

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

??? 7?? ?????????? 2013 (\*)

«????????????? ?????????? – ????? 63 ??? ?? 65 ??? – ?????????? ?????????? ???  
????????? – ?????????? ?????????? ??????? ?? ?????????? ??? ?????????? ???  
??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ???  
????????? ??? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????»

???? ?????? C?322/11,

?? ?????????? ??? ?????? ?????????????? ?????????? ??? ?????? 267 ????, ???  
?????? ?? Korkein hallinto-oikeus (?????????) ?? ?????? ??? 23?? ??????? 2011, ? ??????  
?????? ?? ?????????? ??? 28 ?????? 2011, ??? ?????? ??? ?????????? ??? ??????  
?

K,

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

????????? ??? ??? A. Tizzano, ?????? ???????, A. Borg Barthet, E. Levits (?????????),  
???????,

?????? ??????????: P. Mengozzi

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

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???  
10?? ?????????? 2013,

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

- ? K, ?????????????? ??? ??? M. Tiusanen, asianajaja,
- ? ?????????? ????????, ?????????????? ??? ??? H. Leppo ??? ??? S. Hartikainen,
- ? ?????????? ????????, ?????????????? ??? ??? K. Petersen ??? ??? T. Henze,
- ? ?????????? ????????, ?????????????? ??? ??? A. Falk ??? K. Petkovska,
- ? ?????????? ??? ????????, ?????????????? ??? ??? C. Murrell,  
????????? ??? ??? K. Bacon, barrister,
- ? ?????????? ????????, ?????????????? ??? ??? I. Koskinen, R. Lyal ??? W. Roels,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?? ??????????  
?? 21?? ?????? 2013,

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

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1 ? ??????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 63 ??? ?? 65  
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2 ? ??????? ??? ?????????? ??? ??????? ?????????????? ??? ?????? ?????? ?????? ? K, ? ??????  
?????? ?????? ?????? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????  
????????????? ?????????? ??? ?????? ?? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ???  
?? ?????????? ?????? ??? ?????? ??? ??????, ??? ?? ?????????????? ??? ?????? ???  
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3 ?? ???? 45, ?????????? 1, ??? ???? 1992/1535 ??? ???? ??? ?????? ??????????????  
[tuloverolaki (1992/1535)], ??? 30?? ?????????? 1992, ??? ???? ??? ???? ??? ???? ???  
????????? ?????????? ??? ?????? ?????, ??? ???? ?? ?????????? ??? 2004 (???)  
????: ??? ???? ??? ???? ??????????), ?????? ??? ???? ?????? ??? ?????????? ???  
????????? ??? ???? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ???.

4 ?? ???? 50 ??? ????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?? ????:

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

5 ?? ???? 6 ??? ????? 1995/1552 ??? ??? ?????????? ??? ?????? ?????? ??????????  
[kansainvälisen kaksinkertaisen verotuksen poistamisesta annettu laki (1995/1552)] ??? ?? ????:

«?? ?????????? ??? ?????????? ?? ?????? ??? ??????????, ??? ?????? ? ??????????, ?? ??????  
??????, ??? ?????????? ?? ?????? ??? ?????????? ??? ?????????? ??? ??????????, ??? ??????  
????????? ?????? ?????? [...] . ?? ?????? ??? ?????????? ??? ?????? ???  
????????? ?????? ??? ?????? ?????????? ??? ?????????????? (????????? ??? ??????????)  
????????? . ??? ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ?????????? ???,  
????? ??? ?? ?????? ??? ?????????? ?? ??? ?????? ?? ?????????? ?????????? ?????? ??  
????????? , ??? ?? ?????? ??? ?????? ?????? . ??????, ??? ?????? ?????? ? ?????? ???  
????????? ?????? ??? ?????? ??? ?????????? ?? ??? ?????? ??? ?????????? ??? ?????? ???  
????????? [...]. ? ?????? ?????????????? ?? ?????????? ?? ?????? ??? ?????????? ???  
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6 ?? ?????? ?????????? ???, ??? ??????????, ? ?????????? ??? ?????????????? ???  
????????? ????. ??? ??????. ??? ?? ??? 124, ?????????? 2, ??? ?????? ??? ?? ???  
????????? , ? ?????????? ?????????? ??? ?????????? ?? 2004 ??? ?????????? ???  
????????? ??? 29 %.

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

7 ??? ?? ????? 6, ?????????? 1, ??? ?????????? ?????? ??? ?????????? ??? ??????????  
????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? , ? ?????? ?????????? ??? ?????? ??? 11 ?????????? 1970 (??? ???:

8      ?? ?????? 13, ?????????? 1, ??? ?????????????????? ?????????? ?????????? ?????? ? ? ??????  
???, ?????????? ??, ?? ?????????? ?????? ?????????? ?????????? ??, ?? ?????????? ??????  
??, ?? ?????? ?????? ??, ?? ?????? ??.

