unilateral effects in teleprompting sales*

121. For the reasons set out above, the CMA cannot rule out that there is a realistic prospect that the Merger will result in an SLC in teleprompter sales in the UK. However, as set out below (see paragraph 191), it does not find it necessary to conclude on this point.

*Short-term hire*

*Shares of supply*

122. The Parties' estimated that they have [20–30]% (+[0–10]%) share of the short-term hire market. The CMA has verified some of the Parties' revenue estimates and estimates that the Parties have at least a [20–30]% (+[0–10]%) share.

TABLE 2 Market shares in short-term hire in the UK

	CMA (£m)	Market shares (CMA)
Autoscript	[£x]	[20–30]
Autocue	[£x]	[0–10]
Portaprompt	[£x]	[20–30]
Prompting Plus	[£x]	[10–20]
Cue Box	[£x]	[0–10]
Autocue Hire	[£x]	[0–10]
Iprompt	[£x]	[0–10]
First Take	[£x]	[0–10]
Prompt Master	[£x]	[0–10]
Rest of the market*	[£x]	[20–30]
<b>Total</b>	<b>[£x]</b>	<b>100</b>

Source: Parties' estimates and third party revenues.

\*Details on 18 firms were given and £[£x] of revenue attributed to 'others'.

123. The Parties estimated that the short-term hire market is valued at £[£x] million. The CMA was able to verify some of the Parties' estimates and, based on the Parties' estimates and those confirmed by the CMA, considers that the value of the market would be [£x].

*Closeness of competition*

124. The CMA considered that a range of evidence was consistent with a proposition that Autoscript and Autocue are not close competitors in short-term hire.

- *The Parties' views*

125. The CMA understands that Autocue closed its London short-term hire business in 2008.<sup>15</sup> The CMA understands that at this time several ex-Autocue employees then set up their own independent short-term hire companies (eg Autocue Hire, Prompt Master and Iprompt).
126. However, Autocue continued to earn some revenue from short-term hire services. [✂]
127. A breakdown of the Parties' short-term hire revenues in 2013 demonstrates that Autocue's limited revenues in the market were almost exclusively derived from providing services for conferences/corporate events whereas the large majority of Autoscript's revenues were derived from short-term hire for TV broadcasts.

- *Third party views*

128. Customer views on the Parties' relative closeness of competition varied. Two customers told us that they used (or generally used) Autoscript for short-term hire but that they considered the Parties to be in competition. One of these customers said that they always get a quote from both Parties whereas the other customer said that they no longer use Autocue.
129. Conversely two competitors did not consider that Autocue was very active in the short-term hire market.

*Remaining constraints from competitors*

130. The Parties provided details of 20 short-term hire competitors. These include Portaprompt and at least 6 others who were estimated to have larger short-term hire revenues than Autocue. There is then estimated to be a relatively large number of small competitors operating in the market of a similar scale to Autocue.
131. The CMA's market testing has revealed that a significant number of short-term hire firms provide services across a wide range of customers, including broadcast clients and conferences/corporates.

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<sup>15</sup> See, for example '[Autocue refocuses](#)' (accessed 30 September 2014).

132. The largest remaining competitor in the short-term hire market is Portaprompt. They told us that they competed against Autoscript particularly in the supply of short-term hire to broadcasters.
133. Views on the relative proposition of Portaprompt varied. One third party said that Portaprompt did not offer as full a hire service as Autoscript. Conversely, some customers that we spoke to reported using Portaprompt (albeit to a limited extent) and indicated that they viewed their service to be comparable.
134. In addition to Portaprompt, the CMA understands that there are several other short-term hire companies listed in Table 2 that provide services for TV broadcasters including: Prompting Plus, Cuebox, Promptmaster, AutocueHire and First Take.
135. A large number of the short-term hire companies that the CMA contacted informed it that they provide services to corporate/conference clients. Some smaller firms indicated that they predominantly served those customers although views varied on whether they considered themselves to be in competition with the Parties.

