

?????? C-464/10

État belge

????

Pierre Henfling, Raphaël Davin ??? Koenraad Tanghe, ??? ??? ???????? ????
????????? ??? ?????????? ??? Tiercé Franco-Belge SA

(?????? ??? cour d'appel de Mons
??? ??? ?????? ?????????????? ??????????)

«????????? – ??? ?????? ??? – ?????? 6, ?????????? 4 – ?????????? – ??? 13, B, ??????????
??? – ?????? ?????? – ?????????? ?????????? ??? ?????????? (?????????
?????????) ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????????? ??????????????
????????? ?????????????? ?????????? ?????????»

????????? ??? ??????????

????????? ?????? – ?????????? ??? ?????????? – ??? ?????? ?????? ?????? – ???
????? ??? ?????? ?????????? ??? – ?????????? – ?????????? ??? ?? ?????? ?????? –
??????

(?????? 77/388 ??? ??????????, ??? 6 § 4 ??? 13, B, ??????? ???)

?? ??? 6, ?????????? 4, ??? 13, B, ??????? ???, ??? ?????? ?????? 77/388, ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
?????????, ??? ??? ?????? ???, ?????? ?????????????? ?????? ??? ?????? ??? ?????? ???,
??? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????????
??? ?????? ??? ?????? 13, B, ??????? ???, ? ?????????? ??? ??????????, ??????? ??? ??????
6, ?????????? 4, ??? ?????? ??? ??? ?????????? ?????? ?????????? ?????????? ??????????
????????? ?????????? ??? ?????? ???.

(?? . ??? 44 ??? ??????.)

?????? ??? ?????????? (?????? ????)

?? 14?? ?????? 2011 (*)

«?????????? – ??? ?????? ??? – ??? 6, ?????????? 4 – ????????? – ??? 13, B, ?????????
??? – ?????? ?????? – ?????????? ?????????????? ??? ?????????????? (?????????
?????????????) ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????????
????????? ?????????????? ?????????? ??? ?????????»

???? ?????? C2464/10,

?? ?????????? ??? ?????? ?????? ?????????????? ?????????? ??? ?????? 267 ???,
??? ?????? ?? cour d'appel de Mons (??????) ?? ?????? ??? 17?? ?????????? 2010, ?
????? ?????? ??? ?????????? ??? 24 ?????????? 2010, ??? ?????? ??? ????

État belge

????

Pierre Henfling, Raphaël Davin ??? Koenraad Tanghe, ??? ??? ??????? ????
??? ?????????? ??? Tercé Franco-Belge SA,

?? ?????????? (?????? ???),

????????? ??? ??? D. Šváby, ?????? ???????, R. Silva de Lapuerta ??? T. von Danwitz
(?????????), ????????,

?????? ??????????: Y. Bot

?????????: K. Malacek, ??????? ????????????,

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ?? ?????????? ?????????? ???
18?? ??? 2011,

????????? ??? ??? ?????????? ??? ????????:

- ?? P. Henfling, R. Davin ??? K. Tanghe, ??? ??? ??????? ??? ?? ??????? ???
????????? ??? Tercé Franco-Belge SA, ?????????????? ??? ??? O. Bertin, ????????,
- ? ?????? ????????, ?????????????? ??? ??? M. Jacobs ??? L. Van den Broeck ???
??? ??? ??? J.-C. Halleux,
- ? ?????? ????????, ?????????????? ??? ??? D. Recchia, ??? B. Stromsky ??? ???
C. Soulay,

?????? ??? ??????? ??? ??????, ??? ?????? ??? ?????? ???????????, ?? ??????? ???
?????? ??? ?????? ????????,

?????? ??? ????????

???????

1 ? ?????? ??????? ?????????? ?????????? ?????? ??? ??????? ??? ??????? 6,
????????? 4, ??? 13, ?, ??????? ???, ??? ?????? ?????? 77/388/??? ??? ???????????, ???
17?? ??? 1977, ??? ?????????? ??? ?????????? ??? ?????? ???, ??? ??????? ???, ??? ??????? ???
????? ??? ?????? ??? – ??? ?????? ??? ?????? ?????? ?????????????? ????: ??????????
????????? ??? (?? ????. ??? 09/001, ?. 49, ??? ????: ??? ??????).