9      ?? ?????? 23 ??? ?????????????????????? ?????????? ??????? ?? ????:

«? ?????? ?????????? ?????????? ?? ??????????

1. [...]

2.      ???? ????? ?? ??????????:

[...]

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

10 ?????? ??? 2004, ? K ?????? ??? ??????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? 2001. ??????, ?????? ??? 172 623 ????. ???? ??? ??????? ???, ? K ??? ???  
?????? ??? ?????? ??? ?? ?????? ?? ??????? ?? ??????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
2004 ??? ?????? ??? ?????? ??? ?? ??? ?????? ?? ??????? ?? ???????????, ???? ?? ??????????? ???, ??  
????????????? ??? ?? ??? ?????? ??????. ??????, ? K ?????????? ??? ??????????, ???? ?? ???  
????? ??? 2004, ???????? ?????????? ??? ?? ?????????? ?????????? ???  
????????? ?????? ???, ??? ?????? ?????? ?? ??? ?????????? ?? ?????????? ??? ?????????? ???  
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??????. ? K ??? ?????? ??????????  
????????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???.

11 ? ?????? ?????????? ?????? (verovirasto) ?????? ??? ? K ??? ??? ?? ???????? ??  
?????? ?? ? ? ?????????? ??? ?????????? ?????????? ??? ??? ?????? ????? ??  
????? ??? ?????????? ??? ??? ?????? ?????????? ?????????? ??? ??????.

12 ?????????? ??? ? ?????? ?????????? ??? ?????? ?????? ? K ?????? ??? Lounais-Suomen verotuksen oikaisulautakunta (????????? ?????????? ?????? ??? ?????????? ??????) ?????????? ??? 13 ?????? 2006, ? K ?????? ?????? ?????? ??? Turun hallinto-oikeus (????????? ?????? ??? Turku). ?????? ??? ? ?????? ??? korkein hallinto-oikeus.

13    ? ? ?????????????? ???, ??? ? ?????????? ??? ??? ??? ?????? ?????, ? ?????????? ?????????? ???  
?????? ???? ?????? ?? ?????????? ????????, ?????? ?????? ?????? ?????? ?????????? ??????????  
?????????? ???? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????????? ???? ?????? ??????????  
????????? ??? ???????, ??? ? ?????????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???

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

14      ????. ??? K, ? ????????, ??? ???. ?????????? ??? ?????????????? ??? ???. ?????????????  
????????? ??? ??????????, ??? ?????? ??? ?????????? ??? ???. ?????????? ??? ?????????? ?????????? ???  
?????? ??? ??????? ?? ??????? ?? ??? ?????? ?????????? ?????????? ?????????? ???????????.  
??? ?? ?????????? ??? ?????????? ??? ?????? ??? ???. ?????????? ??? 13??. ??????????  
2005, C?446/03, Marks & Spencer (?????? 2005, ?. I?10837, ???? 40), ??? ???. 29??. ??????  
2007, C?347/04, Rewe Zentralfinanz (?????? 2007, ?. I?2647, ???? 69), ?????????? ??? ??  
?????? ??? ? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ???. ?????????? ??? ??  
????????? ??? ???. ?????? ?????? ?????????? ?????????? ??? ?????? ??? ???????, ??' ??????, ??? ??  
????????????? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ??????????.

16      ??????? ?????????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ???  
????? ??? ?? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? , ?????? ??? ?????? ?? ???  
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
??? ??????. ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?? ??? ??? ???  
????? ????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????  
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??????  
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? 15? ???? 2008, C?414/06, Lidl Belgium (?????? 2008, ?. I?3601), ??? ???  
23? ???? 2008, C?157/07, Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt  
(?????? 2008, ?. I?8061).

17 ??????????, ?? ?????? ??????????? ?????? ??? ? ??? ?????? ?????????? ?????????????? ???  
??? ?????????? ??? ??? ?????? ?????????? ?? ?????????????? ?????? ?????????? Lidl Belgium ???  
Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt ??? ???? ??? ? ??? ?????? ??? ?????? ???  
? K ??? ?????????? ??? ?????????????? ?????? ?????????????? ?????????? ??? ??????????  
????????????? ??? ??? ?????? ?????? ??????. ??????????????, ?????????????? ?????????? ???  
????????? ?????????? ???' ?????? ??? ?????? ??????????, ?????? ?? ?????????? ?????????? ??  
????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?? ?????? ?? ?????????? ??? ?????? ??  
????????? ? ????. ??????, ?? ?????? ??????????, ? ?????????? ?????????? ??? ?????? ??  
????? ??????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ??????. ??????????, ???  
????? ?????????????? ??? ??? ?????? ??? ?????? ?????? ?????????????? ??? ?????? ?????? ?????? ?  
????? ?? ??? ?????? ?? ?????????? ?????????? ??? ??????, ? ??????????, ??? ??? ??? ??????  
??? ?????????? ?????????? ??? ??????, ?????? ??????????, ?????? ??? ?? ?? ??????????  
????????? ?????? ?????????? ??? ??? ?? ?? ?????????? ?????????? ??? ?? ?????????? ???  
????????? ??? ?? ??? ?????? ??? ?????? ??? ??????, ? ?????? ??? ?????????? ?? ?????????? ??,  
????????? ??? ? ??? ?????? ??? ?????? ???, ? ?????? ??? ?????????? ?? ?????????? ???  
?????????????, ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ? ?????????????? ?? ?????????? ???  
?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?? ??????????, ?????????? ??? ??  
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???

