

?????? C-369/04

Hutchison 3G UK Ltd ??.

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Commissioners of Customs and Excise

(?????? ??? VAT and Duties Tribunal, London,

??? ??? ?????? ?????????????? ??????????)

«???? ?????? ?? — ??????? ?????????????? ??? ????? — ?????? ??? ??? “?????????????
?????????????” — ??? 4, ?????????? 2 — ??????? ?????? ??? ??? ??????????????
????????????? ?????? ??? ?????? ??????????????????, ?? ??? ????? ?????????????? ??? ???
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?????? ??? ?????????????? ??? — ?????????? ?????????????? ??? ??? ?????? ???
????? 4, ?????????? 1 ??? 2, ??? ??? ?????? ??????

(?????? 77/388 ??? ??????????, ??? 4 §§ 1 ??? 2)

?? ??? 4, ?????????? 1 ??? 2, ??? ??? ?????? ??????? 77/388, ??? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?? ??? ?????? ?????? ?????? ?????? ???
????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ???
?? ?????????? UMTS, ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ???
??? ??????????, ?????? ?????????? ??? ?????????? ?????????????? ???
????????????????? ??????????, ??? ?????? ?????????? ?????????????? ?????????????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???.

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

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

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

(???. ??????? 36, 38-39, 43 ??? ???????.)

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

?? 26?? ??????? 2007 (*)

«???? ??????? ?? – ??????? ??????????? ?? – ??????? ?? – ??????? ?? “??????????
??????????” – ??? 4, ?????????? 2 – ??????? ??????? ?? ?? ???????????
?????????? ??????? ?? ??????? ???????????????, ?? ????? ??????????? ?? ??
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???? ??????? C?369/04,

??. ??????????? ??????? ??????? ??????????? ??????? ??????? ?? ??????? 234 ??,
?? ??????? ?? VAT and Duties Tribunal, London (?????? ???????) ?? ??????? ?? 24??
????????? 2004, ? ????? ??????? ?? ?????????? ??? 26 ?????????? 2004, ??? ???????
?? ??????

Hutchison 3G UK Ltd,

mmO2 plc,

Orange 3G Ltd,

T-Mobile (UK) Ltd,

Vodafone Group Services Ltd

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Commissioners of Customs and Excise,

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

?????????? ?? ?? ?. ??????, ???????, P. Jann, C. W. A. Timmermans, A. Rosas, K.
Lenaerts, P. K?ris, E. Juhász ?? J. Klu?ka, ??????? ?? ???????, K. Schiemann, J. Makarczyk
(???????) ?? U. Löhmus, ???????,

?????? ??????????: J. Kokott

?????????: B. Fülöp ?? K. Sztranc-S?awiczek, ??????? ????????????,

?????? ?? ?? ??????? ??????????? ?? ??????? ?? ?? ??' ??????????? ??????????? ??
?? ??????????? 2006,

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

- ?? Hutchison 3G UK Ltd, mmO2 plc, Orange 3G Ltd, T-Mobile (UK) Ltd ??? Vodafone Group Services Ltd, ???????????????? ??? K. P. E. Lasok, QC, ????? ??? ??? ??? J. Turnbull ??? P. Lomas, solicitors,
- ? ?????????? ??? ??????? ??????????, ?????????????? ??? ??? M. Bethell ??? ??? R. Caudwell, ???????????????? ??? P. Goldsmith, K. Parker ??? C. Vajda, QC, ????? ??? ??? ??? G. Peretz, barrister,
- ? ?????? ????????, ?????????????? ??? ??? J. Molde, ?????????????? ??? ??? K. Hagel?Sørensen, advokat,
- ? ?????????? ????????, ?????????????? ??? ??? W.?D. Plessing ??? ??? C. Schulze?Bahr, ?????????????? ??? ??? K.?T. Stopp, Rechtsanwalt,
- ? ????????, ?????????????? ??? ??? J. Rodr?guez Cárcamo,
- ? ????????, ?????????????? ??? ??? D. O'Hagan, ?????????????? ??? ??? A. Aston, SC, ??? ??? G. Clohessy, BL,
- ? ????????, ??? ??? ??????, ?????????????? ??? ??? H. G. Sevenster ??? ??? M. de Grave,
- ? ????????, ??? ?????????? ??????????, ?????????????? ??? ??? K. Gross, R. Lyal ??? M. Shotter,