2 ? ?????? ??? ??????????? ??? ?????? ??????? ??????? ?????? État belge
(???????) ??? ??? ?????? Henfling, Davin ??? Tanghe ?? ??????? ???
?????????? ??? Tiercé Franco-Belge SA (???: TFB) ?? ??? ?? ??????? ??? ?? ???
?????? ?? ???????? ??? ??? ????? ??????????? ????? (???: ???) ??? ???????
?????????? ??? ???????? ??????????? ??? ?????????? ??? ?????????? ??? TFB.

?? ?????? ?? ??????

? ?????????????? ????????

3 ????? ?? ?????? 2, ??????? 1, ??? ?????? ????????, ??????????? ????? ?? «?? ???????????
?????? ?? ?????? ?? ??????? ?????????? ?? ?????????????????? ?? ?????????? ?? ?????? ??
????????? ?? ?????? ?? ?????????? ?? ??????????? ????? ??, ??? ?????? ?? ?????? ?? ?????????? ?? ?????».

4 ????. ?? ?????? 5, ??????????? 1 ??? 4, ?????????? ??, ??? ??????? ??????, ?? ????????
?????? ??????? «? ?????????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ??
??????» ????? ?? «? ?????????? ??????, ? ????? ?????????????? ?? ??? ????? ???????
?????? ???. ????? ????».

5 ?? ?????? 6 ??? ?? ??? ?????? ?????????? ???????????;

[...]

4. ?????????????????? ????, ? ?????? ??????? ?????? ????, ?????? ????, ????, ????, ??????????

[...]»

6 ?? ????? 13 ?? ????? ????????, ?? ????? «?????????? ???. ?????????? ???. ??????»,
???????:

«[...]

? . ? ? ? ? ? ? ? ? ? ?

[...]

??) ?? ????????????, ?????? ???. ?????? ?????? ?????? ????????????, ?? ???. ????????????, ???.
???. ????????????, ???. ?????? ???. ?????? ?????? ?????? ?????? ???. ?????? ???. ?????? ???.

[...].».

? ?????? ??????????

7 ?? ?????? 10, ??????????? 1, ??? ?????? ??? ?????? ?????? ?????????????? ??? (???)

????: ?????? ???) ??????:

«?? ???????? ?????? ?????? ? ???????? ???? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??????.

????????? ?????? ??? ???? ?????? ?? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

8 ?? ????? 13, ?????????? 1 ??? 2, ??? ?????? ?????? ??????:

«1. ? ?????????????? ?????? ?????????? ?????????? ???, ?? ???? ??? ??????????????, ?????? ??? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ???, ?? ?????? ?????? ?????? ?????? ???, ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

2. ?????? ?????? ??????????????, ??? ?????? ?????? ??? ??????.

9 ??? ???? 18 ??? ?????? ???:

«?? ?????? ?????????? ?????????? ???, ???? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

?????????, ?????? ???, ?? ?????? ?????? ?????? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

[...]

3. ??? ??????.

[...]».

10 ?? ????? 20, ?????????? 1, ?????? ??????, ??? ?????? ??? ??????:

«[...] ??? ?????? ?????????? ?????????? ???? ??????, ? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? 13, ?????????? 2, ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

11 ??? ???? 44, ?????????? 3, ?????? 13, ??? ?????? ?????? ?????? ?????????? ??? ??? ???? «?? ?????????? ?? ?????? ?????? ??? ???? ??????.

? ?????? ??? ?????? ?????? ??? ?????? ??? ???? ?????????? ??????

12 ? TFB, ? ?????? ?????????? ?? ?????? ?????? ??? 27 ?????????? 2008, ?????? ?????? ??????, ?????????? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

13 ??? ?????? ??? ?????????? ???, ? ?FB ?????????? ?????? ?????? ?????? ?????? ?????? ?????? «????????? ??????????», ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

????????????? ?????? ?????????????????? ?? ?? ??????? ???? ?????????????? ??? ?? ?????????? ???? ?????????????? ?
?? ?? ?????? ?????????? ??????????, ?? ?????????? ?? ??????????????, ?? ?????????? ?? ?????????? ?
????????????? ??? ?? ????? ?????????????????? ?????? ??? ?? ??? ?????? ??? ??????.

