

?????? C-524/04

Test Claimants in the Thin Cap Group Litigation

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Commissioners of Inland Revenue

[?????? ??? High Court of Justice (England & Wales), Chancery Division,

??? ??? ?????? ?????????????? ??????????]

«????????? ?????????????? — ?????????? ?????????? ?????????? — ????? ?????????? — ?????
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????????? ??? ??????????

1. ?????????? ?????????? ??? ?????????? — ?????????? ?????????????? — ?????????? ???
????????? — ????? ??????????

(????? 43 ??, 49 ?? ??? 56 ??)

2. ?????????? ?????????? ??? ?????????? — ?????????? ??????????????

(????? 43 ??)

3. ?????????? ?????????? ??? ?????????? — ?????????? ?????????????? — ??????????
?????????

(????? 43 ??)

4. ?????????? ?????????? ??? ?????????? — ?????????? ?????????????? — ?????????? ???
????????? — ????? ??????????

(????? 43 ?? ??? 48 ??)

5. ?????????? ?????? — ?????????? ?????? — ?????????? ??? ?????? ?????? —
????????? ?????????????? ??? ?????? ??? ?????????? ?? ??????

(????? 43 ??)

6. ?????????? ?????? — ?????????? ?????? — ?????????? ??? ?????? ?????? —
????????? ?????????????? ??? ?????? ??? ?????????? ?? ??????

1. ?????????? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ??????????
????????? ??? ?????? 43 ???. ?????? ??? ???? ?????? ??? ? ?? ??????, ?????? ?? ?????????? ??? ??
????? ??? ?????? ?????? ?????? ??? ???? ?????? ?????? ??? ? ?? ?????? ?????????? ??????????
?? ?????? ?????? ?????? ?????? ?????? ??? ???? ?????? ?????? ?????? ?????? ??? ?????? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????
????????? ??? ??? ?????????? ??, ?? ??? ?????? ???, ??? ?????? ?????? ??? ?? ??? ??

????? ??????????? ??? ???? ???? ???? 49 ?? ??? 56 ??.

(???. ??????? 33, 34, 101)

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

(???. ??????? 72-74)

3. ?? ????? 43 ?? ?????????? ?????????? ??????? ???? ???? ?????????? ??
?????????? ??????? ??????? ?? ???????, ??? ?????????? ???????, ??? ???????,
?????? ??? ?????????? ??? ?????? ??????? ?? ??? ?????? ?????? ?????? ?????? ??? ???????,
? ??? ??? ?????? ?????? ?????? ? ??????, ? ?? ?????? ?????????? ?????? ??? ?????? ?????? ???
??? ?????? ??????? ? ?? ??? ?????? ???????, ?????? ?? ? ?????????? ???, ??????,
????????? ?? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ?? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????
????????? ?????? ???????, ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????
????????? ?????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ???, ???????, ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? , ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??? ??? ?????? ?????????? ??? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
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????????? ??????? ??????? ?????? ?????? ??? ?????? ?????? ?????? ???????????, ??? ?????? ???????
????????? ??????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ??????????
????????????? ?? ??? ?????? ???, ?? ??????, ??? ??? ?????? ???, ?????? ??? ?????? ?? ???
????????? , ?? ?? ??????? ?? ?? ?? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????? ?????????? ??? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

(???. ??????? 61, 92, ??????? 1)

4. ?????????? ??????? ?????? ???? ?????? ?????????? ?? ?????????? ?????????? ??????????
?? ???????, ??? ?????????? ???????, ??? ?????? ?????? ?????? ?????? ?????????? ??? ??
????????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ??????,
??? ??? ?? ?????????? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ?????? ??? ?????? ??? ?????? 43 ??, ???
??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????
?? ??? ?????? ?????? ?? ??? ?????? ???, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? , ??? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
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??????????????, ????, ?? ??? ?????? ???????????, ?? ??????? ?????? ??? ????? ?????? ??
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?????????????? ?? ?????? ?????, ???? ??? ?????? ??? ?????? 48 ??, ?? ?????? 43 ?? ???
???? ???????.

(?. ??????? 99, 102, ??????. 2)

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????????? ?? ??????, ?? ?????? ??????????? ?? ??????????? ?? ??????????? ?? ?????? ??????????? ? ???????????,
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???????? ? ?????????? ???? ? ?????? ?????????? ?????????? ?????????? ?????????? ???? ? ??????????
??????????????, ??????? ???? ?????? 43 ??, ?? ?????? ??????????, ?????????????? ??
????????????? ??? ?????? ??? ??? ?????? ?????? ?? ?????????????? ????????????, ?????????? ??
????????? ?? ?? ??????????? ?????? ?????? ?????? ??, ??????, ?? ?????????????? ?? ?????? ?? ?????????? ??
????????????? ?? ?????? ?????? ???, ??????, ?? ?????????????? ?? ?????? ?? ?????? ?????? ?? ?? ??????
????????? ??? ?????? ??? ?????? ??????. ??????, ? ?????????? ??? ?????????? ??? ?????????? ???
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??????????, ???????????, ?? ??? ??????? ?????????? ?? ?????????? ????? ?????????? ???
????? ??????????, ?????????? ?? ?????????? ?????.

(???. ??????? 115, 123, 126, 128, ??????. 3)

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

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

(???. ??????? 119-121)

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

?? 13?? ?????? 2007 (*)

«????????? ?????????? – ?????? ?????????? ?????????? – ?????? ?????????? – ??????
????? ?????????? ?? ?????????? ?? ?????????? ?????? ?????????? ?? ?????? ?????? ?????? ??
?? ?????? ??? – ?????????????? ?? ?????? ?????????? ?????? ?? ?????? ?????? ?????? – ?????? ???
????????? ?????? – ??????????»