???? ??????? ?? ?????? ??????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ???????????
??? 7?? ??????????? 2006,

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

2 ? ?????? ??? ???? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??????
??? Hutchison 3G UK Ltd, mm02 plc, Orange 3G Ltd, T-Mobile (UK) Ltd ??? Vodafone Group
Services Ltd ??? ??????? ??? Commissioners of Customs and Excise, ??? ?????? ? ??????
????? ??? ?? ?????????? ??? ?????? ?????????????? ??? (??? ????: ???) ??? ??????
?????????, ??? ??? ??? ?? ?????????????? ?? ?????? ?? ?? ?????????? ?????? ?????? ?? ??????????
?? ?????????? ??? ??? ?? ?????????????? ??? ?????????? ??? ?? ?????????? ??? ??? Secretary
of State for Trade and Industry (????????? ?????????? ??? ??????????, ??? ????: ??????) ??
2000, ??????? ???????????, ?????????? ?????? ??? ?????? ?????????????? ?????? ??????,
??? ?????????? UMTS (??? ????: ??????? ??????).

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

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

3 ????? ?? ?????? 2, ?????? 1, ??? ?????? ????????, ???? ??? ??????????? ?? ???????????
????? ?? ?????? ??????? ?????????? ??? ?????????????????? ?? ?????????? ?????? ??
????????? ?? ?????? ??? ?????????? ??? ?????????? ???, ??? ?????? ??? ?? ?????????? ??? ????.

4 ?? ?????? 4 ??? ?????? ?????? ?????? ?? ???:

«1. ????????? ?? ?????????? ??? ?????? ?????? ?????????????? ???, ??? ?????? ???????????
??? ?? ?????????? ???, ??? ??? ??? ?????????? ?????????????? ??? ?????????? ???
????? ?????????? 2, ?????????? ??? ?????????? ??? ?????? ??? ?? ?????????? ??? ????.
????????????? ???.

2. ????????? ???????????????, ??? ?????? ?????? ??? ?????????? 1, ?????? ??? ??
????????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ???,
????????????? ??? ??? ?????????? ?????? ?????????? ??? ?????????? ?????????? ???,
????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ???
????. ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ???
??????, ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

[...]

5. ?? ????, ?? ??????????, ?? ??????, ?? ?????, ?? ?????? ??? ?? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ??? ??,
????????? ??? ? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ??? ??????, ??? ?? ?,
??' ?????? ??? ?????? ??? ?????????? ??? ??????, ?????????? ??????????, ???,
????????? ? ?????? ??????????.

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

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

[...]»

5 ?? ?????? 17 ??? ?? ??? ?????? ?????????? ?? ???:

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

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

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

[...]».

6 ?? ?????? 1 ??? ?????????????? ? ??? ????? ?????? ?????? ??? ????????????????

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

7 ? ?????????? ??? 1994 ??? ?? ???? (Value Added Tax Act 1994 ?????? ??? ????)
4, ?????????? 1, ?? ???:

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

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

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

8 ? ?????? 97/13/?? ??? ?????????? ?????????????? ??? ?? ???????????, ??? 10??
????????? 1997, ??????? ?? ??? ????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????????????? ?????????? (?? L 117, ?. 15), ?????? ?????? ??? 25 ?????? 2003.

9 ?? ?????? 2, ?????????? 1, ??? ?????? ?????? ?????? ??? ?????? ?? ???:

«??? ??? ?????? ??? ?????? ?????? ??????, ?????????? ??:

[...]

?) “????????? ???????????: ?? ??? ?????? ?????? ?????????????? ??? ?? ?????????????? ??????????
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ?????? ??? ?? ?????????? /??/ ??
????????????? ?????????????????? ?????? ??? ?????? ?????????????????? ??????????. ??
????? ?????? ?????? ?????? ?????????? ?????????? ??? ???????, ? ?????????? ??? ??????????????
?? ???, ?? ?????????????? ???????????, ? ?????????????????? ??? ???????????, ?
????????? ??? ??????????, ? ?????????? ??? ?????????????? ??? ?? ?????????????? ???
????????????? ?????? ??? ? ?????????????? ?????? ??? ?????????? ??? ?????????? ?????????? ???
????????? ??? ?????????? ?????????? ?????? ?????????? ?????????? ?????????????? ??? ??????,
????????? ??? ?????????, ?????????? ??????????. [...]»