14 ??????? ?????????? ?????????? ?????????? ?? ??? TFB ?? ??????? ??????????????
«?????? ??????????».

15 ??????? ?? ?????????? ?????, ? TFB ?????? ??????? ??? ?????????? ?????????????? ???
????????????? ??? ?????? ?????? ??????????. ?????? ??? ?????? ??? ??? ??? ?????????????? ??
??? ?????????? ???????, ??????????? ?? ??? ?????? ??? ?????????????? ?????????? ???
????????????? ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????????????? ?????? ??? ??
????????? ??? ?????????????? ??? ?????? ?????????? ??????????.

16 ? ??????? ???. ?????????? ?????? ??? ? TFB ????? ???. ?????????? ??? ??????????
????????????? ??? ?????????????? ?????? ??? ? ?????? ?????? ???. ?????????? ??? ?????????? ??? ???.
????????????? ?????????? ??? ? ?????? ?????? ??? ??????. ? TFB ????? ???. ?????? ??? ???.
????? ??? ?????????? ?????????? ??? ? ?????????? ??? ???. ??????????, ??? ?????????? ??? ???.
????????????? ?????????? ??? . ? ?????????? ?????????? ?????????? ??? ?????????? ??? ???.
????????????? ?????????? ??? ? ?????????? ??? ? ?????????? ?????? ??? ? TFB ??? ???. ??? ???.
??? ?????????? ??? ?????????? ?????????? ??? ? ?????????? ??? ???. ??? ?????????? ??? ???. ??? ?????????? , ???.
????????? ??? ?????????? ??? ? ?????????? ?????? ??? ? ?????????? ??? TFB ?????? ???.

17 ??????????, ? ??????? ?????????????? ?????????????? ??????????????, ??? ? ? ?????????????? ?? ??? TFB
«?????? ??????????», ?? ?????? ??? ?????????????? ?? ?????? ?????????? ?? ??????
???????????, ?????? ????, ??? ??????????, ?? ?????????? ??? ? ?? ??????? ????.
??????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????
??? ? ? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ? ? ?????????? ?? ?????????? ?? ???
????????????? ??? ?? ?????????? ??? TFB. ??????, ??? ?? ?????????? ?? ??????????
????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??? ?????????? ?????????? ??? ???
????????? ??? ?????????? ??? ?????????? ???.

18 ? TFB ??????? ???. ?????????? ?????????????? ??? ?????? ?? ?????????????? ??? ?? ???
????????????? ??? ?? ?????? ??? ?????????????? ??????????????????, ??? ?????? ???, ???
????? ?????????? ???????, ??? ??? ?????????? ?? ?????? ??? ?????? ??? ?????????????? ???
??? ?????????? ??? ?????? ??? ?????????????? ?????????????? ??? ??? ?????????? ???
????????? ??? ?????? ?????????? ??? TFB.

19 ????? ???? ?????????? ?????????? ??? ?????????????? ??? TFB, ? ????? ???? ?????????????? ???
?????????????, ? ?????? ???? ? ?????? ? ?????? ??? ?????? ??? ?????? ?????????????? ??????????????,
????? ?????? ?? ???????? ??? ?????????? ?????????????? ??????????????, ?? ??? ? ? ? ??????, ?????? ??
????????????? ?? ?????????????? ??? ?????? ??? ?????? ????. ????????, ? ??????? ?????? ????? ??????????????
????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????????????? ?????? ?????
????????? ?? ?????????? ???.

20 ? ?????????? ?????????? ?????????? ?? ????????, ?????????????? ?? ??????? ????
????? ??? ?????????????? ??????, ??????? ?????????? ??? ?????? ???
????????????????? ??????. ? ?????????? ??? ?????????????? ??? ??????????????
????????? ????. ??? ?????????? ?????? ?????? ?????????? ??????????. ? ?????????? ??????????
??? ?????????? ?????? ?????????? ??? TFB ??? ??? ?????????? ??? ?????????? ???.