???? ?????? C-524/04,

?? ?????????? ?????? ?????? ?????????? ?????????? ?????? 234 ??,
?? ?????? ?? High Court of Justice (England & Wales), Chancery Division (????? ??????)
?? ?????? ?? 21?? ?????? 2004, ? ?????? ?????? ?? ?????? 31
????????? 2004, ??? ?????? ??? ??????

Test Claimants in the Thin Cap Group Litigation

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Commissioners of Inland Revenue,

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

?????????? ?? ??. ??????, ??????, P. Jann, C. W. A. Timmermans, A. Rosas, K. Lenaerts (????????), P. K?ris ??? E. Juhász, ?????????? ??????????, J. N. Cunha Rodrigues, R. Silva de Lapuerta, K. Schiemann, J. Makarczyk, ?. ?????? ??? A. Borg Barthet, ????????,

?????? ??????????: L. A. Geelhoed

?????????: L. Hewlett, ????? ?????????? ????????????

?????? ?? ??. ?????? ?????? ?????????? ?? ??????? ??' ?????????? ??????????? ?? 31?? ?????????? 2006,

?????????? ?? ??. ?????? ?????????????? ?? ????????:

- ?? Test Claimants in the Thin Cap Group Litigation, ?????????????? ?? G. Aaronson, QC, ????? ?? P. Farmer ??? D. Cavender, barristers,
- ? ?????????? ?? ????????, ?????????????? ?? C. Jackson ??? C. Gibbs, ?????????????? ?? D. Anderson, QC, ????? ?? D. Ewart ??? S. Stevens, barristers,
- ? ?????????? ?? ????????, ?????????????? ?? M. Lumma ??? U. Forsthoff,
- ? ?????????? ?? ????????, ?????????????? ?? D. J. M. de Grave,
- ? ?????????? ?? ?????????? ????????????, ?????????????? ?? R. Lyal,

???? ?? ??. ?????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? 29?? ?????? 2006,

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

???????

1 ?? ?????? ?????????? ?????????????? ?? ??????? ?? ?????????? ?? 43 ??, 49 ??, ????? ?? 56 ?? 58 ??.

2 ?? ??? ?????? ?????? ?????????? ?? ??????? ?? ???????, ???????, ?????????? ?????? ?????????? (??? ????: ?????????? ?? ???????) ??, ???????, ?? Commissioners of Inland Revenue (????????? ?? ?????? ?? ?????????? ??????????) ??????? ?? ?????????? ?????????? ?? ??????? ?? ?????? ?? ?????????? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ??????? ?? ??????? ?? ?????? ?? ?????????? ?????????? ?? ?????? ?? ?????? ?? ?????? (??? ????: ?????????? ?? ???????) ?? ?????????????? ?? ?????? ?? ?????? ?? ?????? ?? ??????.

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

3 ?? ?????????? ?????????? ?? ??????? ?? ??????? ?? ??????? ?????????? ?? ?????? ?? 1988 ?? ?????? ?? ?????????? ?? ?????? ?? ?????? (Income and Corporation Taxes Act 1988, ??? ????: ICTA), ??? ?? ?????? ?? 1995 ?? ??? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? 1995 (Finance Act 1995), ??? ?? ??? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? 1998 (Finance Act 1998).

?? ?????????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????????????? ?? 1995

4 ??? ?? ??? 209, ?????????? 2, ??????? d, ??? ICTA, ? ??????? ?? ?????? ???????

???? ?????????????? ??? ??????? ?????????? ?????????? ?????????? ?????????? ?????? ??
????? ??? ?? ?? ??? ????? ?????????????? ??? ?????? ?????????? ?????????? ??? ??????. ?
????????? ??? ????? ?????? ??? ?? ?????????? ?????? ??? ?????????? ?????????? ???
??? ?????? ???????. ??? ?? ?????? ??? ?????????? ?????? ??? ?????? ?????????? ??????????, ??
????? ??? ?????????? ??? ?? ?????????? ?????? ??? ?????????? ?????? ?????????? ??????????, ???
????????? ?????????? ?????? (?????????). ? ?????????? ?????? ?????????? ?????????? ??????????, ??
?? ??????, ?? ?????????? ?????? ??? ?????????? (advance corporation tax – ACT) ??????? ?? ??
????? 14 ??? ICTA.

5 ???????, ??? ?? ????? 209, ?????????? 2, ??????? iv ??? v, ??? ICTA, ?? «??????»
??????» ??????????????, ??? ?? ?????????????? ??? ?????? d ???????????, ???
????????? ??? ?? ??? ?????? ?? ?????????? ?????? ?????? ?????? ??? ?????? ??????????,
????? ??? ?? ?? ??? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???
????????????? ???????. ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ?? ?????? ?????? ??????, ??? ?????? ?????? ?? 75 % ??? ???????, ?
????? ?? ??? ?????? ?????? ?????? ?????? ?????? 75 % ?????? ?????? ?????? ??????.

6 ??????, ??????? ?? ?? ????? 788, ?????????? 3, ??? ICTA, ?????????? ?????????? ???
????????? ??? ?????? ?????????? (?? ?????: ???) ??????? ?????????? ??? ?? ??????????
?? ?? ??? ?????????? ??? ?????? ??????????, ???????????, ??? ??????????
?????????????, ??? ?????? ??? ?????? ??? ?????? ?????????? ??????. ??????? ?? ???
????????????? ?????????? ??? ??????, ?? ?????? ??? ?????? ?????? ?? ?????? ?????? ???
????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???.