10 ?? ?????? 3, ?????????? 3, ??????? ???????, ??? ?? ??? ?????? ?????? ??? ?? ???:

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

11 ?? ?????? 4, ?????????? 1, ??? ?????? 97/13 ?????????? ?? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??????:

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

12 ??? ?????? III ??? ??????, ?? ?????? ?????????????? ?? ?????? 7 ??? 11, ?????????????? ??
????????? ??????, ???? ? ?????????? ?????????????? ?? ?????????? ?????????? ??????. ?? ?????? 8,
????????? 1, ????, ????, ???? ?? ??? ?????? ?????????? ??? «?? ????, ????, ????
????????????????? ??? ?? ?????? ?????????? ??????, ??? ?????????? ?? ?????????? ?? ?????? ???????,
????? ?????? ??????????????, ?????????????? ??? ?????? ?????????? 2 ??? 4». ??????? ?? ??
????? 2.1 ??? 4.2 ??? ?? ??? ??????????????, ?????????? ?????? ??? ??? ?????? ????
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ???
????????? ?? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ?????? ???
????????? ???.

13 ???' ?????????? ??? ?????? 10, ?????????? 1, ??? ?????? 97/13, ?? ?????? ???
????????? ?? ?????????? ??? ?????? ??? ?????? ??????, ?? ?? ?????????? ? ??????????
????? ??? ?????? ??? ??????????????. ?????? ?? ??? ?????? 2, ????, ?????? ??????????,
??? ?????? ??????, ?? ?????? ??? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? ??????
????? ?? ?????????????? ?? ?????? ??? ?????? ?????? ??? ?? ?????????????? ? ??????????
??? ???????????. ? ?????????? 3, ????, ????, ??? ?????? ?????? ?????? ?????? ??? ??????
????? ??? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ??????????, ??
????? ?????? ??? ?????? ???????????, ??????????, ?????????? ??? ?????? ??? ??????.

14 ??? ?? ?????? 11, ?????????? 1, ??? ?? ??? ?????? ?????????? ?????????? ??? ?? ?????? ?? ??????????
?? ?????? ?????? ?????? ?????????? ? ?????? ??????, ?? ?????? «????????? ??????????????
????? ?????? ??? ?????????? ?????? ??? ?????????? ? ??????, ??????????, ?????? ????
????????? ?? ?????????? ?????? ??????». ???????, ? ?????????? 2 ??? ?? ??? ??????
????????? ?? ???:

«????? ??? ?????????? ??? ?????????? 1, ???? ?????????????? ?????? ?? ??????????, ??
????? ??? ?????? ?? ?????????? ??? ?????? [?????????] ?????? ???? ?? ??????????
????????? ??? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??????. ?? ????
??? ?????? ??????????, ??? ??' ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????????? ?????????? ??? ??? ??????????..»

15 ? ?????? 97/13 ?????????? ??? ?????????????? ??? 25 ?????? 2003 ??? ??
????? 2002/21/EK ??? ?????????? ?????????? ??? ?? ??????????, ??? 7? ?? ??????
2002, ?????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??????????
????????? (????? ??????) (EE L 108, ?. 33).

16 ?? ?????? 9 ??? ?????????? ??? ?????? ?????? ?? ???:

«[...]

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

4. ?? ?????? ??? ?????????????? ??? ? ?????? ??? ?????? ?????? ?????? ?????? [?????????] ??? ??
????????? ??? ?????? ?????????? ?????? ?????? ?????? [?????????] ??? ??