21 ?? ???????, ?? ????? ??????? ? ?????????? ?????????????? ??? ?????????? ?????? ???????
??? ??? ??? ????? ?????????????? ?? ???????????, ??????????, ??? ?????????????? ???
?????????? ????, ?? ????? ??? ?????????? ??????????????, ??? ?????? ??? ?????????? ???

????????? ?????? ??? ?????? ??????? ??? ???. ????????, ??? ??????????? ??? ???. ?????? ?????????? ?????? «Belgische Tercé»
???????? «Tercé belge» ??? ??? ??? ?????? ????? «Tercé Franco Belge». ??? ??????? ??? ???.
????? ?????? ??????? ??????????? ?? ?????????? ?????? «?? ?? ??????? ???, ?
????????????? ?????????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ??? ?????? ??? ??????????
??? S.C. (Société coopérative) P.M.U. belge, ??? S.A. Tercé Franco-belge ??? ??? Bingoal».

22 ??? ?? ??????? ??????????? ???????, ? ?????? ?????? ??? ?????? ??? 2000, ?
????????? ??????????? ??? ??????????? ??? ?? ??????????? ??? ??????????? ?? ???????????
?????????? ??? 1?? ?????????? 1997 ??? 31?? ?????????? 2000 ??? ??????????? ??
???. ?????????? ??? ?? ?????????? ??????????? ?????????? ??' ??????? ??? TFB ???,
????????, ? ?????????? ??? ?????? ?? ?????????? ?? ???, ?? ??? ?????? ???, ??? ???????
??? 2001, ?????????? ??? TFB ??????? ?????? ???, ?????????? ?? ??? ??????? ???
?????? ???????????, ??? ??? ?? ??????????? ???.

23 ? TFB ?????? ??????? ??????? ??? ??????????? ??? ??????? ??? ?????? ??? ??????
??? ? ??? ??? ??????? ??? ??? ??????? ???????????, ??????????? ??? ?? ??????????
?????????? ???, ??? ??? ??????? ??? ??????????? ??? ???, ?? ??????????? ??
?????????????? ?? ?????? ?????????? ??? ?????? ??????? ?????????? ?????????? ??? ???????????
??? ?????? ???.

24 ?? ??? ??? 20 ?????????? 2004 ???????, ?? ?????????? ??? ?????? ??? ?????? ?? ??????
??? TFB. ??????? ??????? ??? État belge, ?? ??????? ??? ?????? ??????????? ??? ??
?????????? ??? ??????? ??? ?????? ??? 5?? ?????????? 2005. ?? ??????????
?????????? ??? ??????? ??? ?????? ??? ??????? ??? ?????? ?????????? ??? ??????????
??????????.

25 ?? ?????? ?????????? ???, ??????, ?? ?????????? ?????? TFB ??? ???????
?????????? ??? ?????? ??? ?????? ??? ??? ?????????? ?????? ?????????? ??? ??????????
????????? ??? TFB ??? ?????? ?????????? ?????? ?????????? ?????????? ???
????????? ??????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ?????????? ???
??? ??? ??????? ??????? ??? ??????, ?? ?????????? ??? ?????????? ??? ?????????? ??? ??
13, ?????????? 2, ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????, ???????
????????? ??? ???????, ?? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ??????????
??? ??? ?????? ??? ?????? ??? TFB.

26 ???????, ?? ?????? ?????????? ??? ??????? ?? ?????????????? ?? ??
????????????? ??? ??? TFB ??? ?????? ?????????? ?????????? ?????????? ??????????????
??? ??? . ?????????? ???, ??????, ? ??? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ??????, ?? cour d'appel de Mons ?????????? ?? ?????????? ??
????????? ??? ?? ?????? ??? ?????????? ?? ?????????? ?????????? ??? ??????:

«????? ?? ??? 6, ?????????? 4, ??? 13, B, ??????? ???, ??? [????? ??????] ??? ??????
??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ???, ?
????? ?????????? ??? ?????? ???, ??? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? [?? ???] ??? 13,
B, ??????? ??? [...];»

??? ??? ?????????????? ??????????