7 ??? ?????? ?????????? ?????????????? ?? ???, ??? ?????? ??? ?????? ?????????? ?? ??
????????????? ?????????? ?? ??????????, ?? ?????????? ??? ?????????? ?? ?????????? ?? ??????????
?? ??????????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????, ??????? ?? ??? ??????
?? ?????? ?????????? ??, ?????????????? ?????? ??? ?????? ??? ?????????????? ???????, ??
????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?? ?????? ?????????? ?? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????.

8 ??? ?????? ?????????? ?????????????? ?? ???, ??? ?????? ??? ?????? ?????????? ?? ??
????????? ??????????, ??? ???????, ??? ?????? ?????????? ?? ?????????? ?? ?????? ??? ??????
??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ?? ?????????? ???
????????? ?????? ?? ?????????? ?????? ??? ?? ??? ?????? ??? ?????? ?????????? ?? ???
????????? ?????? ???, ??? ?????? ??? ?????? ?????????? ?? ??? ?????? ?????? ?? ?????? ???
????? ?????? ??? ?? ?????? ???????, ?????? ??? ?? ??? ?????? ??? ?????? ?? ?????? ???
????????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????.

9 ?????? ??? ?????? 808A ??? ICTA, ?? ?????? ?????? ?? ?? ?????? 52 ??? ??????
????? ??? ?????? ?????????? ??? 1992 [Finance (No 2) Act 1992] ??? ??? ?????? ???
????? ?????????????? ??? 14 ??? 1992, ?????? ?? ?????????? ???, ??? ?????? ??
????????? ?????????? ???, ??? ?? ?????? ?????? ?????????? ?????? ?????? ??? ?? ??
????? ?? ?????????????? ???, ?? ??? ?????? ? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ??????, ?????? ???, ????? ?????????? ???, ?????? ?? ?????? ?? ?????? ??? ??????
??? ??? ?????????? ??? ??????.

? ? ?????????????? ??? ?????????? ??? 1995

10 O ??? ?????? ?????? ?????????? ?????????? ??? 1995, ? ?????? ??? ?????? ?????????? ???
??? ?????? ??? ?????????? ??? 28 ?????? 1994, ??? ?????? ?? ?????? ?? 209,
????????? 2, ?????? d, ??? ICTA. ??????, ?? ?????????? iv ??? v ??? ?????? e ???
????????? 2 ?????????? ??? ?? ?????? 209, ?????????? 2, ?????? da, ?? ???

?????? ? ?? ? ???????? ?????? ?????? ?????????? ??? ?????? ?????? ?????????????????? ??
«?????? ????» ??? ? ???? ???? ? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????????? ?? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ???? ?
?????. ? ??????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????????? ??? ??? ???? ???? ???? ?
???? ???? ?????? ? ?????? ?????? ?? 75 % ??? ?????? ??? ???? ???? ???? ???? ???? ???? ?
????? ?????????? ??? 75 % ?????? ???????.

11 ???????, ??????? ?? ?? ?????? 212, ??????????? 1 ??? 3, ??? ICTA, ??? ??
???????????, ?? ??? 209, ??????????? 2, ???????? da, ??? ??? ?????????? ?? ? ???????
?? ? ?????????? ?? ??? ????? ????????, ????????, ?? ??? ????? ??????? ?? ??? ??????
???????.

12 ?? ?????? 209, ??????????? 2, ???????? da, ??? ICTA ?????????????? ?? ?? ?????? 209,
?????????? 8A ??? 8F. ?? ?? ?????? 209, ??????????? 8B, ??? ICTA ?????????????? ??
????????? ?????? ??? ??????? ? ??????? ?????? ?????? ?????? ?? ?????????????? ?? ???????
???????. ?? ??? ?????????? ?? ??????????? 8? ??? ??? ??????????? 8D ??? 8F ??? ?????? 209
??? ICTA, ??????????? ?? ??? ?????? ?????? ??????????? ? ??????????? ??? ??????????,
?????????? ?? ?????????? ?? ??? ??? ?????? ?????? ?????? ?? ?????? ???.

?? ?????????????? ?? ?????????????? ?? 1998

13 ?? ??? ?????? ????? ??????????? ?????????????? ??? 1998 ???????? ??? ICTA ?? ??????????
28AA, ?? ?????? ?????????? ??????? ?????????? ?? ??? ?? ?????????????? ? ??????????????, ??
?????? ??????? ?? ?? ??? ?????????? ?????? ?????? ?????? ??????? ????????. ?? ??????? ?? ???
?????? ?? ?? ?????????? ?????? ??? ????????, ?? ?????? ?????????? ??? ?? ???
??????, ?? ?? ??? ?????? ??? ?????????? ?????? ?????? ??????? ??? ?? ?????????? ??
?? ?? ??? ?????? ?????? ??? ?? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ???
?????? ?? ?????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ???
?????????? ?????????? ?? ?? ?????? ?????? ?????? ???????. ?? ??????? ?? ?? ??? ?????? ???
?????? ?? ?????????? ??? ?? ??? ?????? ?????? ?????? ?????? ??? ????????, ??? ?? ??? ??
?????? ?????????? ??? ?? ??? ?????? ?????? ?????? ?????? ???, ??? ?? ??? ?? ??? ??
?????? ?????? ??? ?????? ??? ????????, ??? ?????? ??? ?? ??? ?????? ?????? ?????? ???
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14 ?????? ??? ??????????? ?? ?????? ?? 2004, ?????????? ??? ?? ??????
????????? ???????????, ??? ???? ?????? ?? ?????????? ??????, ??? ?????? ??
?????????? ???, ?????? ?? ?? ?????? ?????? ??? ??????????? ??????????? ?? ??
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15 ????? ?? ?????????????? ?? 2004, ?? ??????? ?????? ?????? ?????? ?????? ?????? ??
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? ??????? ? ?? ???? ???? ? ?? ? ???? ?????????? ???? ?