????? ??????? ??? ??????? ??????? ??? ??? ??? ?????? ??????? ?????????????????? ???????
?? ??????????? ??? ??????????? ??? ??? ????? [?????????] ??? ?? ???????????????.
?? ?????? [?????????] ??? ????? ?????????? ??? ?? ?????????? ??? ????? ?? ??????????
??? ??????????. ??? ????? ?????????? ??? ?? ?????? ??? ?????????????? ??? ????? ??????????
???? ?? ?????????? ??? ??????? 676/2002/?? [?? ?????????? ?????????????? ??? ??]
?????????, ??? ?? 2002, ??????? ?? ??? ?????????? ??????? ??? ?? ??? ??????????
??? ?????????? ??? ????? ?????????? ?????? (?????? ??????????) (?? L 108, ? 1)] ?
????? ?????????? ??? ?????, ?????????? ??? ?????? ??????? ??? ?????? ?? ?????? ?? ?????? ??
??? ?????? ??? ?????????? ??????.

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

17 ??? ?? ??? 1, ??????? 1, ??? ?????????? ??? 1949 ??? ??????????
????????????? (?? Wireless Telegraphy Act 1949, ??? ?: WTA 1949), ?????????????? ?
????????? ? ? ????? ?????????? ?????????? ?????????? ?????????????? ?????? ?? ???
?????????, ?????? ??? ?? ?????? ?????????? ?????? ?????? ??? ?? ?????? ?? ??????. ??? ??
????????? ??? ?????????? ?????? WTA 1949 ?????????? ??? ?????? ??????????
?????????.

18 ?? ??? 2, ??????? 1, ??? ?????????? ??? 1998 ??? ??????????
????????????? (?? Wireless Telegraphy Act 1998, ??? ?: WTA 1998) ?????????? ??
????????????? ?????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?????????????? ???
????? ?? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ???????. ?????? ?? ???
????????? 2, ??????? c, ??? ?????? ?????? ?????, ??? ?? ?????????? ??? ?????? ??????
????? ?? ?????????? ?????? ?? ??? ??????????:

- ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ????????,
- ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????????? ???,
- ?? ?????? ?????????? ??? ??????? ???
- ?? ?????????? ?? ??? ?????? ??? ?????????? ?????????????? ??? ????????.

19 ?? ??? 3, ??????? 1, ??? WTA 1998 ??????? ?? ???:

«? ???????, ?????????? ?????? ??? ?????? ?????????? ?????? ??? ??????????????????
??????, ?????? ?? ?????? ?????????? ?????? ?? ??? ?????? ?? ?????????? ???,
???? ?????????? ??? ?????? ?????? ?????? ?? ??? ?????? ?????? ? ??? ?????????? ???
????????? ? ?????? ?? ??? ?????? ?????? ?????, ?? ?????? ?????? ?????? ?????? ??????
????????????? ?????????? ?????? ?? ??????????:

- a) ??? ?????????? ?? ??? ?????? ??? ?????????? ??? ?????? ???' ??????? ???
????????? ??? ??
- b) ??? ?????????? ?? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?? ??? ??
????????? ?? ??? ?????????? ??? ?????? ??? ?????????? ?? ??? ?? ?????????? ??? ??????.

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

20 ??? ?????? ??? 2000 ? ??????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????????
?????????.

21 ?? ?????????? ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ??????

?????????? ?? ?????????? ?????????? ??? ???? ?? ?????????????? ?????????? ??????????????,
??? ??? ??? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ???
?????????????. ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? 22
477 400 000 ?????? ?????????? (GBP).

22 ?? ?????????? ??????????, ??? ?????? ??? ???????, ? Radiocommunications Agency
(????????? ??????????????????), ? ?????? ??????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???.

23 ?? ?????????? ?????? ??? 31 ?????????? 2021, ??? ??
????????? ?? ?? ?????? ??? ?????? ??? ?????? ? ?????????? ?? ?????? ??? ?????? ??? ??
?????? ??????.