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«?????? ?? ?????? 63 ??? 65 ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ??????  
????????? ??????? ??? ???? ?????? ??????? ??? ?????? ?????? ?????????? ?????????????? ??? ?????????? ???  
????????? ??? ??????? ?? ??????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ???  
????????? ??? ??????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ???  
????????? ??? ??????? ?????????? ???????, ??? ???? ??????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????, ??? ?????????? ??? ?????????? ??? ?????????? ???,  
??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???  
????????? ??? ???? ??????;»

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19    ?? ?? ??????? ???, ?? ?????? ??????????? ?????, ???' ??????, ?? ??????????????? ?? ??  
????? 63 ???? ?? 65 ???? ????? ?? ???? ?????? ????? ?????? ?????? ?????? ?????? ??????  
?????????? ?? ?????? ??????? ???????, ???? ? ?????? ?????? ?????? ?????? ????, ? ?????? ????  
?????????? ?? ?????? ?????????????? ?? ? ?????? ?????? ?????? ???? ?????? ?????? ?????? ????  
?????? ?? ?????? ?????????? ?????????? ?????????? ?? ?????? ???? ?????? ???? ?????? ????  
????????? ?? ?? ?? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ???? ??  
?????????? ?? ???? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ????  
?? ???? ??????, ?? ?????????? ???????????, ?? ?? ?????? ?????????? ?????? ???? ??????

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20      ????? ?????? ???????????, ?????????? ?????????? ??? ?????????? ??? ???? ?????????? ??? ???? «????????? ??????????» ??? ?????????????????? ??? ?????? 63, ?????????? 1, ???, ?  
????????????? ? ??? ???? ?????????? ?? ?????????? ? ??? ?????????? 88/361/??? ??? ??????????,  
??? 24?? ??????? 1988, ??? ?? ??? ?? ?????? ?? ?????????? ??? ?????? 67 ??? ??????? [??????  
????????????? ?? ?? ??????? ??? ??????????] (?? L 178, ?. 5), ?????????? ?? ??????? ??? ??  
????????? ??? ?? ?????????? ??? ??????? ???, ?????????? ? ?? ??? ?????? ??????? ??????????  
?????? ??? ?????? 69 ??? 70, ?????????? 1, ??? ?????????? ??? (?? ?????? ??? ???????  
????????? ??? 69 ?? ??? 70, ?????????? 1, ?? ??? ?????????????? ?? ?? ??????? ???  
?????????), ??? ??? ?????????? ??????? ???, ??? ?????????? ??? ?? ?????? ??????? ???  
????????? ??? ?????????? ???????, ? ?????????? ??? ?????????? ??? ?????????? ??? ?? ???  
????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? (??., ????  
??????, ?????????? ??? 14?? ?????????? 2006, C?386/04, Centro di Musicologia Walter  
Stauffer, ??????? 2006, ?. I?8203, ????? 22 ??? ??? ?????????????? ??????????, ??? 12??  
????????? 2009, C?67/08, Block, ??????? 2009, ?. I?883, ????? 19, ??? ??? 15??  
????????? 2009, C?35/08, Busley ??? Cibrian Fernandez, ??????? 2009, ?. I?9807, ????? 17).

21 ??????? ?? ?????????? ?????????? ?? ?????????????????? ?? ?????????????? ? ?? ?????????? ?? ? ?? ??????????  
88/361, ??????????????????, ?? ????? ?? ??? ????? ?????????? «????????????? ?? ??????????», ??  
????????????? ?? ?????????? ?? ?????????????????????? ?? ?????????????? ?? ?????????????? ?? ?????????????? ??????????.

22 ???? ?????? ??? ?????? ?????????? ?????????????? ??? ?????????? ??????????, ??? ???? ???? ?????? ???  
?????? 63, ?????????? 1, ????, ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????????  
??? ??? ???? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ??????????  
???? ?????????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??????????  
???? ?????????? ??? ?????????? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? (??.  
????????? ??? 25?? ?????????? 2007, C?370/05, Festersen, ?????? 2007, ?. I?1129, ???  
24, ??? 18?? ?????????? 2007, C?101/05, ?, ?????? 2007, ?. I?11531, ??? 40, ??? 22??  
????????? 2009, C?377/07, STEKO Industriemontage, ?????? 2009, ?. I?299, ??? 23,

????? ??? Busley ??? Cibrian Fernandez, ????????????????, ????? 20).