#### *Third party views*

136. Views from third parties on the Merger (with specific regard to short-term hire) are generally reflected above. In addition, these third parties gave their overall views on the Merger.
137. The CMA received overall views on the Merger from two short-term hire customers. One customer who primarily uses Autoscript but gets quotes from both said that the Merger could potentially be of concern as they would have 'all of their eggs in one basket'. Another customer said that they had no concerns as there are other suppliers of equipment<sup>16</sup> that they can use instead.
138. Comments from rivals in short-term teleprompting hire were also mixed. One rival was concerned that Autoscript and Autocue would be more efficient due to their larger pool of operators (ie across their short and long-term hire operations) that could be employed flexibly and therefore they would be very difficult to compete against. Another competitor did not consider that the Merger would have much impact given that Autocue's hire department is small.

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<sup>16</sup> The customer did not hire operators.

### *Conclusion on effect of the Merger*

139. The Parties do not appear to be close competitors in the supply of short-term hire services. Autocue's revenues in the short-term hire market are small, and the overlap with regard to services for TV broadcasters is negligible. There is a greater overlap in relation to short-term hire to conferences and corporate customers. Any loss of competition is considered likely to be small given that the Parties' revenues to these customers are relatively small. In addition, a large number of competitors will continue to constrain the merged entity post-Merger. Therefore, the CMA considers that the Merger does not give rise to a realistic prospect of an SLC in the market for the short-term hire of teleprompters in the UK due to horizontal effects.

### *Long-term hire*

#### *Shares of supply*

140. [REDACTED] Both of the Parties provide long-term hire services to the BBC (to which each of the Parties supply both equipment and operators). Overall each party earns approximately £[REDACTED] respectively in the supply of these long-term hire services.
141. The CMA has not identified any other long-term hire contracts of the nature provided by the Parties. A third party also stated that combining the two companies would create a monopoly supplier in this market.

#### *Closeness of competition*

142. The evidence shows that the Parties are each other's closest competitors in the long-term hire market. The BBC, whose contracts account for a large majority of all revenues in this sector, told us that they have a long-standing relationship with both Autoscript and Autocue and was its leading suppliers of long-term hire services. They said that in the previous two or three procurement exercises, though they had not been the only bidders, Autoscript and Autocue had been the main contenders to win the long-term hire contracts. Even though Autocue and Autoscript were the incumbent suppliers at the time of the last tender round, the BBC said that they were able to negotiate an improved deal from them as a result of the tender process.
143. The BBC explained that they chose not to award their most recent contracts to just one of the Parties [REDACTED]. The BBC had some concerns that prices may rise post-merger as a result of the reduction in competition.

### *Remaining constraints from competitors*

144. The BBC also had some concerns over the reduction of choice available to them and whether other suppliers would be able to meet its requirements in terms of its standards and the number of operators needed. However, they also observed that there were other suppliers including Portaprompt and CueScript. They expected that both of these would bid for their next contract and considered that they could be credible suppliers.
145. The BBC said that there were no large differences between different suppliers in terms of their equipment and software. However, the BBC said that they do require that their supplier has the ability to provide services for their foreign language stations which requires appropriate software. They also told us that they rated potential suppliers on their previous experience of working in a live newsroom environment, [✂].
146. Two competitors told the CMA that they had bid unsuccessfully for BBC contracts previously. One of these competitors said that the Merger might give them more opportunity to quote for long-term hire contracts in future. The other competitor said that the Merger would exacerbate the competitive difficulties they face in the industry.

### *Conclusion on effects of the Merger*

147. Autocue and Autoscript are the only suppliers currently providing long-term teleprompter hire contracts. The BBC indicated that they have used competition between the Parties to obtain a better deal in the latest tender round. Although there are other potential suppliers, [the degree of competition would depend upon the range of alternative suppliers that could] fulfil the BBC's requirements.
148. The CMA therefore considers that the evidence where it can rule out concerns that the merged entity may have the ability to increase price or worsen non-price aspects (such as quality) of its long-term hire services.
149. The CMA therefore considers below whether there is sufficient prospect of entry or expansion to constrain the merged entity post-Merger such that this may prevent a realistic prospect of a SLC resulting from the Merger.

