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EUROPEISKA GEMENSKAPERNAS DOMSTOL

## Press and Information

### **PRESS RELEASE N° 89/04**

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Judgment of the Court in Cases C-46/02, C-203/02, C-338/02 and C-444/02

*Fixtures Marketing Ltd v Oy Veikkaus Ab, The British Horseracing Board Ltd and Others v William Hill Organisation Ltd, Fixtures Marketing Ltd v Svenska Spel AB, Fixtures Marketing Ltd v Organismos prognostikon agonon podosfairou (OPAP)*

### **NEITHER THE OBTAINING, VERIFICATION NOR PRESENTATION OF THE CONTENTS OF A FOOTBALL FIXTURE LIST OR A SCHEDULE OF HORSE RACES CONSTITUTE SUBSTANTIAL INVESTMENT GIVING RISE TO PROTECTION AGAINST THE USE OF THE DATA BY THIRD PARTIES**

*The definition of ‘substantial investment’ which gives rise to protection for the maker of a database against unauthorised acts of copying and distribution to the public covers only the work involved in seeking, collecting, verifying and presenting existing materials and not the resources used to create the materials which make up the database*

The four judgments concern the Directive on the legal protection of databases<sup>1</sup> and, more specifically, the scope of that protection in the context of sporting databases (football and horseracing)<sup>2</sup>. Fixtures Marketing and the British Horseracing Board (BHB) allege that other companies have infringed their rights in those databases.

Fixtures Marketing, on behalf of the professional football leagues, grants licences for the exploitation outside the United Kingdom of the fixture lists for the top English and Scottish football leagues. The fixture lists (for around 2000 matches per season) are drawn up at the start of each season by the organisers of the leagues; they are stored electronically and set out *inter alia* in printed booklets.

The BHB, which organises the British horse racing industry, compiles in its database, detailed information about the races and the official register of thoroughbred horses in the United Kingdom. Some racing information is made available to the public by radio, television and the written press and through a specific information service for those concerned.

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<sup>1</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.

<sup>2</sup> More specifically, the *sui generis* protection for a database whose creation required substantial investment.

Oy Veikkaus, Svenska Spel and Organismos Prognostikon Agonon Pododfairou (OPAP) organise pools betting in Finland, Sweden and Greece. They use data relating to matches in the English and Scottish football leagues although none of those companies has a licence granted by Fixtures Marketing.

William Hill Organisation is one of the leading providers of odds in horseracing. In addition to traditional sales methods (licensed betting offices and telephone betting) it offers internet betting for all the major horse races in the United Kingdom. The information displayed on its internet sites comes from newspapers and from an information service for subscribers which in turn obtains its information from the BHB database. The information on its internet site only covers a tiny part of the whole of the BHB database and is arranged in a different way.

Fixtures Marketing and the BHB consider that the companies which are using their data for the purposes of taking bets on football matches or horseracing have infringed the right conferred on them by the directive. The Finnish Vantaan Käräjäoikeus, the Swedish Högsta Domstolen, the Greek Monomeles Protodikeio Athinon and the Court of Appeal of England and Wales, before which these proceedings are pending, have referred several questions to the Court of Justice for a preliminary ruling on the subject matter and the scope of the *sui generis* right provided for by the directive.

The Court points out that the directive reserves *sui generis* protection for databases whose creation required substantial investment. The directive prohibits extraction and/or re-utilisation of the whole or of a substantial part of a database and, under certain conditions, of insubstantial parts of a database too.

First, the Court holds that the term ‘database’ used in the directive refers to any collection of works, data or other materials, separable from one another without the value of their contents being affected, which includes a method or system of some sort for the retrieval of each of its constituent materials.

However, the directive reserves the protection of the *sui generis* right for databases which show that there has been, qualitatively or quantitatively a substantial investment in the obtaining, verification or presentation of their contents.

### **Football fixture lists**

The Court has decided that the expression ‘**investment**’ in the obtaining of the contents of a database refers to the resources used to seek out **existing materials** and **collect** them in the database. It does **not cover the resources used for the creation of materials which make up the contents of a database.**

**The fact that the maker of a database is also the creator of the materials contained in it does not exclude that database from the protection of the *sui generis* right,** provided that he establishes that the obtaining of those materials, their verification or their presentation required substantial investment in quantitative or qualitative terms, which was independent of the resources used to create those materials.

Although a football fixture list may be considered to be a database within the meaning of the directive, finding and collecting the data which make up such a list do not require any particular effort on the part of the professional leagues. Those activities are indivisibly linked to the creation of those data, in which the leagues participate directly as those responsible for

the organisation of football league fixtures. Obtaining the contents of a football fixture list thus does not require any investment independent of that required for the creation of the data contained in that list.

Nor do the professional football leagues need to put any particular effort into monitoring the accuracy of the data on league matches when the list is made up because those leagues are directly involved in the creation of those data. Even the verification of the accuracy of the contents of fixture lists during the season (for example, following the postponement of a match) does not entail substantial investment.

The presentation of a football fixture list, too, is closely linked to the creation as such of the data which make up the list and does not require investment independent of the investment in the creation of its constituent data.

It follows that **neither the obtaining, verification, nor presentation of the contents of a football fixture list attests to substantial investment which could justify protection by the *sui generis* right provided for by the directive.**

### **Horsereading**

In Case C-203/02, it is not disputed that the BHB database which contains lists of horses entered for a race, constitutes a protected database under the directive. The issue is whether William Hill is carrying out acts prohibited by the *sui generis* right. The Court points out that **acts of extraction** (transferring the contents of a database to another medium) and acts of **re-utilisation** (making available to the public), of the whole or a substantial part of the contents of a database **require the authorisation of the maker of the database even where he has made his database accessible as a whole or in part to the public or has authorised a specific third party or specific third parties to distribute it to the public.**

The expression ‘substantial part’, in quantitative terms, of the contents of a database refers to the volume of data extracted from the database and/or re-utilised and must be assessed in relation to the total volume of the contents of the database. In qualitative terms, it refers to the scale of the investment in the obtaining, verification or presentation of the contents extracted or re-utilised.

The Court observes that the resources used by the BHB, in the course of organising horse races, to decide the date, the time, the place and or name of the race and the horses running in it, represent investment in the creation of the materials contained in its database. It adds that the verification prior to the entry of a horse on a list (verification of the identity of the person entering the horse, the characteristics of the horse, the identity of the owner and the jockey) takes place at the stage of the creation of the data and cannot, therefore, be considered to constitute investment in the verification of the contents of a database. Since **the materials extracted and re-utilised by William Hill did not require investment by BHB which was independent** of the resources required for their creation, those materials **do not constitute a substantial part of the contents of the BHB database.**

The directive prohibits unauthorised extraction and/or re-utilisation of insubstantial parts of the contents of a database by unauthorised acts the cumulative effect of which is to reconstitute and/or make available to the public the whole or a substantial part of the contents of that database and thereby seriously prejudice the investment made by the maker of the database.

The acts of extraction and/or re-utilisation carried out in a repeated and systematic manner by William Hill on the occasion of each race held concern insubstantial parts of the BHB database. However, **there is no possibility that, through the cumulative effect of its acts, William Hill might reconstitute and make available to the public the whole or a substantial part of the contents of the BHB database.** William Hill, therefore, does not seriously prejudice the investment made by the BHB in the creation of that database.

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