

1989 No. 1718

MONOPOLIES AND MERGERS

The Merger Reference (Atlas Copco AB and Desoutter Brothers (Holdings) plc) Order 1989

Made - - - - 20th September 1989

Coming into force 21st September 1989

Laid before Parliament 21st September 1989

Whereas—

- (1) the Secretary of State, in the exercise of powers conferred on him by sections 69(2) and 75 of the Fair Trading Act 1973(a) has today referred to the Monopolies and Mergers Commission for investigation and report the matter of the arrangements which, if carried into effect, would result in the enterprises of Atlas Copco AB (“Atlas”) and Desoutter Brothers (Holdings) plc (“Desoutter”) ceasing to be distinct enterprises; and
- (2) in the opinion of the Secretary of State the doing of the things mentioned in articles 2 and 3(2) of this Order would constitute action which might prejudice the reference or impede the taking of action under the said Act which may be warranted by the Commission’s report on the reference:

Now, therefore, the Secretary of State, with a view to preventing the doing of the things mentioned in articles 2 and 3(2) of this Order, and in exercise of powers conferred on him by sections 74(1)(a), 75(4) and 90(3) of the said Act, hereby orders as follows:

1.—(1) This Order may be cited as the Merger Reference (Atlas Copco AB and Desoutter Brothers (Holdings) plc) Order 1989 and shall come into force at 9.00 a.m. on 21st September 1989.

(2) For the purposes of this Order—

- (a) “associate” means a person associated (within the meaning of section 77(4) of the Fair Trading Act 1973) with Atlas or with any subsidiary of Atlas;
- (b) “interest in shares” shall include an entitlement, by a person not being the registered holder, to exercise any right conferred by the holding of the shares in question or an entitlement to control the exercise of any such right;
- (c) “subsidiary” has the same meaning as in section 736 of the Companies Act 1985(b); and
- (d) “voting shares” means shares in respect of which the holders have the right, either at all times or for the time being, to vote at general meetings of the company in question on all, or substantially all, matters.

2.—(1) It shall be unlawful for Atlas, any subsidiary of Atlas or any associate—

- (a) directly or through any nominee or trustee to acquire any shares or interest in shares of Desoutter or any subsidiary of Desoutter in circumstances where Atlas, its subsidiaries and any associate hold, or after the acquisition would

(a) 1973 c.41.
(b) 1985 c.6.

hold, directly or indirectly, 15 per cent or more, or an interest in 15 per cent or more, of any class of voting shares of Desoutter or of any subsidiary of Desoutter, or

(b) to exercise, directly or indirectly, at any general meeting of, or of any class of the members of, Desoutter or any of its subsidiaries, any voting rights conferred by the holding of shares or attaching to any interest in shares if the aggregate of the voting rights exercised by or on behalf of Atlas, its subsidiaries and any associate would amount to 15 per cent or more of the total of the voting rights exercisable on the resolution in question, or

(c) to enter into any agreement or arrangement with any other person with a view to or for the purpose of acting together to secure or exercise control of Desoutter or any of its subsidiaries or of any of the enterprises thereof;

and for the purposes of subparagraph (b) above, the total of the voting rights exercisable on the resolution in question does not include any voting rights which are not exercisable by reason of the application of that subparagraph.

(2) Subparagraph (a) of paragraph (1) of this article shall not apply to anything done in pursuance of an agreement to acquire shares or interests in shares made before 9.00 a.m. on 21st September 1989 and legally enforceable against Atlas, its subsidiaries or any associate.

3.—(1) In the case of a person falling within paragraph (a), (b) or (c) of section 90(3) of the Fair Trading Act 1973, this Order shall extend to his acts and omissions outside the United Kingdom.

(2) Nothing in this Order has effect so as to apply to the acts and omissions outside the United Kingdom of any person who does not fall within paragraph (a), (b) or (c) of the said section 90(3); but, where anything ("the first act") is done by such a person outside the United Kingdom which, by virtue of this Order, would have been unlawful had it been done by him within the United Kingdom, then—

(a) if the first act is of a kind described in article 2(1)(a) above, it shall be unlawful for any person—

(i) subsequently to acquire any title to or interest in the shares or the interest in shares in question, or

(ii) to register, or to take any steps towards registering, a transfer of the shares under section 183 of the Companies Act 1985;

(b) if the first act is of a kind described in article 2(1)(b) above, it shall be unlawful for any person to treat a vote as lawfully cast if cast in exercise of the voting rights in question;

(c) it shall be unlawful for any person subsequently to do any other thing if that would be devoid of legal effect were the first act unlawful.

20th September 1989

J. Redwood
Parliamentary Under Secretary of State,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order)

Atlas Copco AB, its subsidiaries and its associates are prohibited by this Order from acquiring any shares or interests in shares in Desoutter Brothers (Holdings) plc if together they would have 15% or more of any class of voting shares, from exercising 15% or more of voting rights and from making agreements with others to secure control of Desoutter.

The proposed merger of Atlas and Desoutter has been referred to the Monopolies and Mergers Commission.

The Order, unless previously revoked, will cease to have effect—

- (a) 40 days after the Commission's report is laid before Parliament; or
- (b) on the failure of the Commission to report within the period allowed.