### *Entry and expansion*

150. The Parties state that anyone could bid to provide long-term hire services to the BBC, including non-teleprompting Business Process Outsourcing providers. They said that a new supplier to the BBC may retain existing staff

under TUPE arrangements and they would only need to provide hardware and software that could be bought off the shelf. Consequently there would therefore be few restraints on a new provider providing the contract.

151. The BBC did not believe that the level of technical know-how required to fulfil a long-term contract would prevent a new company from entering the market. They explained that a large component of the service offered by Autocue and Autoscript is 'staff management'. They said that operators themselves were not highly specialised but are required to maintain a good personal relationship with the presenters.
152. However, the CMA notes that the BBC, when awarding these contracts, placed importance on their experience working within a live newsroom environment. [REDACTED] Both of these factors may limit the constraint from Portaprompt and CueScript.
153. The CMA did not consider, on the basis of the above, that the threat of entry was sufficiently timely, likely or sufficient to mitigate concerns that the Merger may result in an SLC in long-term hire in the UK.

#### *Customer self-supply*

154. [REDACTED]
155. However, the BBC told the CMA that it has no plans to bring the service in house and that long-term hire offered the best value to the BBC.
156. The CMA did not consider, on the basis of the above, that the threat of customer self-supply was sufficient to mitigate concerns that the Merger may result in an SLC in long-term hire in the UK.

#### *Third party views*

157. Views from third parties on the Merger (with specific regard to long-term hire) are generally reflected above.

#### *Conclusion on horizontal unilateral effects in long-term hire*

158. The CMA cannot rule out that there is a realistic prospect that the Merger will result in an SLC in teleprompter sales in the UK. However, as set out below (see paragraph 191), it does not find it necessary to conclude on this point.

### ***Vertical effects***

159. The Parties are both involved in the upstream supply of teleprompting equipment (and aftersales services) and the downstream supply of short-term teleprompter hire services (equipment and operators). The CMA received some concerns from third parties about possible vertical effects arising from the Merger.
160. A short-term hire company was concerned that the Parties could supply their downstream short-term hire operations with teleprompting equipment at cost price whereas they would have to pay market rates for equipment. They also stated that they could be foreclosed by the Parties if, for instance, they delayed/withheld the supply of additional teleprompting equipment when they anticipated that they would be in competition against the short-term hire competitor.
161. Two other companies also had some concerns about the impact of the Merger with regard to their future access to teleprompting equipment.
162. A rival upstream teleprompter manufacturer suggested that short-term hire companies can currently play Autocue and Autoscript off against each other but that these short-term hire companies might, post-merger, be 'locked out' of the market.

### ***Theory of harm***

163. The CMA has principally considered a partial input foreclosure theory of harm. This theory of harm is that the merged firm could increase the price it charges (or decrease the quality) of teleprompting equipment supplied to downstream short-term hire rivals. Short-term hire rivals may either accept these higher prices or they may switch to another supplier of teleprompting equipment<sup>17</sup> such as Portaprompt (which may face an incentive to increase its prices in response to the Parties' higher prices).
164. If short-term hire rivals face higher prices for teleprompting equipment (and/or their proposition is adversely affected as a result of switching to an alternative teleprompting equipment supplier) the competitive constraint that these downstream rivals exert on the Parties may be reduced. Customers of short-term hire may switch away from downstream rivals and towards the Parties' own services in response. Less competition in short-term hire may allow the

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<sup>17</sup> Including of aftersales services.

Parties to increase the price they charge for short-term hire services to customers.

