

2. Article 20 must also be interpreted as not precluding national legislation which lays down that an eligible customer's equipment may be connected to a transmission system only where the distribution system operator refuses, on account of established technical or operating requirements, to connect to its system the equipment of the eligible customer which is on the territory included in its licence. It is, however, for national courts to verify that the implementation and application of that access system takes place in accordance with objective and non discriminatory criteria between the users of the transmission and distribution systems.

(<sup>1</sup>) OJ C 170, 21.7.2007.

**Judgment of the Court (Grand Chamber) of 16 September 2008 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — (United Kingdom)) — The Commissioners of Her Majesty's Revenue and Customs v Isle of Wight Council, Mid-Suffolk District Council, South Tyneside Metropolitan Borough Council, West Berkshire District Council**

(Case C-288/07) (<sup>1</sup>)

*(Sixth VAT Directive — Article 4(5) — Activities engaged in by bodies governed by public law — Provision of off-street car-parking facilities for which a charge is made — Distortions of competition — Meaning of 'would lead to' and 'significant')*

(2008/C 301/16)

Language of the case: English

**Referring court**

High Court of Justice (Chancery Division)

**Parties to the main proceedings**

*Appellants:* The Commissioners of Her Majesty's Revenue and Customs

*Respondents:* Isle of Wight Council, Mid-Suffolk District Council, South Tyneside Metropolitan Borough Council, West Berkshire District Council

**Re:**

Reference for a preliminary ruling — High Court of Justice of England and Wales (Chancery Division) — Interpretation of Article 4(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Activities or transactions engaged in by a body governed by

public law in its capacity as a public authority — Off-street parking facilities for which a charge is made — Non-application of VAT leading to distortions of competition — Concept of 'distortion of competition' — Criteria for determination

**Operative part of the judgment**

1. Article 4(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is to be interpreted as meaning that the significant distortions of competition, to which the treatment as non-taxable persons of bodies governed by private law acting as public authorities would lead, must be evaluated by reference to the activity in question, as such, without such evaluation relating to any local market in particular.
2. The expression 'would lead to' is, for the purposes of the second subparagraph of Article 4(5) of Sixth Council Directive 77/388/EEC, to be interpreted as encompassing not only actual competition, but also potential competition, provided that the possibility of a private operator entering the relevant market is real, and not purely hypothetical.
3. The word 'significant' is, for the purposes of the second subparagraph of Article 4(5) of Sixth Council Directive 77/388/EEC, to be understood as meaning that the actual or potential distortions of competition must be more than negligible.

(<sup>1</sup>) OJ C 199, 25.8.2007.

**Judgment of the Court (Fourth Chamber) of 9 October 2008 (reference for a preliminary ruling from the Bundesgerichtshof, Germany) — Directmedia Publishing GmbH v Albert-Ludwigs-Universität Freiburg**

(Case C-304/07) (<sup>1</sup>)

*(Directive 96/9/EC — Legal protection of databases — Sui generis right — Concept of 'extraction' of the contents of a database)*

(2008/C 301/17)

Language of the case: German

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

*Applicant:* Directmedia Publishing GmbH

*Defendant:* Albert-Ludwigs-Universität Freiburg

**Re:**

Preliminary ruling — Bundesgerichtshof — Interpretation of Article 7(2)(a) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20) — Adoption of data from a protected database and their incorporation in a different database on the basis of individual assessments following a close examination of those data, without any copying being carried out — Whether such a data adoption and incorporation operation constitutes 'extraction' within the meaning of Directive 96/9/EC

**Operative part of the judgment**

The transfer of material from a protected database to another database following an on-screen consultation of the first database and an individual assessment of the material contained in that first database is capable of constituting an 'extraction', within the meaning of Article 7 of Directive 96/9 of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, to the extent that — which it is for the referring court to ascertain — that operation amounts to the transfer of a substantial part, evaluated qualitatively or quantitatively, of the contents of the protected database, or to transfers of insubstantial parts which, by their repeated or systematic nature, would have resulted in the reconstruction of a substantial part of those contents.

(<sup>1</sup>) OJ C 211, 8.9.2007.

**Judgment of the Court (Seventh Chamber) of 25 September 2008 — Commission of the European Communities v Italian Republic**

(Case C-368/07) (<sup>1</sup>)

**(Failure of a Member State to fulfil obligations — Directive 2000/59/EC — Port reception facilities for ship-generated waste and cargo residues — Failure to develop and implement waste reception and handling plans for all ports)**

(2008/C 301/18)

Language of the case: Italian

**Parties**

*Applicant:* Commission of the European Communities (represented by: K. Simonsson and E. Montaguti, Agents)

*Defendant:* Italian Republic (represented by: I.M. Braguglia, Agent, G. Fiengo and F. Arena, lawyers)

**Re:**

Failure of Member State to fulfil obligations — Failure to have adopted, within the prescribed time-limit, all the measures necessary to comply with Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ 2000 L 332, p. 81)

**Operative part of the judgment**

The Court hereby:

1. Declares that, by failing to prepare and adopt waste reception and handling plans for every Italian port, the Italian Republic has failed to fulfil its obligations under Article 5(1) and 16(1) of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues;
2. Orders the Italian Republic to pay the costs.

(<sup>1</sup>) OJ C 223, 22.9.2007.

**Judgment of the Court (First Chamber) of 2 October 2008 (reference for a preliminary ruling from the Supreme Court — Ireland) — Nicole Hassett v South Eastern Health Board, Cheryl Doherty v North Western Health Board**

(Case C-372/07) (<sup>1</sup>)

**(Jurisdiction — Regulation (EC) No 44/2001 — Point 2 of Article 22 — Disputes as to the validity of decisions of organs of companies — Exclusive jurisdiction of the courts of the State where the company has its seat — Medical practitioners' mutual defence organisation)**

(2008/C 301/19)

Language of the case: English

**Referring court**

Supreme Court

**Parties to the main proceedings**

*Applicants:* Nicole Hassett, Cheryl Doherty

*Defendants:* South Eastern Health Board, North Western Health Board

*In the presence of:* Raymond Howard, Medical Defence Union Ltd, MDU Services Ltd, Brian Davidson