23     ?? ?????? ?? ?????????? ?????????? ?????????????? ?????????? ?? ?????????? ?? ?????????  
????? ?? ?????????? ?????? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? (??., ??? ??? ?????? ???, ?????????????? ?????? Busley ??? Cibrian  
Fernandez, ??? 21).

24      ????? ?????? ?? ??????? ?????? ?????? ?????? ?????????????? ????????, ?????????????? ??? ??  
????? 50, ?????????? 1, ??? ?????? ??? ?????? ??? ?????? ?????????????? ?????????? ??? ??  
????????????? ?????? ?????? ?????? ?????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??????, ?????? ? ???????, ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ??  
????????? ??? ??????, ?????? ? ???????, ?????? ?? ???????, ??? ?? ?????????? ??? ?????? ??? ??  
????????? ? ?????? ??? ??? ?? ??? ?????? ?????????? ???.

25      ??????????, ??? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ??  
 ????? ??????????, ??? ?????? ?????? ?? ??????, ????? ?????? ?? ?????? ?????? ?????????? ?????????? ??  
 ?? ?????????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??  
 ???????????????, ??? ?? ???? ?? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? ??????.

26 ????????, ??? ???? 6, ?????????? 1, ??? ????? 1995/1552, ?? ?????? ???  
????????????? ??? ???? ?????? ?????? ?????? ??? ?????????? ??? ???? ???? ?????? ??? ??????????  
?? ??? ???? ?????????? ??? ?????????? ?????? ??? ?????? ??????.

27      ???????, ??? ?????????????? ??????? ??????? ??????? ?? ??????? ?? ??????? ?? ???????  
??? ?????? ??? ?? ?????????? ?????? ??????? ??????? ?????? ?????? ?????? ?????? ?????? ???  
??? ?????????? ??? ?????????????? ?????? ?? ?????????? ?????????????? ??? ??????????  
?????? ???.

28     ????? ??? ?????????? ??????, ? ??????????? ?????????? ????? ?????????????????? ??????????  
????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ?  
?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????? ?????? ??????  
?????? ?????? ?????????? ??????? ??? ?????? ??? ?????????????????? ? ?????? ?????????? ??????  
????? ??? ?????????? ?????????? ?????????? ??? ??????????.

29 ?????????? ??? ?????????????? ? ?????????? ??????????, ? ?????????? ???  
????????????? ?????????? ?????????? ??????? ?? ?????????? ??? ?????????? ??? ?????? ???  
????????? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????????????? ?????? ???  
??? ?????? ?????? ?????? ??? ?????????? ??? ??? ?????????? ?????? ??? ?? ?????????? ???  
????? ??? ?????? ??? ?????????????? ??? ??????????????.

30 ????????, ?????????? ? ?????????? ???, ?? ??????????, ? ?????????? ???  
????????? ??????, ??????, ?? ?????? ?????? ?????? ?????????????????? ?????????? ?????????? ??  
????????? ??? ?????? ?????? ??? ?????????????? ?????? ??? ??? ?????????? ??? ?????????? ??  
????? ??? ?????????? ??? ?????? ???, ??????, ?? ??? ?????????? ??? ?????????????? ??? ?????????? ???  
????????? ?????? ???, ?????, ?? ??? ?????????? ??? ?????????????? ??? ?????? ?????????? ???  
????????? ?????????? ?? ?????? ??? ?????????? ??? ?????????????? ?????? ?????? ?????????? ???.

31    ??? ?????? ??????? ?????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??  
????????? ??? ?????? ??? ?? ?????????? ??? ?????????????? ??? ?????? ??? ?????????? ?? ?????  
????? ??? ?????? ??????? ??? ??????, ??? ?????, ??? ?????????? ??? ?????????  
????????????? ??? ?????????? ???????????????, ???' ????, ??? ?? ??? 63 ???.

32      ???????, ??????? ?? ??????????? ?? ? ??????????? ?????? ??? ??????????? ???????????

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

33      ????. ?? ?????? 65, ??????????? 1, ?????????? ??, ????, «[?] ?????????? ??? ?????? 63  
[?????] ??? ?????? ?? ?????????? ??? ?????? ?????? [...] ?? ?????????? ??? ?????? ??????????  
??? ?????????? ??? ?????? ?????????? ?? ?????? ?????????? ?????? ?????????? ?????? ??? ???  
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ??? ??? ??? ???  
????????? ??? ?????? ??? ?????? ». .