### *Ability*

165. The CMA considers<sup>18</sup> that the ability of the merged firm to engage in partial input foreclosure of downstream rivals (by increasing prices or decreasing quality) of teleprompting equipment may depend on:
- (a) the cost of the teleprompter relative to all costs of providing short-term teleprompting hire;
  - (b) the extent to which downstream rivals can switch to other suppliers of teleprompters;
  - (c) pass-through of any cost increases.

### *Proportion of input cost in terms of total*

166. All else being equal, if the cost of a teleprompter accounts for only a small part of the total costs incurred by a short-term teleprompter hire firm, the merged firm will be less able to harm rivals' ability to compete downstream than if the cost of a teleprompter accounts for a greater part of the total costs.
167. In this case the CMA understands that teleprompter packages vary in price. A hardware and software package from Autoscript for broadcast work could cost up to £[REDACTED].<sup>19</sup> One rival estimated that a teleprompter unit costs around £2,000–£5,000 and another estimated that a teleprompter with accessories/spares might cost around £12,000. The CMA understands that the operational lifetime of a teleprompter will depend on its level of use and how well it is cared for. However, [REDACTED] and third party estimates were consistent with an operational lifespan of potentially over four years.
168. The CMA considers, on the basis of this evidence, that an individual teleprompter does not, therefore, appear to represent a significant annual cost compared to other costs such as the cost of an operator (notwithstanding that firms may have a stock of teleprompters rather than just one).

### *The extent to which rivals can switch to other suppliers of teleprompters*

169. The CMA is aware that many short-term hire firms use Autoscript or Autocue teleprompters. We assessed whether downstream rivals would be able to

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<sup>18</sup> See [Merger Assessment Guidelines](#), paragraph 5.6.10.

<sup>19</sup> [REDACTED]

switch their purchases of teleprompters to other manufacturers. This consideration particularly focused on their ability to switch to Portaprompt (the remaining established UK manufacturer).

170. Views from short-term hire companies varied on their ability to switch to using Portaprompt equipment. Two short-term hire companies that currently use Autocue equipment thought that they would be able to switch whereas some rivals using Autoscript equipment did not believe that Portaprompt would be a suitable replacement.
171. For instance, one short-term hire company said that Portaprompt teleprompters may be used on some light entertainment and sports shows but would not really be suitable for prime live TV shows such as the X-Factor. Autoscript teleprompters were asserted to have a superior build quality and software and we were told that they are used by most of the top operators in the industry. Another short-term hire company said that Portaprompt equipment was not as portable and they referred to negative comments that their customers had made about Portaprompt equipment. These firms had similar concerns about switching to Autocue equipment too.
172. Set against this view, the CMA was made aware of a wide number of high profile TV shows, including live prime time programmes, for which the teleprompter used by the short-term hire firm was manufactured by Portaprompt.
173. The Parties said that it is typically the operator, rather than the end-customer, that uses the teleprompter equipment. They said that the decision by an end-customer over which short-term hire company to use will often depend on the operators employed by the hire company, especially if the TV presenter has built a rapport with the operator.
174. Several short-term hire companies did not think that an end-customer would have a preference for the brand of teleprompter used. Similarly, no short-term hire company indicated that the operator's preference for a teleprompter brand was itself an important factor in whether they would be able to switch teleprompter brands.
175. Customers of short-term hire indicated that the brand of teleprompter used was not a significant factor in choosing the short-term hire company and that they had used Portaprompt equipment before (albeit generally to a limited extent). These customers confirmed that the relationship between the presenter and operator was a key factor in the choice of short-term hire company.

176. The CMA therefore considers that the fact that many customers have little preference over the brand of teleprompter used means that it is not clear that short-term hire companies would be unable to switch to Portaprompt equipment in the large majority of cases.

*Pass-through*

177. The CMA did not consider that it was necessary to consider in detail the extent to which any increases in the costs of teleprompting equipment would be passed on to customers of short-term hire.

