Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

12 July 2012*

(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)

In Case C-138/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Austria), made by decision of 28 February 2011, received at the Court on 21 March 2011, in the proceedings

Compass-Datenbank GmbH

v

Republik Österreich,

THE COURT (Third Chamber),

composed of K. Lenaerts (Rapporteur), President of the Chamber, J. Malenovský, R. Silva de Lapuerta, G. Arestis and D. Šváby, Judges,

Advocate General: N. Jääskinen,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 2 February 2012,

after considering the observations submitted on behalf of:

— Compass-Datenbank GmbH, by F. Galla, Rechtsanwalt,

— the Republik Österreich, by C. Pesendorfer and G. Kunnert, acting as Agents,

— the Bundeskartellanwalt, by A. Mair, acting as Agent,

— Ireland, by D. O'Hagan, acting as Agent, and P. Dillon Malone, BL,

— the Netherlands Government, by C. Wissels and J. Langer, acting as Agents,

— the Polish Government, by M. Szpunar and B. Majczyna, acting as Agents,

* Language of the case: German.

— the Portuguese Government, by L. Inez Fernandes, acting as Agent,

— the European Commission, by M. Kellerbauer, R. Sauer and P. Van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 April 2012,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 102 TFEU.

2 The reference has been made in proceedings between Compass-Datenbank GmbH ('Compass-Datenbank') and the Republik Österreich (Republic of Austria) in relation to the making available of data from the companies register (*Firmenbuch*) stored in a database.

Legal context

European Union law

3 Article 2 of the First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ, English Special Edition 1968 (I), p. 41), as amended by Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 (OJ 2003 L 221, p. 13), lists the documents and particulars of companies subject to compulsory disclosure.

4 Article 3 of Directive 68/151, as amended by Directive 2003/58, provides:

'1. In each Member State a file shall be opened in a central register, commercial register or companies register, for each of the companies registered therein.

2. All documents and particulars which must be disclosed in pursuance of Article 2 shall be kept in the file or entered in the register; the subject matter of the entries in the register must in every case appear in the file.

...

3. A copy of the whole or any part of the documents or particulars referred to in Article 2 must be obtainable on application. As from 1 January 2007 at the latest, applications may be submitted to the register by paper means or by electronic means as the applicant chooses.

...

The price of obtaining a copy of the whole or any part of the documents or particulars referred to in Article 2, whether by paper means or by electronic means, shall not exceed the administrative cost thereof.

...'

5 According to Article 7(1) 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), Member States are to provide for a '*sui generis*' right for 'the maker of a database' where 'there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.'

6 Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-utilisation of public sector information (OJ 2003 L 345, p. 90; 'the ISP Directive') states, in recital 5 in the preamble to the directive:

'One of the principal aims of the establishment of an internal market is the creation of conditions conducive to the development of Community-wide services. Public sector information is an important primary material for digital content products and services and will become an even more important content resource with the development of wireless content services. Broad cross-border geographical coverage will also be essential in this context. Wider possibilities of re-using public sector information should inter alia allow European companies to exploit its potential and contribute to economic growth and job creation.'

7 According to recital 9 in the preamble to the ISP Directive:

'This Directive does not contain an obligation to allow re-utilisation of documents. The decision whether or not to authorise re-utilisation will remain with the Member States or the public sector body concerned. This Directive should apply to documents that are made accessible for re-utilisation when public sector bodies license, sell, disseminate, exchange or give out information. ...'

8 Article 1(1) of the ISP Directive is worded as follows:

'This Directive establishes a minimum set of rules governing the re-utilisation and the practical means of facilitating re-utilisation of existing documents held by public sector bodies of the Member States.'

9 Article 2(4) of the ISP Directive defines 're-utilisation' of public sector documents as 'the use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced.'

Austrian law

10 In accordance with Paragraph 1 of the Law on the companies register (*Firmenbuchgesetz*; 'FBG'), the companies register serves for the recording and disclosure of particulars which are required to be registered pursuant to the FBG or other statutory provisions. All legal entities specified in Paragraph 2 of the FBG, such as sole traders and the various forms of companies listed in that provision, must be entered in the register.

11 Particulars listed in Paragraph 3 of the FBG must be registered for all legal entities, such as, for example, their name, legal form, registered office, a brief description of the sector of business, any branch or subsidiary establishments, the name and date of birth of persons with power of representation, the commencement of their power of representation and its nature, and liquidation or the institution of insolvency proceedings.

