STATUTORY INSTRUMENTS

# 1988 No. 1965

# MONOPOLIES AND MERGERS

## The Merger Reference (Elders IXL Limited and Scottish & Newcastle Breweries plc) Order 1988

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| *Made - - - -* | *10th November 1988* |
| *Laid before Parliament* | *10th November 1988* |
| *Coming into force* | *10th November 1988* |

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) ("the Act") has on 9th November 1988 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 Elders IXL Limited (a company incorporated in South Australia) ("Elders") and Scottish & Newcastle Breweries plc ("S&N") ceasing to be distinct enterprises; and

(2) in the opinion of the Secretary of State the doing of the things mentioned in article 2 of this Order would constitute action which might prejudice the reference or impede the taking of action under the 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 article 2 of this Order, and in exercise of powers conferred on him by sections 74(1)(b) and 75(4) of the Act, hereby orders as follows:

**1.**—(1) This Order may be cited as the Merger Reference (Elders IXL Limited and Scottish & Newcastle Breweries plc) Order 1988 and shall come into force at 3.00 p.m. on 10th November 1988.

(2) For the purposes of this Order –

(a) "interest in shares" shall include an entitlement, by a person not being the registered holder, to exercise any right conferred by the holding of those shares or an entitlement to control the exercise of any such right; and

(b) "subsidiary" has the same meaning as in section 736 of the Companies Act 1985(b).

**2.**—(1) It shall be unlawful for Elders or any subsidiary of Elders –

(a) directly or through any nominee or trustee to acquire any shares or interests in shares of S&N or of any subsidiary of S&N in circumstances where Elders and its subsidiaries and any person associated with Elders or any of its subsidiaries hold, or after the acquisition would hold, directly or indirectly, 15 per cent, or an interest in 15 per cent, of any class of shares of S&N or of any subsidiary of S&N, or

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

(b) to exercise, directly or indirectly, 15 per cent or more of the total voting rights exerciseable at general meetings of, or of any class of the members of, S&N or any of its subsidiaries.

(2) Subparagraph (a) of paragraph (1) of this article shall not apply to anything done in pursuance of a legally enforceable agreement to acquire shares or interests in shares made before 3.00 p.m. on 10th November 1988.

*Francis Maude*
Parliamentary Under Secretary of State for Corporate Affairs
Department of Trade & Industry

10th November 1988

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order prohibits Elders IXL Limited and its subsidiaries from acquiring, directly or indirectly, shares or interests in shares of Scottish & Newcastle Breweries plc or any of its subsidiaries if, after the acquisition, they and their associates would have more than 15% of any class of the shares; but this does not apply to existing acquisitions. They are also prohibited from exercising more than 15% of voting rights. The proposed merger of Elders and Scottish & Newcastle 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.

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