*Conclusion on ability*

178. The CMA considers that the Parties' ability to foreclose rival short-term hire firms is generally limited. Teleprompters do not appear to constitute a large input cost for a short-term hire firm and short-term hire companies appear to be able, in general, to switch to an alternative brand of teleprompter.
179. However, the CMA understands that there may be some very specific circumstances where an end-customer could require that a particular teleprompter brand is used by the short-term hire company with the result that the short-term hire company might find it difficult to switch to alternative teleprompter brands. In these cases the Parties might have a greater ability to foreclose rivals.
180. For instance an end-customer could have a preference to hire an Autoscript teleprompter if they are hiring an additional teleprompter to supplement an installed base of Autoscript teleprompters. An end-customer's staff may also be trained to use a particular type of teleprompter unit.
181. Some operators (who are generally freelance) may also have a preference to use a specific brand of teleprompter. If a short-term hire firm was unable to provide Autoscript teleprompting equipment, then it is possible that the operators themselves would switch to a short-term hire firm that could provide it (eg Autoscript).
182. The CMA considers it unlikely that these instances account for a significant proportion of customer demand. For instance one rival did not think that many customers would have both an installed base of equipment and also purchase hire services. Even when a broadcaster has some installed base of teleprompters, the Parties argued that the broadcaster would likely be purchasing short-term hire for use on different programmes or in different studios. Nevertheless, the CMA considers the Parties' incentive to engage in input foreclosure in these very specific instances.

### *Incentive*

183. The merged firm may have an incentive to pursue an input foreclosure strategy if the loss of upstream profits (due to lower sales of teleprompters to downstream rivals) would be outweighed by higher downstream profits (eg due to end-customers or operators switching to the Parties' own short-term hire operations).
184. Our assessment focused on whether the effect of the Merger would be to increase the incentive for the Parties to engage in a foreclosure strategy. We considered, in particular, whether the Merger would materially increase the number of short-term hire customers that would switch from foreclosed rivals to the Parties.
185. The CMA does not consider that it is likely that a foreclosure strategy would result in the Parties winning materially more customers downstream compared to the pre-merger situation.
186. For instance, a short-term rival described Portaprompt's proposition as being positioned in-between Autoscript (the market leader) and Autocue (who are positioned lower in the market), suggesting that Portaprompt is a closer substitute for Autoscript. Another short-term rival who used Autoscript also stated that they did not like Autocue equipment (although they could not identify another brand they would switch to instead).
187. Even if an end-customer (or operator) did consider that Autocue was their next best choice after Autoscript, it is not clear that they would switch to using Autocue's short-term service. Autocue has a very small presence in the short-term hire market and there are several other short-term hire companies using Autocue equipment that are estimated to have a more significant presence than Autocue itself. Autocue's annual revenues attributable to short-term hire in recent years are declining and we understand that it closed its London short-term hire business in 2008.
188. The CMA does not consider that the merger firm's incentives to foreclose rival short-term hire operators in the specific circumstances identified above will be materially changed by the transaction.

### *Conclusion on vertical effects*

189. The Parties do not, in general, appear to have the ability to successfully foreclose downstream rival short-term hire firms. In those specific circumstances where the Parties may have such an ability, it is not clear that the Parties will face a greater incentive to pursue such a strategy as a result of the Merger.

190. Consequently the CMA does not consider that vertical effects are likely to arise and therefore it is not necessary to consider the effect of foreclosure.

## Conclusion

191. As set out above, the CMA cannot rule out that the test for reference may be met in this case. However, it has not been necessary for the CMA to reach a definitive conclusion in this respect because the CMA considers it appropriate to exercise its discretion to apply the ‘de minimis’ exception to the duty to refer, as set out below.