12 Paragraphs 4 to 7 of the FBG lay down special registration requirements. Any change in registered particulars must also be declared immediately, pursuant to Paragraph 10 of the FBG. According to Paragraph 24 of that law, administrative sanctions can be imposed in order to ensure that the information that has to be disclosed is reported in its entirety in a timely fashion.

13 Under Paragraph 34 of the FBG, any person has the right, depending on the technical resources and staff available, to carry out an individual search of the companies register by means of computerised data transmission.

14 According to the European Commission's observations, under the provisions of the Law on State liability (Amtshaftungsgesetz), the Republik Österreich is responsible for ensuring that the information reported pursuant to the FBG is correct.

15 The fees due for individual and comprehensive searches are fixed by the regulations concerning the companies register database (Firmenbuchdatenbankverordnung; 'FBDV'). The fees charged by the billing agencies and passed on to the Republik Österreich are calculated, in essence, on the basis of the type of information searched for.

16 Paragraph 4(2) of the FBDV provides that the authorisation to search the *Firmenbuch*, in accordance with Article 34 et seq. of the FBG, does not confer, apart from the search for data, any right to use that data. That right is reserved to the Republik Österreich, in its capacity as maker of the database, in accordance with the provisions of Paragraph 76c et seq. of the Law on copyright (Urheberrechtsgesetz; 'UrhG'), adopted in the context of the transposition of Directive 96/9. Under Paragraph 4(1) of the FBDV, the *Firmenbuch* is a protected database, within the meaning of Paragraph 76c of the UrhG. The holder of the rights in respect of that database, within the meaning of Paragraph 76d of the UrhG, is the Republik Österreich.

17 The Federal law on the re-utilisation of public sector authority information (Bundesgesetz über die Weiterverwendung von Informationen öffentlicher Stellen; 'IWG') was adopted in order to transpose the ISP Directive. The IWG provides for the possibility of claming from public authorities, under private law, the right to re-use documents, to the extent that those public authorities make documents available which can be re-used. It lays down, in addition, the criteria for determining the fees which may be charged in that regard. However, access to *Firmenbuch* data is not covered by that law.

The dispute in the main proceedings and the questions referred for a preliminary ruling

18 Compass-Datenbank is a limited liability company established under Austrian law which operates a database containing economic data for the purposes of providing information services. In 1984, it began to set up an electronic version of that database based on a card index system the content of which was checked, corrected and supplemented after searching in the *Firmenbuch*. As editor of the *Zentralblatt für Eintragungen in das Firmenbuch der Republik Österreich* (Central Journal for Entries in the Companies Register of the Republik Österreich), it obtained, until 2001, the data in question from the Federal computer centre with no restriction as to use. It also used that data, inter alia, for its own database.

19 In order to provide its information services, Compass-Datenbank requires access to daily updates of extracts from the *Firmenbuch* concerning entries or deletion of information by undertakings. The information services thus provided are based on information contained in the *Firmenbuch*, supplemented by information resulting from searches carried out by Compass-Datenbank's own editorial services and by other information, such as that emanating from Chambers of Commerce.

20 Following a procurement procedure, the Republik Österreich, which maintains the *Firmenbuch*, conferred in the course of 1999 upon a number of undertakings the setting up of billing agencies for the transmission, in return for payment, of the data in the *Firmenbuch* ('the billing agencies'). Those bodies establish the connection between the final customer and the *Firmenbuch* database and charge the fees, which they then pass on to the Republik Österreich. According to the Commission, as remuneration for their activities, they may charge the final customer, in addition to those fees, a reasonable supplementary amount. The billing agencies and the final customers are prohibited from making their own data collections which reproduce the data in the *Firmenbuch*, from supplying that data themselves or from adding advertising to the content or presentation of that data.

21 In the course of 2001, the Republik Österreich brought before the Handelsgericht Wien (Commercial Court, Vienna) (Austria) in 2001, an action seeking, inter alia, to prevent Compass-Datenbank from using the Firmenbuch data, including storage, reproduction or transmission of that data to third parties. The proceedings between the Republik Österreich and Compass-Datenbank finally led to a decision of the Oberster Gerichtshof (Supreme Court) (Austria), of 9 April 2002, in which that court ordered Compass-Datenbank to refrain, on a provisional basis, from using the *Firmenbuch* database to update its own database and, in particular, from storing or otherwise reproducing data from the register in order to transmit or make it accessible to third parties, or to extract from the *Firmenbuch* information intended for third parties, since that data was not acquired in consideration for payment to the Republik Österreich.

22 The decision of the referring court does not state whether, thereafter, the Austrian courts ruled on the substance of that dispute.