27 ?? ?? ??????? ???, ?? ?????? ?????????? ??? ?? ?????????????? ?? ?? ?? ?????? 6,

?????????? 4, ??? 13, B, ??????? ???, ??? ?????? ??????? ?????? ??? ?????? ???

?????????? ??? ??????? ?????????? ??? ??? ??? ??? ??????? ??? ?????? ???????

??????????????, ? ?????? ??????? ??? ???????, ??? ??? ?????????? ???????????????

? ?????? ?????????? ??? ?????? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? 13, B,

????????? ????. ??????????, ?? ?????? ??? ??????? ??? ???????, ??? ?????? ??? ???,

??? ?????? ?????? ?????? ?????????????? ?????? ?????????? ?????? ?????? ?????????? ???

????????????? ?????????????? ??? ?????? ?????????? ??? ???????, ??? ???

????????? ??? ?? ??? ????? ???????????.

28 ????? ?? ?????? 13, B, ?????????? ???, ??? ?????? ????????, ?? ????????????, ??
????????????? ?????? ??? ?? ?????? ?????? ? ?????????? ?????? ?????????????? ??? ??? ???,
??? ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????.

29 ????? ?????? ??????????? ?? ??????????, ?????? ??? ??? ?????? ???????, ?????? ??
?????????? ?? ? ??????? ?? ?????? ?????? ?????????? ??????????? ?? ?????? ?????? ???????
??????, ?????? ? ??????? ?? ?????? ?????????? ?????? ?????? ?????? ?? ?????? ?????? ??
?????????? ?? ?????? ???????, ??? ??? ??? ?? ??????? ??????????? ??????????? ??
?????????? ?? ?????? ???????, ??? ??? ??? ?? ??????? ??????????? ??????????? ??
?????????? ?? ?????? ???????, ??? ??? ??? ?? ??????? ??????????? ?????? (??. ??????? ??
13?? ?????? 2006, C?89/05, United Utilities, ?????? 2006, ?. I?6813, ????? 23, ??? ?? 10??
?????? 2010, C?58/09, Leo-Libera, ??? ??? ??? ??????????? ?????? ??? ???????, ????? 24).

30 ? ?????? ?????????? ????????????, ??? ?????? ?????? ? ??????? ?????, ?????????????????? ???
??? ?????? ??????? ?????????? ??????? ?????? ????? ?????????????????? ??? ??? ??? ??? ??????, ??
???????????, ??? ?????????? ??? ?????????? ?????????????? ?????????????????? ??? ?????? ??????
(????????????? ??? United Utilities, ??? 26).

32 ???????, ? ??????? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? United Utilities. ????????????, ??????, ?
????????????? ??? ?????????? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? «call
centre», ?????? ?????, ?????? ?? ?????????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
??????????, ?? ?? ??? ?????? ?????????? ?????? ?? ?????????? ??? ?????? ??? ?????? ???, ??????, ?????, ?????? ?????????????? ???
?? ?????????? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???, ??????, ?????, ?????? ?????????????? ???
?? ??? ?????? ??? ?????? ??? ?????? ?????? ???????????????. ????????, ? ??????? ??? ??????
???? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???' ?????? ??? ?????? ??? ?????? ??? ??????
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

33 ? ?????????? ??? ?????? ?????? ??????? ???, ?????????? ??? ?????? ??? ?????????? ???
?????? ??? ??????? ??? ?????????????? ?????? United Utilities, ??? ??????????????
??? ?????? 27 ??? ?????????? ????, ? ?????? ?????? ??? ?????????????? ?????? ?????? ???
????????????????? ??? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ??? ? ??????
?????????????????, ??? ?????? ??? ?????????????? ??? ??? ??????????????????, ????, ???
??? ?????????????? ??? ??? ?? ??????????????, ???????.

34 ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ???, ?? ?????? 6,
????????? 4, ??? ?????? ?????? ?????????? ???, ??? ?????????????? ??? ?????, ?? ??????
????????? ??? ?????? ??? ?????? ??? ?????????? ??????, ?????????? ?? ?????????? ??????????,
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ??? ?????? ??????????