## Exception to the duty to refer

192. The CMA's duty to refer under section 33(1) of the Act is subject to certain discretionary exceptions, including the exception under section 33(2)(a) relating to markets of insufficient importance (the ‘de minimis’ exception).<sup>20</sup>
193. Where the annual value in the UK of the market(s) concerned is, in aggregate, less than £3 million, the CMA will generally not consider a reference justified provided that there is in principle not a clear-cut undertaking in lieu of reference available.
194. As the aggregate annual value of the markets in which we have identified competition concerns in this case is below £3 million, the CMA has considered whether it should apply the ‘de minimis’ exception under section 33(2)(a) of the Act. As the CMA's general policy is not to apply this exception where clear-cut undertakings in lieu of reference could be offered by the parties, the CMA has also considered whether such undertakings would be available if the duty to refer were met.
195. During the course of the investigation, the Parties stated that they would be willing to waive their procedural rights to a full investigation, including an issues letter and an issues meeting, to the extent that the CMA would apply the ‘de minimis’ exception to the duty to refer, and without prejudice to the Parties’ views on whether the duty to refer was met. Since, as set out below, the CMA decided to apply the ‘de minimis’ exception, it did not send an issues letter to the Parties.<sup>21</sup>

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<sup>20</sup> See [Exceptions to the duty to refer and undertakings in lieu of reference guidance](#) (OFT1122, December 2010) (**‘Exceptions guidance’**) as adopted by the CMA (see Annex D to [Mergers: Guidance on the CMA's Jurisdiction and Procedure](#) (CMA2)).

<sup>21</sup> *Exceptions guidance*, paragraphs 2.51 to 2.53.

### ***Availability of undertakings in lieu***

196. The CMA will not generally exercise its discretion to apply the ‘de minimis’ exception where clear-cut undertakings in lieu of reference could be offered by the Parties to resolve the competition concerns identified. The CMA’s judgment in this respect is an ‘in principle’ one that does not depend on any actual offer of undertakings in lieu.<sup>22</sup>
197. The CMA is of the view that the only structural remedy open to the Parties to address the competition concerns in this case would be to abandon the Merger. The CMA does not include what would amount to a prohibition of the Merger when considering whether an ‘in principle’ undertaking in lieu is available.<sup>23</sup>
198. On the basis that the CMA believes there is no clear-cut undertaking in lieu available, the CMA has proceeded to examine whether to exercise its ‘de minimis’ exception in this case.

### ***Application of the ‘de minimis’ exception***

199. In this case, the total market value of the affected markets where we have identified prima facie competition concerns is less than £3 million. Based on its market investigation, the CMA estimates the annual market size for teleprompter sales is approximately £[REDACTED] million and long-term hire is approximately £[REDACTED] million.
200. In its assessment of whether it is appropriate to apply the ‘de minimis’ exception in this case, the CMA has also considered other factors besides the size of the market. The CMA notes that whilst it cannot rule out that the Merger gives rise to competition concerns in the supply of teleprompting equipment, the Parties will continue to face some constraint from competing suppliers, particularly in the supply of budget and mid-range teleprompter. Competition in the supply of high-end teleprompters may be strengthened by the recent entry of CueScript as discussed further above.<sup>24</sup>
201. The CMA believes that it is appropriate for it to take account of the wider implications of any decision that it takes to exercise its ‘de minimis’ discretion for its treatment of future cases. The CMA will be less likely to apply the ‘de minimis’ discretion where it believes that the Merger in question is one of a potentially large number of similar mergers that could be replicated across the

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<sup>22</sup> *Exceptions guidance*, paragraphs 2.18 to 2.27.

<sup>23</sup> *Exceptions guidance*, paragraph 2.27.

<sup>24</sup> See paragraphs 94 and 95 above.

sector in question.<sup>25</sup> The CMA considers that there is only a limited risk of this given the specific facts of this case, in particular due to the small number of firms operating in these markets.

202. On balance, having taken account of all relevant factors in the round, the CMA considers that the public cost of a reference would be greater than the impact of the Merger on consumers. The CMA therefore considers that, to the extent that its duty to refer may be met, it is appropriate to exercise its discretion to apply the 'de minimis' exception in this case.

## **Decision**

203. This merger will therefore **not be referred** under section 33(1) of the Act.

**Sheldon Mills**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**30 September 2014**

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<sup>25</sup> See *Exceptions guidance*, paragraph 2.40.