23 There is no account of the separate court proceedings, instituted by Compass-Datenbank and which led to the main proceedings before the Oberster Gerichtshof, in the order for reference, but the Republik Österreich sets out the various steps in those proceedings in its observations.

24 Thus, on 21 December 2006, Compass-Datenbank brought an action before the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna), against the Republik Österreich seeking that it be ordered to make available to it, in return for adequate payment, certain documents from the *Firmenbuch*. Specifically, it requested access to extracts from the *Firmenbuch* containing updated data relating to legal entities registered therein, which had been the subject of entries or deletion of information the day before the search, and to extracts from the *Firmenbuch* containing historic data.

25 The Landesgericht für Zivilrechtssachen Wien dismissed Compass-Datenbank's claims by judgment of 22 January 2008. That rejection was confirmed by the Oberlandesgericht Wien (Higher Regional Court, Vienna), by judgment of 19 December 2008.

26 In the appeal brought before it, the Oberster Gerichtshof also considered, in a judgment of 14 July 2009, that Compass-Datenbank could not derive any right from the IWG. However, it further held that there were elements in the arguments submitted by that undertaking which made it possible to consider that it could rely on provisions of competition law, applying, by analogy, the provisions of the IWG concerning remuneration. It therefore set aside the previous decisions and entrusted to the Landesgericht für Zivilrechtssachen Wien the task of requesting Compass-Datenbank to indicate whether, in the proceedings in question, it based its claims on rights derived from the IWG or those derived from competition law.

27 Questioned on that point, Compass-Datenbank stated, before the Landesgericht für Zivilrechtssachen Wien, that it based its claims expressly on competition law provisions, applying, by analogy, the IWG rules on remuneration, and it amended the form of order sought by it to that effect. By decision of 17 September 2009, that court declined jurisdiction and referred the case to the Oberlandesgericht Wien, the court having jurisdiction in competition matters.

28 Before the Oberlandesgericht Wien, Compass-Datenbank requested, in essence, that the Republik Österreich be ordered to make available to it up-to-date documents from the *Firmenbuch* containing all the extracts from that register concerning the undertakings which had been the subject of entries or deletion of information the day before the documents are made available, in return for 'reasonable remuneration'. Compass-Datenbank's request was based in essence on the argument that the Republik Österreich, as an undertaking having a dominant position on the market, within the meaning of Article 102 TFEU, was obliged to provide it with data from the *Firmenbuch*, applying the 'essential facilities' doctrine.

29 The Oberlandesgericht Wien dismissed Compass-Datenbank's appeal by decision of 8 March 2010. That undertaking appealed against that decision to the Oberster Gerichtshof. The Oberster Gerichtshof observes, in the order for reference, that the prohibition on abuse of a dominant position, laid down in Article 102 TFEU, applies to undertakings, including public undertakings, in so far as they exercise an economic activity. It points out that, according to Case 118/85 *Commission* v *Italy* [1987] ECR 2599, paragraph 7, and Joined Cases C-264/01, C-306/01, C-354/01 and C-355/01 *AOK-Bundesverband and Others* [2004] ECR I-2493, paragraph 58, a legal entity may be regarded as an undertaking in the light of only part of its activities, where that part can be classified as economic in nature but that, according to Case C-343/95 *Diego Calì & Figli* [1997] ECR I-1547, the status of undertaking must on the other hand be ruled out where State bodies are concerned, where and in so far as they act as public authorities.

30 The referring court finds that the first question raised by the case in the main proceedings is whether, if a public authority 'monopolises' the data which must be registered and made public by law by collecting them in a database protected by a *lex specialis*, that authority exercises public powers. The fact that the Republik Österreich, by relying on the law of intellectual property to protect the database at issue in the main proceedings, invokes provisions which are of a private law rather than public law nature, militates against classification of its activity as falling within the exercise of public powers. That court observes that the Republik Österreich is also not acting in the public interest which must in its view seek to ensure that it is possible to obtain diverse and reasonably priced information services, thanks to the operation of competitive forces.

31 The referring court states that, according to recitals 5 and 9 in the preamble to the ISP Directive, public sector data is an important primary material for digital content products and services and that European companies should be able to exploit its potential, which would argue in favour of the application, in the present case, of competition law, even if that directive does not contain any obligation to authorise re-utilisation of the data, but leaves that decision to the Member States.