35 ???????, ? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ???????,
????????? ??? ?????? ??? ?????????, ?? ?????? ?????????? ??? ??????????. ??????? ???
????????? ??? ?????? ??? ??????, ? ?????????? ??? ?????? ?????????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????????? ???, ???????, ??? ?????? ??? ??
???? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??????, ? ??????
????????? ??? ?????????? ???, ?????? ?????? ??? ?????? ?????? ?????? ?????????? ???
????? ??? ?????? ??????. ???????, ??? ?????? ?? ?????? ?????? ?????? ?????????????? ???
????????????? ???, ? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ??????????
????????????? ??? ?????????? ??? ???.

36 ??????? ??? ?? ?????? 6, ?????????? 4, ??? ?????? ?????? ?????????? ??? ?????? V
??? ??????, «????????? ???» ??? ?????????? ???, ?????? ?? ??????????????
????????????? ??? ?????? ?? ?????? ?????????? ??? ? ?? ?????????? ???, ?? ??????????????
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ??? ??? ???
????????? ? ??? ?????? ??????, ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????????????? ??? ?????????? ??? ???, ? ?????? ?????? ??? ?????????? ??? ??? ??? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?? ??? ?????? 13, B, ?????????? ???, ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ? ??????????????, ??? ? ?????????? ???
????????? ??? ?????? ??? ?????? ???.

37 To ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 13, B, ?????????? ???,
??? ?????? ???, ?????? ?? ??? ?????? ?????????? ?????????? ???????????. ???????????, ?
????????? ??? ???, ?? ?????? ?? ?????? ?????????? ???, ?????????????? ??????????????
??? ?????????? ??? ?????? ?????????? ??? ?????? 6, ?????????? 4, ??? ?????? ??? ??
??? ?????????? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????? ?????????, ??? ?????? ?????? ??? ?? ??? ?????? 13, B, ?????????? ???, ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ? ??????????????, ??? ? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???.

38 ?????????? ??? ?????? ??? ?????????? ? ?????? ?????????? ???, ? ?????? ??? ??????????
????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??? ??? ??? ???
13, B, ?????????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ???
????????????? ???, ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ? ??????
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?. ??????????????
????? ?????????? ??? ?? ?????? 6, ?????????? 4, ??? ?????? ??????, ? ?????? ??????
????????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????????? ?????????? ?, ? ??????
????????? ??? ?????? ??? ?????? ??? ?????????? ???, ?? ?????? ?????????? ??? ??? ??? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ? ?????? ?????? ??? ??? ??? ???
??? ??? ?????? ??? ?????? ??? ?????? ???.

39 ??? ?????? ?? ?????? ?? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ???
????????? ???, ??? ?? ?????? ??? ?????????? ???, ??? ?????? ??? ??? ??? ???

?????? 6, ?????????? 4, ??? ????? ???????, ?? ????? ??????? ? ??????? ??????????,
?????????? ? ?????????? ??? ?? ?????????? ???????, ?? ????? ?????????????? ???
????? ??? ?????????? ???, ?????????? ??? ?????????????? ??? ?? ?? ??? ????? ??????????
????????? ?????? ??? ?????????? ???.

40 ??? ?????? ??? ??????????? ??? ?????? ?????? ?? ????? 267 ????, ??????????? ???
?????? ???????????, ??? ??? ????? ?????????? ??????? ? ?????? ?????? ??? ??????? ???
26 ??? ?????? ???????, ?? ???????, ?????? ??? ?????????? ??? ???????, ??? ???????, ???
??? ?????? ??? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ???
???, ?? ?????????? ??? ? ?????????? ??? (??., ???????, ??? ?????? ?? ????? 26 ??? ???
??????, ?????????? ??? 12?? ?????????? 1992, C?163/91, Van Ginkel, ??????? 1992, ?.
I?5723, ?????? 21, ?????? ??? 13?? ?????????? 2005, C?200/04, ISt, ??????? 2005, ?.
I?8691, ??????? 19 ??? 20).