35 ????????, ? ?????????? ??? ?????????? ? ?? ??? ????? ?????????????????? ??? ?? ???  
65, ?????????? 3, ????, ?? ??? ????? ?????????? ??? ?? ??????? ?????????? ??? ?? ?????  
????????? ? ?????????? 1 ??? ?????? ????? «??? ??????? ?? ?????????? ??? ?? ?????? ???  
????????? ?????????? ??? ?????????????? ??? ?????????????? ?????????? ??? ?????????? ???  
????????? ??? ??? ?????????? ??? ?????????? ??? ?????? 63» (????????????? ?????? Haribo  
Lakritzen Hans Riegel ??? Österreichische Salinen, ??? 57).

36      ?? ??????? ?? ?????????????? ?? ???? ?????? ?????????? ?? ???? 65, ??????????? 1,  
????????? ??, ????, ??????, ??????, ?? ???????, ?? ?????????????? ?? ???? ?????????????? ?? ???? ??  
????????? 3 ??? ?????? ?????? ?????? ??????????. ??????, ??? ?? ?????????? ?????????? ???,  
????????? ??? ?????? ?????????? ?????????? ??? ???? ? ?????? ??? ?????? ??? ???? ?? ?????? ??  
????????? ?????? ?? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????? ???  
?????????, ?????? ? ?????????? ?????????? ??? ?????????? ??? ?????? ?????????? ?? ???? ?????? ??????????  
?? ???? ?????? ?????????? ?????? ?? ???? ?????????? ?????? ??? ?????? ?????????? ??? ?????????? ???  
????????? ?????????? (????????????? ?????? Haribo Lakritzen Hans Riegel ???  
Österreichische Salinen, ??? 58 ??? ??? ?????????? ??????????).

38      ????? ?? ?????????? ??????????, ? ??????? ????? ????? ?????????? ???????  
????????? ?? ??????? ?????????? ?????????? ??? ?????????? ??? ???????,  
????????? ??? ? ??????? ?????????? ?????? ??? ?????? ??? ?????????? ??  
????????? ??? ?????????? ?????? ??????. ??????, ??? ?????????? ??? ?????? ??? ??????  
????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ??  
????????? ?????? ?????? ?????? ??????, ??' ??? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??????  
??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????????? ??, ?? ?????? ?? ?????? ?????????? ?????? ?????? ?????? ??  
????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??, ?? ??? ?????? ??????  
????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

39      ? ?????????? ?????????? ?????????? ??? ? ?????? ?????? ?????? ?????? ???  
????????? ??? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????????  
?? ?????????? ??? ? ?????? ?????? ?????? ?????? ??? ? ?????? ?? ?????????? ??? ????  
????, ??? ? ?????? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
??, ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?? ?????????? ??????.

40      ? ?????????? ?????????? ???, ?? ?????????? ?????? ?????? ?????? ?????? ???, ???  
????? ?? ?????????? ???, ??? ?????? ?? ?????????? ?????? ?????? ??? ?????? ??? ??????  
?? ?? ?????????? ???, ?? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ??? ?????? ???' ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????.

41      ??? ?????, ????, ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ?? ?? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????  
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????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
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????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
2006, C?290/04, FKP Scorpio Konzertproduktionen, ?????? 2006, ?. I?9461, ??? 54, ???  
12? ?????? 2006, C?374/04, Test Claimants in Class IV of the ACT Group Litigation,  
????? 2006, ?. I?11673, ??? 52, ??? 18? ?????? 2007, C?231/05, Oy AA, ?????? 2007,  
. I?6373, ??? 52, ??? ??? Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt,  
????????? ??? 48).

42      ? ?????????? ?????? ?????? ??? ?????? ?? ?? ?????? ??? 6, ?????????? 1, ??? ??????  
????? ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? 13, ?????? 1, ???  
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