24 ?? ?????????????? ?????? ??? ?????? ??? ? ??????? ??? ?????? ?????????? ???
????????? ?? ??? ??? ???? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
???? ?????????? ???' ??????? ??? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ???
??? ?????? ?????? ??? ?????? ?????????, ?? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????? ?? ??? . ?????? ??? ?????????? ??? ?????????? ???, ?? ?? ?????????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?? ???, ?? ?? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???;

25 ??? ??? ???????, ?? VAT and Duties Tribunal, London, ?????????? ??
????????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ??????????
?????????:

«1) ???, ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????????????? ???
????????? [...] , ? ??? "????????? ?????????? ??????????", ??? ?????????????? ??? ??? 4,
????????? 1 ??? 2, ??? ??? ?????? ???, ?? ?????????? ??? ??? ?????? ??? ?????????? ???
?? ?????? ?????? [????????? ?????????? ??????] ??? ??? Secretary of State
(?????????) ?????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??????????
????????? ?? ?????????? ?????? ??? ?????????? ?????? ?????????? ?????? (??? ????: ??????
?????????????) ??? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???;

2) ??? ?????? ?????????? ??? ?????? ?? ??????? ??????, ??? ??? ?????????? ??? ??????????
??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???, ??? ?? ?????? ?????????? ??? ??????
?????????, ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? "?? ?????? ??????"
???? ??? ?????? ??? ?????? 4, ?????????? 5, ??? ??? ?????? ???;

3) ??? ??????, ??? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?? ??????????
????????? ?????????? , ? ?????? ?????????? i) ?? ?????? ?? ?????? ???
"????????? ??????????" ???/? ii) ?? ?????? ?? ?????? ??? ?????? ??? ?????? ???
????? ? ?????? ?????? ?? ?????? ??? ?????? ???, ?? ?????????? ? ?????? ?????????? ???
????????? ?? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???;

4) ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????????? ??? ??
????????? ?????? ?? ?????????? ? "????????? ?????????? ??? ??? ?????? ??? ?????????? ???", ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? 4, ?????????? 5, ??? ?????? ?????? ??? ??
????????? ??? ?????? ?? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ???,
????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???; ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ???, ??? ???;
?????????;

5) ?????????????? ? ??? "?????????????" ??? ?????????? ? ?? ?????? ?????? ?????? (???)
????? ?????????? ?? ??? ?????? ??? ?????? 4, ?????????? 5, ??? ?????? [?????] ???
????? ?????? [?????] ?????????? ?????? ??????] ??? ??? ?????? ?????? ??????
????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????? ??????
????????? ?????? ??? ?????????? ?????? ?????????? ??????, ??? ??? ?????????? ???
????????? ??? ?? ?????????? ?????? ?????????? ??????;

6) ??? i) ??? ?????? ?????? ?????????? ?? ??? ?? ?????? ?? ?????? ?? ??? 4, ?????????? 1
?? 5, ??? ?????? ?????? ?? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????? (????? ?? UK Treasury ?? ??????) ?? ?????? ?????????? ?? ??? ?????? ??
????????? ??? ?????? ?????????? ?????? ? ?????? ?????? ?????? ??? ?????????? ?????? ???
????????? ?????????? ??? ii) ?? ??? ?????? ?????????? ??????, ?????? ??? ??????
????, ??????, ? ?????? ???, ??????, ?????? ?? ??? ?????? ?? ?????? ?? ?????? ???
????????? ?????????? ?????? ? ?????? ?????? ?????? ?????? ?????????? ???, ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ??? ??? ?????? ??? ???? ???
????????? ?? ??? ?????? ?????? C?106/89, Marleasing (????? 1990, ?. ?-4135,
????? 8) (???, ?? ???, ???);»

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

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

26 ??? ?? ?? ?????? ?????? ?? ??? ?????? ?????????? ?????? ?? ??? ?????? ?? ??? ?????? ??????????
????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??????
«????????? ??????????», ??? ??? ?????? ??? ?????? 4, ?????????? 1 ??? 2, ??? ???
?????.

27 ??? ?? ??? 4, ?????????? 1, ??? ??? ?????? ??????, ?????????? ?? ?????????? ???
????? ?????????? ???, ??? ?????? ?????????? ??? ?? ?????????? ???, ??? ??? ???
????????? ?????? ??? ?????? ?????? ??? ?? ?????????? ??? ?? ?????????? ???
????????? ??? ?? «????????? ??????» ?????? ??? ?? ??? ?????????? 2 ??
????????? ??? ?? ?????? ?????? ???, ??? ?????? ??? ?? ??? ??????
?????????, ??? ?????? ??? ?? ??? ?????????? ?????? ??? ?????? ???, ??? ??? ???
????????? ??? ?????? ??????.