41 ??????, ?? ??????????, ?????????? ?? ?????????? ??? ??????? ?????????? ??????????
??????????, ??? ?????? ?? ???????, ?? ?????????? ??? ??????? ??? ?????????? ???
????? ??? ?? ??????? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ???,
?? ?????????? ??? ?????? ?????????? ?? ??????? ??? ??????? ??? (?. ?????????? ???
11?? ?????????? 2007, C?438/05, International Transport Workers' Federation ??? Finnish
Seamen's Union, ??????? 2007, ?. I?10779, ????? 85, ?????? ??? 13?? ??????? 2010,
C?73/08, Bressol ???., ??? ??? ??? ?????????? ??? ?????? ??? ???????, ????? 65).

42 ??? ?????? ??? ??????? ?????????????? ??? ?????????? ?????????? ??? ??????
?????, ?????????? ???, ??????? ? ?????????? ??? ? ?????????? ??? ?????? ??? ??????? ??
????????? ??? ??????? ??? ?????? ?????????? ???, ??? ?????????? ??? ?????? ???
????????? 4, ??? ?????? ???????, ?????? ?? ?????????? ??? ?????? ??? ?????????? ???
??????, ??? ?????????? ??? ?? ????? 40 ??? ?????????? ?????????, ?????????? ??? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??? ???
????????? ??? ?????????? ?????????? ??? ?????? ?????? ??? ?????????? ??? ??? ???
??, ?????? ??? ?????????? ??? ?????????? ??? ?????????, ?? ??? ????? ?????????? ??????????
????????? ???????, ??? ?? ?????? ??? ?????????? ??? ?????? ???.

43 ??????, ?????? ?? ?????? ???, ?????? ???, ?? ?????? ??? ? ?????? ???
????????????? ??? ?????? ??? ? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ????????
?????, ??? ?? ?????? ??? ??????? ?? ?????????? ?????????? ??? ??????? ?? ?????? ???
TFB, ??? ?? ??????? ???????, ??????? ??? ?????? ??? ?????????? ??? ?????????? ???
????, ?? ??????? ??? ?????? ??? ?????????? ??? ?????? ??? ???????, ??? ?? ???????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?? ??????????
????????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???
?? ?????????? . ???????, ? ?????? ?????? ?????? ?????????? ?? ?????? ???
????????? ?? ?????? ?????? ??? ?????? 6, ?????????? 4, ??? ?????? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ?????????? ???
????????? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ?? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????????? ???
????? ?????????? ??? ?????? ??? 6, ?????????? 4, ??? ?????? ??????, ? ?????????? ???
?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

44 ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
? ?????? ??? ?? ?????? 6, ?????????? 4, ??? 13, B, ??????? ???, ??? ?????? ???
????? ??? ?????? ???, ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???

???????????? ???? ?????????? ?????? ?????????????? ?????????????? ?????????????? ?????????????? ?????????????? ,???? ??
????????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 13, B,
????????? ???, ? ?????????? ?????? ?????? ?????????? ,????????? ??? ?????? 6, ?????????? 4, ???
????????? ???? ?? ??? ?????????????? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????? ???
????????? ???.

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45 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ??????????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ????? ??????????????
???? ?????????? ?????????? ??? ??????????, ??? ??? ?? ??? ?????????, ??? ??????????.

???? ???? ?????? ??????, ?? ?????????? (?????? ?????) ????????????:

????????? 6, ?????????? 4, ??? 13, B, ????????? ???, ??? ????? ?????? 77/388/??? ???
??????????, ??? 17?? ??? 1977, ??? ?????????????? ??? ?????????? ??? ?????????? ??? ??????
?????, ??? ??????? ?? ??? ????? ?????? ?????? ????????? - ??? ????? ?????? ????
????????????? ????: ?????????? ?????????? ???, ??? ?????? ??? ?????? ???,
?????? ?????????????? ?????? ?????????? ??? ???????, ??? ?????? ??? ??????????
????????????? ?????? ?????????? ?????????????? ?????????????? ??????????????, ??? ??
?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ???
????????????? ??? 13, B, ????????? ???, ? ?????????? ???
?????????, ??? ?????? ??? ?????? 6, ?????????? 4, ??? ?????? ??? ?? ???
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(???????????)

* ??????? ??????????????: ? ???????.