

- (69) It should be reiterated that, under Article 3(2) of the Directive, the contracting authority may require the concessionaire to award to third parties contracts representing a minimum percentage of the total value of the work. The contracting authority may also request the candidates for concession contracts to specify this minimum percentage in their tenders.
- (70) This is also the case for service concessionaires who are awarding authorities under these Directives. The provisions of the Directives apply to procedures to award concession contracts.
- (71) In this context, it should be noted that Advocate-General Elmer, in Case C-433/93, *Commission v. Germany*, found that according to the case law of the Court (the Judgments of 20 September 1988, in Case 31/87, *Beentjes*, and 22 June 1989, in Case 103/88, *Constanzo*) 'the Directives on public contracts confer on individuals rights which they may exercise, in certain conditions, directly before the national courts, *vis-à-vis* the State and awarding authorities'. The Advocate-General also maintained that Directive 89/665/EEC, adopted after this judgment, did not seek to restrict the rights which case law confers on individuals *vis-à-vis* public authorities. On the contrary, the Directive sought to reinforce 'the existing arrangements at both national and Community levels . . . particularly at a stage when infringements can be corrected' (second recital of Directive 89/665/EEC).
- (72) Nonetheless, insofar as the concessionaire has exclusive or special rights for activities governed by the Utilities Directive, he must comply with this Directive's rules on public contracts.
- (73) For example, the *Telaustria* case referred to above.

Prior notification of a concentration

(Case COMP/M.1961 — NHS/MWCR)

(2000/C 121/03)

(Text with EEA relevance)

1. On 18 April 2000 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ⁽¹⁾, as last amended by Regulation (EC) No 1310/97 ⁽²⁾, by which the undertakings Nuova Holding Subalpina SpA (NHS), belonging to the Sanpaolo/IMI Group, and the MWCRLux Sarl, controlled by Schrodgers Group, acquire, within the meaning of Article 3(1)(b) of the Regulation, joint control of the Italian company MWCR SpA, by way of purchase of assets.
2. The business activities of the undertakings concerned are:
 - NHS: retail banking and financial services,
 - MWCRLux Sarl: retail banking and financial services.
3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.
4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.1961 — NHS/MWCR, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

⁽²⁾ OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.