28 ?????? ?????????? ???, ?????? ?? ??? 4 ??? ?????? ?????? ?????? ??????
????? ??? ?????? ??? ?????? ??????, ??? ?????? ??? ?????? ?????? ?????? ??
????????? ??? ?? ?????? ?????? ?????? (?. ?????? ?????? ??? 11??
????? 1996, C?306/94, Régie dauphinoise, ?????? 1996, ?. I?3695, ????? 15, ??? 29??
????? 2004, C?77/01, EDM, ?????? 2004, ?. I?4295, ????? 47, ??? ??? 26?? ????? 2005,
C?465/03, Kretztechnik, ?????? 2005, ?. I?4357, ????? 18).

29 ??? ??? ?????? ?????? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? (?., ?????? ?????, ?????? ??? 21??
????????? 2006, C?223/03, University of Huddersfield, ?????? 2006, ?. I?1751, ????? 47
??? ??? ?????? ??????).

30 ??? ??? ?????? ??? ?????? ?????? ??? ? ?????? ??? ?????? ???

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

31 ????? ????????, ?? ?????? ?????? ?? ?????????????? ?? ? ?????? ??? ?? ?????? ????????,
???????, ??? ?? ????, «????????????? ??????» ????, ??? ?????? ??? ?????? 4,
????????? 2, ??? ?????? ??????.

32 ??????????? ?????? ??????? ?? ??????????????? ???, ??? ??????? ??? ?? ???
???????, ? ?????? «??????????» ??????????, ??????? ?? ??? ?????????? ??? ?????? ???
?????????????? ??? ?????? ?????????? ???, ?? ??? ?????? ??? ???????, ?????????? ??? ??
????? ?????? ???, ??? ?????????? ??? ?????? ?????? ??????? ?????????? ??? ?? ???
??? (?. ??????? ??? ?????? ??? 4?? ?????????? 1990, C?186/89, Van Tiem, ???????
1990, ?. I?4363, ????? 18, ??? ?????????????? ?????? EDM, ????? 48, ??? ??? ?????? ???
21?? ?????????? 2004, C-8/03, BBL, ?????? 2004, ?. I-10157, ????? 36).

33 ??????? ?????????? ??? ? ??????? ????? ????? ????? ?????????????????? ?????????????? ???
?????? ??????, ????? ?? ?????? ?? ?????????????? ????? ?????????????? ????? ?????????? ?? ??????
????????? ?? ?????????????????? ?? ?????????????? ??? ??? ????? ?????? ?????? ?????????????? ??????
?????????? ??? ????, ?????? ??????, ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????
?????????????.

34 ? ?????????????? ???? ?????????? ?????? ?? ??? ???? ??? ?????????? ??? ??????????????
???? ?????? ?? ?????????? ?????? ?? ????? ?????? ?? ??? ?????????????? ?????? ??? ??????????
?????????? ?? ?? ?????? ?????? ?? ?????????? ?????????????? ?????? ??? ??????????
????????????????? ??? ????, ?????????? ? ???????, ?????????? ??????????, ?????? ???
?? ??? ?????????????? ?????????? ??? ???????????????, ??? ?????????? ??? ??
????????? ??? ?????????? ??? ?????? 2, ?????????? 1, ??????? ??, 4, ?????????? 1, ??? 8,
????????? 1, ??? ?????? 97/13.

35 ????????, ?????????? ?? ??????? ???? ? ?????? ??? ?? ????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????????? ?? ?????? ?????? ??????, ?????? ?? ??? ?????? 97/13 ???
??? ?? ??? ????? WTA 1949 ??? WTA 1998.

36 ????????, ??? ?????????????? ??? ? ??????? ????? ????? ????? ?????? ?????????? ??????????
????????? ??? ?? ?????? ?????????????? ?????? ?? ?????????????? ??? ?????? ?????? ?????? ???
????? ??? ?????? ???????????????. ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ??? ?????? ?. ????????, ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?? ?????????????? ???,
?? ?????? ??? ?????????????? ??????????, ?????????????? ?? ?? ??? ?????? ??? ?? ?????? ???
??? ?????? ?????? ?????????? ??????????.