16 ??????????? ??? ?????? ?????? ?????? ?????? ??????????????? ?? ?? ??????????? ??
?????????? ?????? ?????? ?????? [group litigation] ??????? ?? ?? ???????????????
(Thin Cap Group Litigation), ??? ?????? ??? ?????? ?????????????? ??????? ?? ??????
????????? ??/??? ??????????? ?? ?????? ?????? ?????? ?????????? ??? ?? Commissioners of
Inland Revenue ?????? ?? High Court of Justice (England & Wales), Chancery Division ???
?? ?????? ?? ?????? ??? 12?? ?????????? 2002, C-324/00, Lankhorst-Hohorst (??????
2002, ?. I-11779).

17 ?????? ?????? ??? ???? ?????????????? ??? ?? ?????????? ?????????????? ?????????? ??

«?????????????????» ??? ??????? ??? ??? ????? ?????????? ?????????? ?????????????? ?????
????????? ??? ????? ?????????? ?????????????? ??? ?????? ?????????? ?????????? ????
? ?????? ?????????? ??? 75 % ??? ?????????? ?????????? ?????????? ??? ?????? ?????? ??????
???? ??? ?? ?????? ?????????? ??? ?????? ????? ?????????? ?????????? ??? ?????? ?????? ??????
? ??????, ?????????? ??? 75 %, ? ??? ?????? ?????? ?????????? ??????????.

18 ??????????, ??????, ??? ?????? ?????????? ?? ?????? ?????????????? ??? ??????
????????? ??? ?????????? ?? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??????????
????????? ??? ?????? ?????? ?????????? ?????????????? ??? ?????? ?????? ?????? ??????
????????? ?? ?????????? ??? ??? «?????????????????» ?????????, ??? ??? ??? ??? ??????
Lafarge ??? Volvo, ??? ? ?????????? ?????????? ??? ? ?????? ?????????? ??????
????????????? ??? ??? ?????? ?????, ?? ?????????? ??? ?????? ??? ??? ??? ??????
?????????.

19 ?????????, ?? ?????????? ??? ??? ?? ??? «?????????????????» ?????????, ??????????
????????????? ??? ?????? ?????????? ??? ?????? ?????? ?? ?????? ?????????, ?????????? ???
????? ?????? ?????? ?????????? ?????????????? ?? ?????? ???, ??? ??? ??? ??????????
????????? ??? ?????????, ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??????
????????????? ?? ??? ?????? ?????? (????? ?????????? ?? ?????????? ?????????? ??? ??????)
Caterpillar, ??????? ?? ?????? ?????????? ??? ?????? ?????????? ?????????) ?? ??? ?????? ??? (????
????????? ?? ??? ?????? ?????????? ??? ?????? Caterpillar ??? ?????? ?????? ?????????? ???
????????? ??????), ? ?????? ??? ?????????? ?????????????? ?? ?????? ?????? ?????? ??? ??????
???? ?????? ??? ?????????????? ?????????????? ?? ?????? ??? (????? ?????????? ???
????????? ??? ?????? PepsiCo, ??? ? ?????????? ?????????? ??? ?????? ?????????????? ???
????????? ???, ??? ?????? ??? ?????? ?????????????? ??? ?????? ??????).

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

21 ??? ??? ?????? ??? ?????????????? ?????????? Lankhorst-Hohorst, ?? ??????????
??? ?????? ??? ?????? ?????????? ?????????? ?????????? /??? ?????????? ?????? ?? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ???
????????? ??? ?????????? ???, ???, ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????
/??? ?? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ???
???, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????????
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

22 ??? ??? ??????? ???, ?? High C?urt ?f Justice (England & Wales), Chancery Di?isi?n,
????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??
????????? ?????????? ??? ??????:

«1) ?????????? ??? ??? 43, 49 ? 56 ?? ?? ?????? ?????? ?????? (??? ????: ??????
??? ?????????? ??? ??????) ?? ??? ??? ?? ?????? ?????? ?????????? ??? ?????? ?? ??????????
??? ?????? 209, 212 ??? ?????????? 28AA ??? [ICTA, ??? ????: ?????????? ??? ??????
?????????], ?? ?????? ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?? ??? ?????? ?????? (??? ????: ?????????? ??? ??????), ??

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

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

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

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

????????????? ??? ?????????????? ??? ??????????????;

2) ??? ?????? ? ?????? ??? ?????? ??????:

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

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

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

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

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

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

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

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

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

????????? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??????;

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

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

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

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

????????? ??? ?????????? ??? ?????? ???, ??? ?????? ?????? ??? ?????? ??????;

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

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

?? ?????? ?????;

3) ?? ?????? ? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????????? ??? ?

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

????????? ??? ?????? ?????? ?????????? ? ?????????? ?????? ??????????; ?? ?????????? ?????????? ???

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

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

????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??????;

4) ?? ?????????? ?????????? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? 56 ??,

????????? ?? ?????? ?????? ?????? 31 ?????????? 1993 ??? ??? ?????? ?????? ?????? ?????? ???

?? ?????? 57 ??;

5) ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????????? ??? ???

