

**1989 No. 27**

**MONOPOLIES AND MERGERS**

**The Merger Reference (GEC, Siemens and Plessey)  
Order 1989**

<i>Made</i> . . . . .	<i>11th January 1989</i>
<i>Coming into force</i>	<i>12th January 1989</i>
<i>Laid before Parliament</i>	<i>12th January 1989</i>

**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 today referred to the Monopolies and Mergers Commission for investigation and report the matters of the arrangements which, if carried into effect, would result in the enterprises of The General Electric Company, plc (“GEC”) and The Plessey Company plc (“Plessey”) ceasing to be distinct enterprises and in the enterprises of Siemens AG (“Siemens”) and Plessey 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 those references or impede the taking of action under the Act which may be warranted by the Commission’s report on those references:

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 Act, hereby orders as follows:

**1.—(1)** This Order may be cited as the Merger Reference (GEC, Siemens and Plessey) Order 1989 and shall come into force at 9.00 am on 12th January 1989.

**(2)** For the purposes of this Order—

- (a) “associate” means a person associated (within the meaning of section 77(4) of the Act) with GEC or Siemens or with any subsidiary of GEC or Siemens;
- (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 those shares 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 GEC or Siemens, any subsidiary of GEC or Siemens or any associate—

- (a) directly or through any nominee or trustee to acquire any shares or interest in shares of Plessey in circumstances where GEC, Siemens, their respective subsidiaries and

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

any associate hold, or after the acquisition would 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 Plessey or of any subsidiary of Plessey, or

- (b) to exercise, directly or indirectly, at any general meeting of, or of any class of the members of, Plessey 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 GEC, Siemens, their respective 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 Plessey or any of its subsidiaries or of any of the enterprises thereof;

and for the purpose of determining, in the application of subparagraph (b) above, whether a voting right is exercisable, account shall be taken 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 am on 12th January 1989 and legally enforceable against GEC, Siemens, any of their respective subsidiaries or any associate.

3.—(1) This Order shall extend to the conduct outside the United Kingdom of a person falling within paragraph (a), (b) or (c) of section 90(3) of the Act; but nothing in it shall have effect in relation to the conduct outside the United Kingdom of any other person.

(2) Where anything (“the first Act”) is done outside the United Kingdom which would have been unlawful by virtue of this Order had it been done within the United Kingdom—

- (a) if the first act falls within 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 falls within 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.

11th January 1989

*Lord Young of Graffham*  
Secretary of State for Trade and Industry

## EXPLANATORY NOTE

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

The General Electric Company, plc, Siemens AG, their subsidiaries and their associates are prohibited by this Order from acquiring any shares or interests in shares in The Plessey Company plc if together they would have 15 per cent or more of any class of voting shares, from exercising 15 per cent or more of voting rights and from making agreements with others to secure control of Plessey.

The proposed mergers of GEC and Plessey and of Siemens and Plessey have 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.