37 ??? ??? ????????, ?????, ? ?????? ?????????????? ????, ? ?????? ????, ???? ???? ???? ????
????? ??? ?? ??? ????? ?????????? ??? ???? ??????????. ??????? ?????? ??
????????????? ??? ?? ??? ?????? ??? ???? ?????????? ?? ???? ???? ?????? ??? ?????? ??
????????? ?? ?????????? ??? ???? ?????????? ??? ???? ???? ?????? ??? ??????????????.
????????, ? ?????????? ???, ???, ??? ???? ???? ?????????? ?? ???? ?????? ??? ?????? ??
???????? ?????????? ??? ???? ?????? ?????????? ??? ???? ?????????? ??? ?????????? , ??????
?? ?? ?????? 9, ?????????? 4, ??? ?????? 2002/21, ??? ?????? ?? ?????????? ?? ???
?????? ?????? ??? ???? ??????? ?????.

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

39 ??????, ?? ?????? ???? ?? ?????? ?????? ???? ?? ?????? ?????? ???? ?????? ????
????????????? ???? ???? ?????? ???? ?????? ???? ?????? ?????????????? ????
????????????? ???? (?. ?????? ???? ?????? ??? 18?? ?????? 1997, C?343/95, Diego
Calì & Figli, ?????? 1997, ?. I?1547, ??? 24 ??? ??? ?????? ?????????? ??????????).

40 ??????, ? ??????? ???? ??? ?????? «????????? ??????????????», ???? ???? ????
??? ?????? 4, ?????????? 2, ??? ?????? ??????.

41 ? ??????? ???? ?????????????? ???? ??? ?????????? ???? ?? ?????????? ???? ????
????? ?? ??????????, ???? ??? ?????? ???? ?????? 4, ?????????? 5, ???? ?? ?????? ??????, ??
????????? ?? ?????? ? ?????????? ?????????????? ???? ?????? ???? ?????????? ??????????
????? ?????????? ??????????????, ???? ??? ?????? ???? ?????? 4, ?????????? 2, ???
????? ????, ?? ?????? ?? ?????? ? ?????????? ?????? ?? ?????? ?? ?????????? ?? ??????????
????? ???? ???? ??? ?????????????? ????.

42 ???????????, ?????? ???? ?? ??????? ???? ? ?????????? ???? ?????????????? ????
?? ????????????, ?? ?????????? ??????????????, ?????????? ?????????? ???? ???? ??????
?? ?????? 4, ?????????? 5, ???? ?????? ?????? ???? ?????? ?????????? ?????? ????
????????? ?????????? ???? ?????? ?????? ??????????????. ???? ???? ?????? ????
????? ?? ?? ?????? 40 ??? ?????? ?????? ?????? ???? ???? ???? ?????? ????
?????????.

43 ?????? ??? ?????? ???????, ?????? ?? ?????? ???? ?????? ?????? ?????? ? ?????? ????
????? 4, ?????????? 1 ??? 2, ??? ?????? ?????? ???? ??? ?????? ???? ?????? ????
????? ?? ?????? ???? ?????? ???? ??? ?????? ?????????? ???? ??? ?????? ????
??? ?????? ???? ??????????, ?????? ?????????? ???? ?????????? ?????? ????
????????????? ??????????, ??? ?????? ?????????? ?????????????? ???? ???? ????
??? ?????? ???? ??? ?????? ???? ?????? ???? ?????? ?????????? ???? ???? ????
?????????.

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44 ?????? ??? ?????????? ???? ?????? ???????, ??? ?????????? ?? ?????? ?????????? ????
????? ?????????? ???? ?????????? ??????????.

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

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

? ? ?????? 4, ?????????? 1 ??? 2, ??? ?????? ?????? 77/388/??? ??? ??????????, ???
17?? ??? 1977, ??? ?????????? ???? ?????? ???? ?????? ???? ?????? ????, ???
????????? ?? ??? ?????? ?????? ?????? ?????? - ??? ?????? ?????? ???? ?????? ??????????????
?????: ?????????? ?????????? ????, ??? ?????? ?????? ???? ?????? ?????? ????
?? ?????? ??? ?????? ?????????? ?????? ?????? ????, ??? ?????? UMTS, ??? ???

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

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