43      ??????, ??? ?????????? ?? ?????? ?????? ?????? ?, ?????????? ?????? ???  
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? ??????????, ?????????????? ?? ????? ??????????. ??????????????, ?? ????? 23, ?????????? 2,  
????????? ?, ??? ?????????? ????? ?????? ??? ? ?????????????? ????? ?????? ?????? ??  
????????????? ??? ??? ?????????????? ?????????????? ??? ?????????? ?????? ??? ?? ???  
?????????, ?? ??? ?????????? ??? ?????????????? ??? ?????????? ??? ??? ??? ??????????  
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44 ??? ??? ?????????? ??? ?????????? ??????????????, ????? ??? ??? ??? K ??? ???  
????????????? ?????????????? ??? ??? ??' ?????????????? ?????????? ?????????? ???, ?????????? ?  
????????????????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ??? ?? ???  
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45 ??????????, ??? ?? ?????????? ??? ????? ?????????? ???, ??????? ? ??????????????????  
????????, ??? ?? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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??? ??????????????, ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????????? ??????????  
????????????????? ? ?????? ?????????? ??? ?????????? ??????????????, ??? ?????????????? ???  
????????? ??? ?????? ?????????, ? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ??????  
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46 ??? ??????????, ? ?????? ??? ?????????? ??? ?????????????? ?????????????? ??? ?? ??????????????????  
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?????????????, ?????????????????? ??? ?????????? ??????????????, ?????? ??? ?????? ??? ??????  
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47 ??? ??????, ?????????, ??? ?????????? ??? ?????? ??? ?????? ?????????? ? ?????????? ??? ??  
????? ?? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? ??? ?????????? ?? ?????????? ??? ??????????  
??? ?????? ??? ?????????? ??? ?????? ?????? ??????????, ?????? ?????????? ??? ??????  
????????? ??? ?????? ??? ?????? ???, ??? ?????????????? ??? ?????? ?????? 30 ??? 45 ??? ??????  
?????????, ? ?????? ?????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????  
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48 ??????, ? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??????, ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
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49 ?? ?? ??????, ?????? ??? ?????? ?? ?????????? ?? ? ?????????? ??? ?????? ???  
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????????? ??? ?????????? ??? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??????, ???  
????????? ??? ??????????????, ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ??????????  
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50 ??? ??????, ??????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????? ??????, ??? ????? ?????????????? ??? ?? ?????????????? ??? ?????????? ????? ?????????????? ???  
????? ??? ? ????????, ?????????????? ??? ?????????? ??? ?????? ???, ?????????????? ???  
?? ?????????? (??., ?????? ????, ?????????? ??? 29?? ?????????? 2011, C?371/10, National  
Grid Indus, ?????? 2011, ?. ??12273, ????? 45, ??? ??? 6?? ?????????? 2012, C?18/11,  
Philips Electronics, ????? 23), ? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ???  
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????  
????, ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?? ??? ?? ?????? ??? ?????? ??? ??  
????? ??? ?????? (??., ??? ??? ?????? ???, ?????????????? ?????????? Marks & Spender,  
????? 45, Oy AA, ????? 54, ????? ??? Lidl Belgium, ????? 31).

51 ? ?????? ?????, ??? ??? ?????????????? ?? ??????????, ?????????? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??  
????????? ?????????? ??? ?????? (??., ?????????????? ?????????? Lidl Belgium, ??? 33,  
??? Philips Electronics UK, ????? 24), ????? ?????????? ?? ??? ?????????? ???  
????????????? ?? ?????????? ?? ?????????? ?????????? ?? ?????? ??? ?????? ??? ?????? ???  
????? ?? ?????? ??? ?????? (??., ??? ??? ?????? ???, ?????????????? ?????????? Oy AA,  
????? 56, ??? Lidl Belgium, ????? 34).

52 ??? ?????? ??? ?????? ???, ?? ??? ?????? ? ?????????????? ???????, ?  
????????? ??? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????? ??????????????  
??? ?????????? ??? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ??? ??????.

53 ? ?????????? ??? ?????????????? ?????????? ??? ?????????? ??? ?????? ?????????? ???  
?? ?????????? ?? ?? ?????????? ?????????? ??? ?????????? ?????????? ??? ? ?????????? ???  
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????????? ?????????? ??? ?????????? ???' ?????? ??? ?????? ??? ??????????.

54 ?? ?????? ?????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ???  
????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??????????  
??? ??????????????, ?????????????? ??? ?????????????? ??? ?????? ??? ?????? ?????? ??????????  
??? ?????????????? ??? ?????????? ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ??  
????????????? ?? ?????????? ?? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??  
????????????? ?? ?? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ???  
(??., ??? ??? ?????? ???, ?????????????? ?????? Lidl Belgium, ????? 34).

55 ??? ??? ?????? ?????, ??? ?????????? ???' ?????? ? ?????? ?????????? ???  
????? 40 ??? ?????????? ???, ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ???  
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
?????. ????????, ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ???.

56 ??? ????, ????????, ?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ?????????????? ??? ??????, ?? ??? ?????? ?????????????? ? ?????????? ??? ??  
????????? ????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? (??., ?????????????? ?????? Marks & Spender, ??? 47,  
Rewe Zentralfinanz, ??? 47, ??? Lidl Belgium, ??? 35).

57 ????????, ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????, ? ????????, ?? ?????????? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
?? ????????, ??????????.

58 ???????, ??? ?????????? ? ?????? ?????????? ?????????? ??? ?????? 32 ??? ?????????  
???, ?? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ??  
????? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?? ?????? ?????? ?????? ???  
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???.

59 ??????, ??? ?? ?????????? ?????????? ??? ??? ?????????? ??? ?????? ?????????? ?????????? ,?  
????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ???  
????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???.

