

## Notice for the OJ

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)

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?

AB Svenska Spel contends that the company had no knowledge of the databases and obtained the data for the pools coupons from other sources and that what appeared on the pools coupons was not the whole or a substantial part of the fixture lists. Fixtures Marketing Limited, for its part, argues that it was irrelevant to the assessment whether the data were obtained from sources other than the fixture lists since the data originally came from them.

5. How should the terms "normal exploitation" and "unreasonably prejudice" in Article 7(5) be interpreted?

Fixtures Marketing Limited argues that AB Svenska Spel has repeatedly and systematically extracted and re-utilised the contents of the database for commercial purposes, in a manner which conflicts with a normal exploitation of that database and thereby unreasonably prejudiced the football leagues. AB Svenska Spel, for its part, contended that it is wrong to look at several pools coupons together in making an assessment and disputes that their use is in breach of Article 7(5) of the directive.

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<sup>1</sup> - OJ L 77 of 27.03.1996, p. 20.