??? ??? ?????? ?????? ?????? ??? ?????? 43, 49 ? 56 ??, ???, ?? ? ?????????????? ???

????????? ? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????;

????????? (??? ????: ??????) ?????????? ??? ?????? ??????;

?) ?????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, ???

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

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

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

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

?????? ?? ?? ????? ??????? ?? ????????????????????, ??? ?? ?? ????? ?? ?? ?????????????? ????????, ??:
??:

— ?????????? ??? ?????????? ? ?????????????? ?????????????? ?????????????? ?????????????? ?????? ???
????????? ?????????? ??? ?? ?????????? ?? ??? ?????????? ??? ????? ?????????? ??? ?????????????? ??????????
?????????, ?

- ?????????? ??? ????????????, ?

- ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????????????? ?? ??? ??????????????; ?????????? ??? ?????????? ?? ??? ??????????;

6) ?????????????? ??? ? ?????????? ?? ?????????????? ?????? ??? ?????????? ??????????????
????? ??? ???? ?????????? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ???
????????????? ?? ?????? ?????????? ?????????? ?????? ??? ??????????:

?) ?????????? ?? ?? ??? ?????????? ?????????? ? ?????? ?????????? ??? ?????????????? ???
????????? ?? ?????????????????? ?????????? ??????????, ?

?) ??????? ?? ??????????? ??????????? ? ????? ?? ?????????????? ??????????? ???
?????????????? ??? ?????????????? ??? [??????? ?? 5?? ??????? 1996, C-46/93 ??? C-
48/93, Brasserie du Pecheur ??? Factortame, ??????? 1996, ?. ?-1029], ?

?) ?????? ?? ??????????? ?????? ?????? ?????????????;

7) ?????????? ???' ??????????? ?????? ? ?????????? ?? ??? ?????? ?? ??????? ?????? ?? ??????????

8) ?????? ??????????? ?????? ??????????? ?????? ?? ?????? ?? ??????????? ??
?????????? ?????? ??? ?????? ??? ??????????? ??? ?????? ?? ?????? ??? ?????? ?? ???????????
?????????? ?? ?????? ?? ?????????????????? [?????????] ?????????? ??? ?? ?????? ?? ?????? ??
???? ?????????????? ?????? Brasserie du Pecheur ??? Factortame, ?????? ?? ?? ? ??????????
???? ??????????, ?? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??????????
????????? ??????????;

9) ??????, ???' ?????, ?? ?????????? ?????? ?????????? ?????????? (????? ??? ?????? ???
????? ??? [????????????????? ?????? Brasserie du Pecheur ??? Factortame]) ??????
?????????? ?????????? ??? ?????? 43, 49 ??? 56 ?? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ???????, ??????? ?? ??? ??, ?? ??????
????????? ??? ?????????? ??? ?????? ?????? ???????; ?? ?????????? ??????????
?????????, ????? ?????????? ?????? ?????????? ?????? ?? ?????? ?? ?????????? ???
????? ?? ?????? ?? ??? ?? ?????? ?????????? ?????? ?? ?????? ?? ?????????? ??
????? ?????? ?????? ?????????? ???????;

10) ??????? ?? ??????? ????????????, ???? ?? ?????????????? ?? ??????? ?? ??????? ?? ??????? ??
????????? ?? ?????????? ????????????, ?? ?????? ?????? ?? ?? ?????????? ?????????? ?????????? ??????????
?????? ?????????? ????????????, ?? ?????????? ? ?? ?????????? ?? ?????????? ?? ?????? ??, ??
????????? ?? ?? ?????? ??????? ????????????, ?? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??
????????? (????????? ?? ?????????? ??????????) ???

?????????? ?? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????? ???????;
?????????? ? ??????? ??? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ???????
???? ?? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ???????
??? ?????? ??????????;»

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

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

23 ?? ?? ??? ?????? ??????? ??, ?? ?????? ??????????? ????, ???' ??????, ?? ?? ??? 43
??, 49 ?? ? 56 ?? ?????????? ?????????? ??????? ?????? ?????? ?????????? ??
????????? ??????? ?????????? ?? ???????, ??? ?????????? ???????, ??? ???????
?????? ?????????? ??? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ??????? ???
??? ??????? ?????? ????, ??? ?? ?? ?????????? ??????? ?????? ?????? ?????? ??? ?? ???
????????? ??? ?? ?????? ??????? ??? ?????? ?????? ?????? ?????? ?????? ???????.

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

25 ?????? ??????? ?? ?????????? ???, ??? ?????? ???????, ?????? ? ?????? ? ?????
????????? ??????? ??? ?????????? ??? ?????? ?????, ?? ?????? ?????? ?????? ?? ???
????? ??????? ?? ?????????? ?????? (??., ????, ???, ??? ??????? ??? 8?? ??????
2001, C?397/98 ??? C?410/98, Metallgesellschaft ??., ?????? 2001, ?. I?1727, ??? 37, ???
13?? ?????????? 2005, C?446/03, Marks & Spencer, ?????? 2005, ?. I?10837, ??? 29, ???
??? 12?? ?????????? 2006, C-374/04, Test Claimants in Class IV of the ACT Group Litigation, ?
????? ??? ??? ?????? ?????? ??????? ??? ???????, ??? 36).

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

26 ??? ?? ?????? ?? ?????? ?? ?????? ?????????? ??? ?? ?????????? ??????? ?? ???
????????? ??? 43 ??, ??? ?????????? ???????????, ??? ?? ?????? 49 ??,
???? ??????? ?????? ???????, ??? ?? ?????? 56 ??, ??? ??????????
????????? ???????, ??? ?? ?????????? ?? ??? ?????? ?????? ?????? ?????? ??? ???????
???? ?? ?????? ??? ?????? ??? ?????????? ???.