60 ??????, ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??  
????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (??., ???' ?????? , ??????)  
??? 21?? ?????? 2002, C?436/00, X ??? Y, ?????? 2002, ?. I?10829, ??? 62, ??? 12??  
????? 2006, C?196/04, Cadbury Schweppes ??? Cadbury Schweppes Overseas,  
????? 2006, ?. I?7995, ??? 50, ??? 13?? ?????? 2007, C?524/04, Test Claimants in the  
Thin Cap Group Litigation, ?????? 2007, ?. I?2107, ??? 73, ??? 17?? ?????? 2008,  
C?105/07, Lammers & Van Cleeff, ?????? 2008, ?. I?173, ??? 27, ??? 4?? ?????? 2008,  
C?330/07, Jobra, ?????? 2008 ?. I?9099, ??? 37, ??? 5?? ?????? 2012,  
C?318/10, SIAT, ??? 38).

61 ?????????? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?????  
????????? ??? ?????????? ? ?????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? Cadbury Schweppes ???  
Cadbury Schweppes Overseas, ??? 55, Test Claimants in the Thin Cap Group Litigation, ???  
74, ??? ??? SIAT, ??? 40).

62 ??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????? ??????????  
??? ?? ?????? ??? ?????? ???, ??? ? ?????????? ??? ? ?????? ??? ?????? ??? ??  
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????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

63 ??? ??????, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

64 ??????, ? ?????????? ??? ? ?????? ?????? ??? ?????? ?????? ??? ? ?????? ???  
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,

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

65    ?????????????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?????? ?????????????? ??  
?????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ??????????  
?? ???? ?????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? (????????? ?? ???? 28?? ???? ??????)  
1992, C?204/90, Bachmann, ??????? 1992, ?. I?249, ????? 21, ?? ???? 7?? ?????????? 2004,  
C?319/02, Manninen, ??????? 2004, ?. ??7477, ????? 42, Krankenheim Ruhesitz am Wannsee-  
Seniorenheimstatt, ????????????, ??? 43, ?? ???? 1?? ?????????? 2011, C?250/08, ???????  
????? ???????, ??????? 2011, ?. ?-12341, ????? 70, ?? ???? 1?? ?????????? 2011, C?253/09,  
????? ??????? ?? ???? ???????, ??????? 2011, ?. ?-12391, ????? 71, ?? ???? 7?? ?? ???? 13??  
????????? 2012, C?35/11, Test Claimants in the FII Group Litigation, ????? 57).

66    ??????, ??? ????? ????????, ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ??  
?????????? ?? ?, ?????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ??????? ??  
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????????? ?????????? (????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 71 ??  
????? ?????????? ??????), ? ?? ?????????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ??????? ?? ???? ??????  
?? ??????? ?? ???? ?????? ?? ???? ?????? (????????? ?? ???? 27?? ???? 2008,  
C?418/07, Papillon, ??????? 2008, ?. I?8947, ????? 44, ?? ???? 18?? ?????? 2009, C?303/07,  
Aberdeen Property Fininvest Alpha, ??????? 2009, ?. I?5145, ????? 72, ?? ???? ?? Test  
Claimants in the FII Group Litigation, ????????????, ????? 58).

67    ??? ?????????? ?? ???? ?????? 52 ?? ???? 53 ?? ???? ?????? ??????????, ?? ???? ?????? ??  
????????????? ?? ?, ???? ?????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?????? ??  
????????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ??  
????? ?????? ?? ???? ?????? ?? ???? . ? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ??  
????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??  
????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??  
????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??  
????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??  
????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??.

68    ?? ???? ??????? ?? ???? , ?? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ??  
????????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????  
????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????  
????? ?? ???? ?????? ?? ???? ?????? (??., ?? ???? ?????? ??, ?????????????? ?? ???? ??????  
Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt, ?? ???? 42, ??????? ?? ???? ??????,  
????? 73 ?? ???? ?????? ?? ???? ???????, ?????? 74).

69    ??????, ?????????? ?? ???? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ??  
????????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????  
????????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????  
????????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????  
????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ??

70    ?? ???? ?? ???? , ?? ???? ?? ???? ?????? ?? ???? ?? ???? ?????? ?? ???? ?????? ?? ???? ??  
????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????  
????? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????  
????????? (??., ?? ???? ?????? ??, ?????? ?? ???? 6?? ?????? 2000, C?35/98, Verkooijen, ??????)

2000, ?. ??4071, ????? 58, ????? ??? ?????????????????? ?????????? Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt, ????? 42, ???????? ??? ???????, ????? 76, ??? ??????? ??? ????????????, ??? 77).

71      ???????, ?????????????? ??? ?????????? ??? ? ?????? ? ?????? ?????? ??? ?????? ??  
????????????? ??? ?????????? ?????? ?????? ?????? ?????????? ?????????? ??? ??????  
????????? ??? ?????????? ?????? ??? ?????????? ?????? ?????? ?????? ??? ??????  
????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ??????  
????????? ??? ??? ?????????? ??? ???? ??????.