32 That court states that, if the activities of the Republik Österreich at issue in the main proceedings had to be classified as economic in nature, the question would also arise whether the principles derived from the judgments in Joined Cases C-241/91 P and C-242/91 P *RTE and ITP* v *Commission* [1995] ECR I-743 and Case C-418/01 *IMS Health* [2004] ECR I-5039 ('essential facilities doctrine'), must also be applied, even if there is no 'upstream market' because the collection and storage of the data concerned are carried out in the context of the exercise of public powers. That court states the arguments for and against the application of that doctrine in the case in the main proceedings.

33 It is in those circumstances that the Oberster Gerichtshof decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 102 TFEU to be interpreted as meaning that a public authority acts as an undertaking if it stores in a database (*Firmenbuch* — companies register) the information reported by undertakings on the basis of statutory reporting obligations and allows inspection and/or print-outs to be made in return for payment, but prohibits any more extensive use?

(2) If the reply to Question 1 is in the negative:

Does a public authority act as an undertaking in the case where, in reliance on its *sui generis* right to protection as the maker of a database, it prohibits uses which go beyond that of allowing inspection and the creation of print-outs?

(3) If the reply to Questions 1 or 2 is in the affirmative:

Is Article 102 TFEU to be interpreted as meaning that the principles laid down in the judgments in [*RTE and ITP* and *IMS Health*, cited above] ("essential facilities doctrine") are also to be applied if there is no "upstream market" because the protected data are collected and stored in a database (*Firmenbuch* — companies register) in the course of a public-authority activity?'

Questions referred for a preliminary ruling

The first and second questions

34 By its first and second questions, which should be considered together, the referring court asks, in essence, whether 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 in return for payment, while prohibiting any other use of that data — that authority relying, inter alia, on the *sui generis* protection granted to it as maker of the database in question — constitutes an economic activity, meaning that that public authority is to be regarded, in the course of that activity, as an undertaking, within the meaning of Article 102 TFEU.

35 In that regard, it is settled case-law that, for the purposes of the application of the provisions of European Union competition law, an undertaking is any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed (see, inter alia, Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21, and Joined Cases C-159/91 and C-160/91 *Poucet and Pistre* [1993] ECR I-637, paragraph 17). It is clear from established case-law that any activity consisting in offering goods and services on a given market is an economic activity (see Case C-82/01 P *Aéroports de Paris* v *Commission* [2002] ECR I-9297, paragraph 79; Case C-49/07 *MOTOE* [2008] ECR I-4863, paragraph 22; and Case C-437/09 *AG2R Prévoyance* [2011] ECR I-973, paragraph 42). Thus, the State itself or a State entity may act as an undertaking (see, to that effect, Case 41/83 *Italy* v *Commission* [1985] ECR 873, paragraphs 16 to 20).

36 By contrast, activities which fall within the exercise of public powers are not of an economic nature justifying the application of the FEU Treaty rules of competition (see, to that effect, Case 107/84 *Commission* v *Germany* [1985] ECR 2655, paragraphs 14 and 15; Case C-364/92 *SAT Fluggesellschaft* [1994] ECR I-43, paragraph 30; and *MOTOE*, paragraph 24).

37 In addition, a legal entity, and inter alia a public entity, may be regarded as an undertaking in relation to only part of its activities, if the activities which form that part must be classified as economic activities (*Aéroports de Paris*, paragraph 74, and *MOTOE*, paragraph 25).

38 In so far as a public entity exercises an economic activity which can be separated from the exercise of its public powers, that entity, in relation to that activity, acts as an undertaking, while, if that economic activity cannot be separated from the exercise of its public powers, the activities exercised by that entity as a whole remain activities connected with the exercise of those public powers (see, to that effect, Case C-113/07 P *SELEX Sistemi Integrati* v *Commission* [2009] ECR I-2207, paragraph 72 et seq.).

39 In addition, the fact that a product or a service supplied by a public entity and connected to the exercise by it of public powers is provided in return for remuneration laid down by law and not determined, directly or indirectly, by that entity, is not alone sufficient for the activity carried out to be classified as an economic activity and the entity which carries it out as an undertaking (see, to that effect, *SAT Fluggesellschaft*, paragraph 28 et seq. and *Diego Calì & Figli*, paragraphs 22 to 25).

40 In the light of the entirety of that case-law, it must be observed that a data collection activity in relation to undertakings, on the basis of a statutory obligation on those undertakings to disclose the data and powers of enforcement related thereto, falls within the exercise of public powers. As a result, such an activity is not an economic activity.

41 Equally, an activity consisting in the maintenance and making available to the public of the data thus collected, whether by a simple search or by means of the supply of print-outs, in accordance with the applicable national legislation, also does not constitute an economic activity, since the maintenance of a database containing such data and making that data available to the public are activities which cannot be separated from the activity of collection of the data. The collection of the data would be rendered largely useless in the absence of the maintenance of a database which stores the data for the purpose of consultation by the public.