27 ??? ?????? ???????, ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ???
??? ??????? ??? ?????????? ?????????????? ?? ?????????? ?????? ?????????? ???
????? ??????? ??? ?? ?????????? ?????? ??????? ?????? ??? ?????????? ?????? ??? ??????????
????????? ?????? ??? ?????? ??????? ???????, ??? ?????? ?????? ??? ? ?????????? ??? ?? ???
????????? ?? ?????????? ?? ??? ?????? ?????????? ?????? ??? ?????????? ??? ?? ??????????
??? ?? ?????????? ??? ?????????? ??? (??., ??' ???, ??????? ??? 13?? ??????
2000, C?251/98, Baars, ?????? 2000, ?. I-2787, ??? 22, ??? 21?? ??????
2002, C-436/00, X ??? Y, ?????? 2002, ?. I-10829, ??? 37, ??? 12?? ?????????? 2006,
C-196/04, Cadbury Schweppes ??? Cadbury Schweppes Overseas, ? ?????? ??? ?????? ???
????????? ??? ???????, ??? 31).

28 ?? ??????????, ??? ?????? ? ?????? ? ?????? ?????????? ??? ?????? 33 ??? 34 ???
????????? ???, ?? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????? ?????? (??? ????: ?????????? ???), ??? ??????

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

29 ??????, ??? ???? ?????????? ??? ?????????? ??? 1998, ?? ??????? ??????????
?? ICTA ?????? ??????? ??? ?????? ?????????? ??? ??????? ?????? ?? ??????
?????????, ?? ?????? ? ??? ?????? ?????? ?????? ?? 75 % ?? ??????? ? ??? ???? ??????
?? ?????? ??? 75 % ?????? ?????? ?????? ??????????.

30 ????????, ??? ???? ?????????? ??? 1998, ? ?? ??? ?????? ?????????? ?????????? ???
??? ??? ???? ??? ???? ?????????? ?????? ?????? ?????? ? ?????? ??? ???????,
???? ???? ???? ???? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ???????, ???
????? ???? ???? ?????? ??? ??? ?????????? ??????.

31 ????????????, ??? ??????? ? ?????????? ??? ?????????? ?????? ????????????, ??
????????? ??? ? ?????? ??? ?????? ???, ?????? ??? ?????? ?????? ? ?????????? ???
????????????????? (thin capitalisation) ??? ?????? ?????????? ??? ?????? ?????? ??????????
????????? ???, ?????????? ??? ?????? ?????? ?????????? ??? ? ?? ??? ?????? ??????
????????? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??????, ?? ?????????? ??
????? ?? ?????????? ??? ?????? ?????? ?????? ???????????????, ?????? ?? ??? ???? ?? ?? ??
????????? ??? ???? ???? ?????????? ??? ?????? ?????? ?????????? ???? ?????? ??????????.

32 ???????, ??? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?? ?????????? ???
????????? ?? «?????????????» ??? ?????? ??? ?????????? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????????? ?????????????? ??? ?????? ?????? ?????????? ??
????? ?????? ?????? ???? ?????? ?????????? ??? 75 % ?????????? , ?????????? ??????????
????????? ???? ?????? ?????????? ?????????? , ???? ?????? ?????? ?????? ?????? , ??? 75 %
????????? , ?????????? ??? ???? ?????? ??????????.

33 ??????? ???? ? ?????? ??? ?????? ???, ? ?????? ?????? ??? ?????? ??? ?????? ?????
????????? ?????? , ?????????? ?????????? ??? ?????????? ?????????????? ???, ?? ??
????? , ?????? ?? ?????????? ??? ???? ?????? ??? ?????? 43 ?? (??., ??' ????, ??
????????????? ?????? Cadbury Schweppes ??? Cadbury Schweppes Overseas, ??????
32, ??? ??? ?????? ??? 12?? ?????????? 2006, C?446/04, Test Claimants in the FII Group
Litigation, ? ??? ??? ??? ?????????? ?????? ??? ?????? , ??? 118).

34 ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????????????? ?? ?????????? ??? ?????? ??????
?? ? ?? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ???, ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?? ??
????????? , ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? 49 ??
??? 56 ?? (??., ??? ??? ?????? ???, ??? ?????? ??? 14?? ?????????? 2004, C-36/02,
Omega, ?????? 2004, . I-9609, ????? 27, ??? ?????????? ?????? Cadbury Schweppes
??? Cadbury Schweppes Overseas, ????? 33, ??? ??? ?????? ??? 3?? ?????? 2006,
C?452/04, Fidium Finanz, ? ??? ??? ??? ?????????? ?????? ??? ?????? , ?????? 48 ??
49).

35 ???????, ?? ?????????? ??? ?????????? ?????? ??? ?????? ?? ?????? ??? ??
????? ??? ???? 43 ??.

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

36 ? ?????????? ??????????????, ??? ??? ?? ??? 43 ?? ?????????? ?????
????????? ?????? ??? ? ??? ? ?????????? ??' ?????? ??? ?????? ??? ?????? ??
????????? ??????????????, ?????? ??? ?? ?????? ??? ?????????? ??????????????, ??? ??
????? ?????????????? ?? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ??
????????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????????? ?? ?? ?????? 48 EK,
????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ?? ?? ?????? ?????? ?????? ??
??? ?????? ??? ?????????? ??? ??, ??? ?????? ??? ?????? ?? ?? ?????? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?? ?????? ?? ?? ?????????? ??
?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ?? ?? ?????? ??
????????? ??? 21?? ?????????? 1999, C-307/97, Saint-Gobain ZN, ?????? 1999, ?. I-6161,
????? 35, ??? ?? ?????????? ?????? Marks & Spencer, ????? 30, ????? ??
Cadbury Schweppes ??? Cadbury Schweppes Overseas, ????? 41).

