

rely on the exhaustion of the distribution right under Article 4(2) of that directive, and hence be regarded as lawful acquirers of a copy of a computer program within the meaning of Article 5(1) of that directive and benefit from the right of reproduction provided for in that provision.

(<sup>1</sup>) OJ C 194, 2.7.2011.

**Judgment of the Court (Third Chamber) of 12 July 2012  
(reference for a preliminary ruling from the Oberster  
Gerichtshof — Austria) — Compass-Datenbank GmbH v  
Republik Österreich**

(Case C-138/11) (<sup>1</sup>)

*(Competition — Article 102 TFEU — Concept of ‘undertaking’ — Data of the companies register stored in a database — Activity of collection and making available of that data in return for remuneration — Refusal by the public authorities to authorise re-utilisation of that data — ‘Sui generis’ right provided for in Article 7 of Directive 96/9/EC)*

(2012/C 287/17)

Language of the case: German

**Referring court**

Oberster Gerichtshof

**Parties to the main proceedings**

Applicant: Compass-Datenbank GmbH

Defendant: Republik Österreich

**Re:**

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 102 TFEU — National rules providing for payment to be made for consultation of the companies register (Firmenbuch) and prohibiting any other commercial use of that register — Concept of economic activity — Abuse of a dominant position — Scope of the essential facilities doctrine

**Operative part of the judgment**

The activity of a public authority consisting in the storing, in a database, of data which undertakings are obliged to report on the basis of statutory obligations, in permitting interested persons to search for that data and/or in providing them with print-outs thereof does not constitute an economic activity, and that public authority is not, therefore, to be regarded, in the course of that activity, as an undertaking, within the meaning of Article 102 TFEU. The fact that those searches and/or that provision of print-outs are carried out in consideration for remuneration provided for by

law and not determined, directly or indirectly, by the entity concerned, is not such as to alter the legal classification of that activity. In addition, when such a public authority prohibits any other use of the data thus collected and made available to the public, by relying upon the sui generis protection granted to it as maker of the database pursuant to Article 7 of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, or upon any other intellectual property right, it also does not exercise an economic activity and is not therefore to be regarded, in the course of that activity, as an undertaking, within the meaning of Article 102 TFEU.

(<sup>1</sup>) OJ C 186, 25.6.2011.

**Judgment of the Court (Second Chamber) of 5 July 2012  
(reference for a preliminary ruling from the Södertörns  
tingsrätt — Sweden) — Torsten Hörnfeldt v Posten  
Meddelande AB**

(Case C-141/11) (<sup>1</sup>)

*(Equal treatment in employment and occupation — Prohibition of discrimination on grounds of age — National legislation conferring on employees an unconditional right to work until the age of 67 and providing for automatic termination of the employment relationship at the end of the month in which the employee reaches that age — Account not taken of the amount of the retirement pension)*

(2012/C 287/18)

Language of the case: Swedish

**Referring court**

Södertörns tingsrätt

**Parties to the main proceedings**

Applicant: Torsten Hörnfeldt

Defendant: Posten Meddelande AB

**Re:**

Reference for a preliminary ruling — Södertörns tingsrätt — Interpretation of the general principle of law on the prohibition of age discrimination and of Article 6 of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — National legislation and collective agreement granting employees an unconditional right to work until the age of 67 and providing for automatic termination without notice of the employment relationship at the end of the month in which the employee turns 67, without taking account of the actual pension paid to him