42 With regard to the fact that the making available to interested persons of the data in such a database is remunerated, it should be noted that, in conformity with the case-law cited in paragraphs 38 and 39 of the present judgment, to the extent that the fees or payments due for the making available to the public of such information are not laid down directly or indirectly by the entity concerned but are provided for by law, the charging of such remuneration can be regarded as inseparable from that making available of data. Thus, the charging by the Republik Österreich of fees or payments due for the making available to the public of that information cannot change the legal classification of that activity, meaning that it does not constitute an economic activity.

43 In that regard, it should be noted that, according to the information contained in the order for reference, it is the Republik Österreich which maintains the *Firmenbuch* and the database derived from it, whereas the billing agencies, selected in a procurement procedure, establish the connection between the final customer and the *Firmenbuch* database and collect the fees provided for under the FBDV, the sum of which they transfer to the Republik Österreich. As remuneration for their activities, the billing agencies may, according to the Commission, charge the final client with a supplement of a reasonable amount over and above those charges.

44 Thus, as stated by the Advocate General in point 29 of his Opinion, the activities of the Republik Österreich themselves must not be confused with those of the billing agencies. In the main proceedings, it is the activities of the Republik Österreich and not those of the billing agencies which are at issue.

45 The Republik Österreich stated at the hearing that the billing agencies are selected exclusively on the basis of qualitative criteria and not on the basis of a financial tender and that they are not limited in number. If that is so — that being for the referring court to establish — the only remuneration which the public authorities receive in consideration for the maintenance and the making available to the public, by means of the billing agencies, of the information appearing in the database at issue in the main proceedings, is constituted by the charges provided for under the FBDV.

46 The referring court raises before the Court the question of the activity of a public authority consisting in a prohibition on billing agencies from re-using the information collected by that authority and stored in the database of a public register such as the *Firmenbuch* in order to provide their own information services. In particular, it asks whether the fact that that public authority relies on the *sui generis* protection which is granted to it as maker of a database, in accordance with Article 7 of Directive 96/9, amounts to the exercise of an economic activity.

47 In that regard, it must be held that a public entity which creates a database and which then relies on intellectual property rights, and in particular the abovementioned *sui generis* right, with the aim of protecting the data stored therein, does not act, by reason of that fact alone, as an undertaking. Such an entity is not obliged to authorise free use of the data which it collects and make available to the public. As observed by the Republik Österreich, a public authority may legitimately consider that it is necessary, or even mandatory in the light of provisions of its national law, to prohibit the re-utilisation of data appearing in a database such as that at issue in the main proceedings, so as to respect the interest which companies and other legal entities which make the disclosures required by law have in ensuring that no re-use of the information concerning them is possible beyond that database.

48 In that regard, it follows from the order for reference that a statutory limitation on re-utilisation of *Firmenbuch* data exists under Austrian law, Paragraph 4(2) of the FBDV providing that the authorisation to search the *Firmenbuch* in accordance with Article 34 et seq. of the FBG does not confer, apart from a data search, the right to use that data.

49 The fact that the making available of data from a database is remunerated does not have any bearing on whether a prohibition on the re-use of such data is or not economic in nature, provided that that remuneration is not itself of such a nature as to enable the activity concerned to be classified as economic, in accordance with the reasoning set out in paragraphs 39 to 42 above. To the extent that the remuneration for the making available of data is limited and regarded as inseparable from it, reliance on intellectual property rights in order to protect that data, and in particular to prevent its re-use, cannot be considered to be an economic activity. Such reliance is, accordingly, inseparable from the making available of that data.

50 Finally, to the extent that the referring court questions whether the ISP Directive can have an effect on the answer to the first and second questions, it must be held that, in accordance with what is stated in recital 9 in its preamble, that directive does not contain any obligation to authorise re-utilisation of documents. In addition, access to *Firmenbuch* data is not covered by the IWG, the law by which the Republik Österreich transposed the ISP Directive. It follows that that directive is irrelevant for the purposes of determining whether the refusal to authorise the re-utilisation of data in the case in the main proceedings was or was not economic in nature.

51 Taking into account all of the foregoing considerations, the answer to the first and second questions is that 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 at issue pursuant to Article 7 of Directive 96/9 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.

The third question

52 Taking into account the answer given to the first and second questions, and in the light of the fact that the third question is asked in the alternative, there is no need to answer that third question.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

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.

[Signatures]