37 ? ??? ???? ????????, ??? ???? ?????? ??? ?????? 48 ??, ??????????, ??? ?
????????? ??? ?????? ??????, ??? ??? ?????????? ??? ?????? ??? ?? ?? ?????? ??
????? ??? ??????. ?? ?????? ??? ?? ?????? ??? ?????? ?????? ?????????? ?????? ??
?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??
????????? ?? ??? ?????? ???, ?? ?????? 43 ?? ??? ?? ?????? ?????? ?????? (??., ???
?? ?????? ???, ??? ?????? ??? 28?? ?????????? 1986, 270/83, ?????? ??? ?????? ??
????? 1986, ?. 273, ??? 18, ??? 13?? ?????? 1993, C?330/91, Commerzbank, ??????
1993, ?. I?4017, ??? 13, ??? ??? ?????????? ?????? Metallgesellschaft ?..,
????? 42, ??? Marks & Spencer, ??? 37). ? ?????? ?????? ?????????? ?????? ??????
?? ? ?????????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??
????????? (??., ??? ?? ?????? ???, ??? ?????????? ?????? ?????? ??
????????? 14, ??? Saint-Gobain ZN, ??? 35).

38 ?? ????????, ?? ?????? ?? ??? «?????????????» ?????????? ?? ??????
????????? ???, ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ??
?? ??? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ??????, ?? ?????? ?????? ?????? ?? ?????? ??
????? ?? ?? ?????????? ?????? ?? ?????? ??.

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

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

41 ??????, ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?? 1995, ? ?????? ??
????? ?????? ?????? ?????? ?????? ??????, ???????, ?? ?????? ?????? ?? ?? ?????? ??
????? ?????? ?? ??????, ??? ?? ?????? ?????? ??????, ?????? ?????? ?????? ??????, ?????? ??
??? ?? ? ?????? ?????? ?????? ?????? ?????? ?? ?????? . ??????, ??? ?? ??????
????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??????, ?????? ?? ?????? ??
??? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??, ???, ? ??????
????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??, ?????? ?? ?????? ??

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

42 ????????, ??? ???? ?????? ?????????? ??? ?????? ?????? 1995 ??? 1998, ? ???????
?????? ??? ?????? ? ?????????? ?????? ?????? ?????????? ??? ?????? ?????? ??????????????
????? ?????? ??????, ?????? ?? ??? ?????? ?????? ?????????? ??? ?????? ??? ?? ??????????????
????????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ? ?? ??????
??????, ??? ??? ?????? ?????? ?? ? ?????????? ??? ? ?????????? ?????? ?????? ?????? ??????
????????? ?? ??? ??? ?????? ???????.

43 ??????, ??? ???? ?????? 1998 ??? 2004 ????????, ? ????????, ??????
?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????????????????? ?
????????????? ?????? ?????? ?????????? ??? ?????????? ?????????????????? ??? ??????
????????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???
????? ??? ?? ? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ???
????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??????.

44 ?????????? ??? ???? ?????? ?????? ??? ?????? ?????? ?????????? ?? ??? ?????? ?????? ?????????? ??
????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????????????? ???
????????????? ? ?????????? ?? ?????????? ?????? 1995 ??? 2004 ????????
????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
?????????.

45 ????????, ??? ???? ?? 1995 ??, ?? ??? ?????? ????????, ?????? 1995 ??? 2004, ??
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ??????????
????????? ??????, ? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??????????
????????? ?? ?????? ?? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ?????????? ???????.

46 ?????? ?? ?? ? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?? ?? ??????????
?? ?????? ??? ?????????? ?????? ??????????????, ? ?????????? ?????????? ??? ? ??????????
?? ?????? ??? ?????????? ??????????, ???????, ??? ?? ?????????? ?????? ??? ??????
????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??????????????,
????? ??? ?????? ??????????, ??????? ?? ??? ?????????????? ?? ?????? ?????? ?????? ???,
??? ??? ?????? ??? ?????? ?????? ??? ??????.

47 ?? ?????????? ?????? ?????? ??????????????, ???????, ??? ??? ?? ???? ?????? ??????? ??
????????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
«????? ??????» ? «?? ?????? ?????? ??? ??????», ??? ? ?????? ?????????? ??? ??????
?? ??? 9 ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? (????). ? ?????????? ??????????
????????? ???, ?????? ?? ??? ?????? ??????, ?? ?????? ?????????? ??? ?????? ??? ??????????
????????? ?????? ?? ??? ?????? ?????? ?????????????? ??? ?????? ?? ??????????
????????? ?????? ???, ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ?????? ?????? ??????????.

48 ?????? ?? ?? ?????? ??? ?????? ?????? ?????? ?????, ? ?????????? ??? ?????? ?????? ??????????
????????? ??? ?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?? ??????????

