

**Action brought on 20 September 2002 by the Commission of the European Communities against the Italian Republic**

(Case C-337/02)

(2002/C 274/39)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 20 September 2002 by the Commission of the European Communities, represented by Antonio Aresu and Knut Simonsson, acting as Agents.

The applicant claims that the Court should:

- Declare that, by maintaining in force Article 3(3) of Law No 10 of 10 July 1991, which lays down the conditions to which are subject those maritime companies having their main offices in another Member State if they are to be treated identically to Italian maritime companies so far as concerns participating in the Italian share of the conference liner traffic, the Italian Republic has failed to fulfil its obligations under Articles 43 and 48 EC;
- Order the Italian Republic to pay the costs.

*Pleas in law and main arguments*

Article 3(3) of Italian Law No 210 of 1991 lays down, for those maritime companies established in other Member States which intend to exercise their right to establish themselves in Italy and participate in conference liner traffic from that State, additional conditions which such companies are not necessarily required to fulfil in the Member State of origin. The Commission concludes that that amounts to an infringement of Article 43 EC in conjunction with Article 48 EC.

**Reference for a preliminary ruling by the Högsta Domstolen by order of that Court of 10 September 2002 in the case of Fixtures Marketing Limited against AB Svenska Spel**

(Case C-338/02)

(2002/C 274/40)

Reference has been made to the Court of Justice of the European Communities by order of the Högsta Domstolen (Supreme Court) of 10 September 2002, received at the Court Registry on 23 September 2002, for a preliminary ruling in the case of Fixtures Marketing Limited against AB Svenska Spel on the following questions:

1. In assessing whether a database is the result of a 'substantial investment' within the meaning of Article 7(1) of Council Directive 96/9/EC<sup>(1)</sup> of 11 March 1996 on the legal protection of databases (the 'database directive') can the maker of a database be credited with an investment primarily intended to create something which is independent of the database and which thus does not merely concern the 'obtaining, verification or presentation' of the contents of the database? If so, does it make any difference if the investment or part of it nevertheless constitutes a prerequisite for the database?

AB Svenska Spel contends in this case that Fixtures Marketing Limited's investment is primarily concerned with the drawing up of the fixture lists for the English and Scottish football leagues and not with the databases where the data are stored. Fixtures Marketing Limited, for its part, argues that it is not possible to distinguish the work for the purpose of planning the game and that for the purpose of drawing up the fixture lists.

2. Does a database enjoy protection under the database directive only in respect of activities covered by the objective of the database maker in creating the database?

AB Svenska Spel contends that Fixtures Marketing Limited's creation of the database is not intended to facilitate football pools and other gaming activities but that such activities are a by-product of the purpose of the investment. Fixtures Marketing Limited, for its part, argues that the purpose of the investment is irrelevant and disputes that the possibility of exploiting the database for football pools constitutes a by-product of the actual purpose of the investment in the database.

3. What do the terms 'a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database' in Article 7(1) mean?

4. Is the directive's protection under Article 7(1) and Article 7(5) against 'extraction and/or re-utilisation' of the contents of a database limited to such use as entails a direct exploitation of the base or does the protection also cover use in cases where the contents are available from another source (second-hand) or are generally accessible?