72 ??????????, ?????? ?? ?????????? ?? ? ?? ????? ?????????? ?????? ?????? ??? ??????????  
????? ?? ?? ?????????? ?? ?????? ?????, ??? ?????? ?? ????????, ??? ?????? ?????? ???  
?? ????????, ??? ?????? ?? ?????????????????? (??., ??? ??? ?????? ???,  
????????????? ?????? National Grid Indus, ??? 80).

73      ???????, ?? ?????? ??????????? ?????? ?? ?????????????? ????? ?????? ??  
?????? ?? ???? ???? ?????? ?????????????? ??? ?????????? ????? ?????????????? ??????????????  
????????? ??? ?????? ?????????????? ?????? ????? ?????????? ?????? ??? ?, ??? ?  
????????????? ??? ??? ?????? ????? ?????????????? ?????? ??? ?? ??? ????? ??????, ???  
??? ?????? ?? ?????? ?? ?????? ?? ?????? ???, ? ?? ??? ????? ?????? ?? ?????????? ?? ??????  
????????.

74 ???????, ? K ?????????? ?????? ??? ?????????? ?????????????? ??? ?? ??????????

75 ?????????????? ??? ?? ?????????? ????? ?????? ??? ?????? ?? ?????? ?????????? ??  
?????????? ?????????? ?????????? ??? ?????? ?????? ????? ?????? ?????? ?? ?????????? ??? ?? ??????????????  
????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ??????????????????  
??? ?????? ??? ?????? ?????, ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ?????? ??????????, ? ?? ?????? ?????????, ??? ?????? ?????????? ??????????????, ??  
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ?? ?????? ?????? ??? ??????  
??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ??????  
????????????? ??? ?????? ?????? ?????? ??????, ?????? ?? ?????????? ?????? ??? ??? ??????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ?????? Marks & Spencer, ?????????????, ?????? 44 ??? 51, ??? ???  
21?? ?????????? 2013, C?123/11, A, ?????? 40 ??? 46), ??? ?????? ?????? ??? ?????? ??? ??????????  
????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ???  
????????? ??? ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????  
????? (??., ??? ??? ?????? ???, ?????????? Marks & Spencer, ??? 55,  
?? A, ??? 49).

76      ???????????, ?? ?????????? ????? ? ??? ?????? ????? ?????? ?????, ??? ??????? ?? ??????,  
????????????? ?? ?????????????? ?????????????? ?? ?????????? ?????????????? ?? ??????  
??????????, ??? ??? ????? ?????????????? ????? ? ? ??? ????? ?????????? ????? ??? ??????????????  
????????????????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ??????.

77      ????????, ??? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ???  
????????? ?? ???? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ??? ?????? ?????? ??????????, ?  
????????? ??? ?????????? ??????.

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

79    ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ???  
????????? ?? ?????????? ????, ???? ??? ?????????? ??? ?????????? ?????????? ???, ???  
????????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??????????  
????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???  
????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ?? ?????????? ?? ?????????? ??? ?????? ??????  
??? ?????? ??? ?????? ?????? ?????? (??., ???' ???????, ?????????? ??? 6?? ??????????  
2007, C?298/05, Columbus Container Services, ?????? 2007, ?. ??10451, ??? 51, ??? 28??  
????????? 2008, C?293/06, Deutsche Shell, ?????? 2008, ?. I?1129, ??? 42, ???  
Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt, ???????????, ??? 49).

80    ? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ??????  
????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?? ??? ??  
????????? ?????? ??? ?????? ??? ?????? ?????, ???? ?? ?????????? ?? ??? ?????? ??? ??????????  
??? ? ?????????? ??? ?????? ?? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??????  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? (??., ???' ??????  
????????? ?????? ?????? Deutsche Shell, ??? 43, ??? Krankenheim Ruhesitz am  
Wannsee-Seniorenheimstatt, ??? 50).

81    ??? ??????, ?????????? ???, ??? ? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
??? ?????? ?? ???????, ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??  
????? ?????? ??? ? K, ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ???  
????? ??? ?????? ?????? ?? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
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82    ?????? ??? ?????? ?????? ??????, ?????? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ??????  
????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??????  
????? ??? ??????.

83    ??????, ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ???  
????? 63 ??? 65 ??? ? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ???, ??? ?  
????? ??? ?????? ???, ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??????  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????  
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ???, ??? ?????? ?? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???, ??  
?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

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84    ?????? ??? ? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ???  
??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ?' ???  
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????  
????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

??? ?????????? ??? ????? 63 ??? ????? ? 65 ??? ? ?????????? ?????????? ??????????  
???????, ??? ? ?????? ??? ?????? ???, ? ?????? ??? ?????????? ??  
????????????? ? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????  
????? ?????? ?????????? ?????????? ?????????? ?? ?????? ??? ?????? ??? ??????  
????????? ??? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???, ???  
????? ?? ??? ?????, ??? ?????????? ??????????, ?? ?? ?????? ??????????  
????? ??? ?????? ?????? ??????.

(?????????)

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