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

49 ?????? ?? ??????????, ???????, ???, ??????? ?????????? ?????? ?????????????? ?
??????????, ?? ?????? ??? ?????????? ??? ?????????? ?? ???????, ?????????? ?
?????????, ?? ??????? ?????????? ??? ?????????? ??? ?????????????, ?????????????,
????? ???, ?? ?????????? ?? ?????? ?????? (????????? ??? 12?? ??? 1998,
C?336/96, Gilly, ?????? 1998, ?. I-2793, ?????? 24 ??? 30, ??? 7?? ?????????? 2006, C-
470/04, N, ? ???? ??? ??? ?????????????? ?????? ??? ???????, ?????? 44, ??? ??? 14??
????????? 2006, C?513/04, Kerckhaert ??? Morres, ? ?????? ??? ??? ?????????? ?????? ???
??????, ??????? 22 ??? 23). ??? ?????? ??? ?????????? ??? ?????? ??? ?? ?????????? ??
????????? ??? ??? ?????? ??? ?????? ?????????? ?????, ?????????????????, ?????? ???,
?? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ???????,
????????????????? ??? ?????????????? ?????? ??? ?????? ?????????? ???? (??., ???
?? ?????? ???, ??? ?????????????? ??????, Gilly, ??? 31, N, ??? 45, ???
Kerckhaert ??? Morres, ??? 23).

50 ??????, ?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???
????????????? ??? ??? ?????????? ??? ?????? ?????? ?????????? ??? ??? ?????? ??? ???
????? ??? ?????? ??? ?????? ???.

51 ???????????, ??? ?????????????? ??? ?????? ?????????? ??? ?????????? ??? 1995, ?? ??????????
?????, ??????? ?????????? ?????????? ??? ??????? ??? ?????????? ??? ?????????? ???????, ???
?? ?????????? ?????????? ?????????? ???, ??? ? ?????????? ?????? ??? ?????? ?????????? ???
????? ??? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????????????? ??
????????? ??????. ?? ??? ?????????? ??? ?????? ??? ?????????????? ??? ?????????? ??? 1998
???? ??? ??? ??? ?????? ??? ?????????????? ??? ?????? ?????????? ???????, ?????? ?? ??????
???? ?????????? ??? ??? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ???????, ??? ???
???? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???
????????? ??? ?? ??? ??????, ?????? ?? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????? ??? ?? ?????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?? ??? ?????? ???????, ?????? ?? ???
?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????.
????????? ??? ?????? ??? ?????????? ??? ?????? ???.

52 ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????
?? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ???
????????? ??? ?? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ?????????? ?????????????? ??? ?????? ??? ?????????? ?????????? ??? ??????
????????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? 55
?? 56 ??? ?????????? ???, ? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???, ??
????????? ?????????? ??? ?????? ??? ?????????? ?????? ?? ?????????? ?????????? ??? ?????????? ???
?? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???
????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ???, ?? ?? ??? ?????? ???, ?????????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???,
????????? ?? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???.

53 ???????, ???????, ?? ?????????? ?????????? ?, ??????? ??? ?????? ??? ?????? ???

???? ?????????? ?????? ?????? ?????????? ?????????????? ?? ????, ??????????, ???? ???
????? ??? ?????????? ?????? ?????????? ?? ???? ?????????? ?? ??? ?????? ?????, ?? ????
???? ??????? ?? ?????????????? ????. ??? ?????????????? ?????? (??., ??? ??? ??????
????, ??? ?????????????? ?????? Saint-Gobain ZN, ?????? 58 ??? 59, ??? ??? ??????
??? 12?? ?????????? 2002, C-385/00, De Groot, ?????? 2002, ?. I-11819, ????? 94) ???,
??????????, ?? ?????????? ??? ?????????? ?????????????? ?????????????? ?? ???
????? 43 ??.

54 ??????, ????, ????? ?? ??, ??????? ?? ?????????? ??, ? ??????? ?? ???? ??????????????
?????? ??????? ?? ?????????????????? ?? ?????????? ?? ?????? ??????????????
?????????????? ?? ?????????????? ?? ?????????????? ?? ?????? ?????????????? ?? ?????? ?? ??????
????????????? ?? ?????????????? ?? ???????????, ?? ?????????? ?? ?????? ??, ??????, ?? ?????? ?? ?? ??
?????? ??????????, ?? ?????????? ?? ?????????? ?? ?????? ?????????????? ?? ?????? ?????????? ?? ?????
?? ??????????? ?? ?????? ??????? ?? ?????? ?????? ?????? ?????? ?????????, ?? ???????????
???????? ?? ?? ?????? ?????? ?????????????? ?? ?????? ?? ?????? ?????? ??? ?????? ?????????? ?? ??????
????????? ?? ?????????????? ??????? (??., ?? ???? ?? ?????? ??, ?????????? ?? ?? 7??
?????????? 2004, C-319/02, Manninen, ??????? 2004, ?. I-7477, ?????? 21, ??? ?? 19??
?????????? 2006, C-265/04, Bouanich, ??????? 2006, ?. I-923, ??????? 51 ?? 55, ??
????????????? ??????? Test Claimants in Class IV of the ACT Group Litigation, ?????? 71,
????? ?? ?? ?????? ?? 14?? ?????????? 2006, C?170/05, Denkavit Internationaal ??
Denkavit France, ? ?????? ?? ?????? ?????????????? ?????? ?? ???????, ?????? 45).

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

58 ??? ?? ?? ??? ??????? ?? ?????? ?? ?????????? ???????????, ? ??????? ??
?????? ??????? ?????????? ?? ??????? ??????? ?????????, ??? ??????? ??????? ??
?????????? ??????????. ???????????, ?? ?? ??? ?????????? ??????????????? ?? ??
?? ?????????? ?? ??????? ??? ?????? ??? ?????? ???????, ??? ??? ?????????????? ?? ??
?????????????? ?? ??????? ??? ?????? ?????????? ?????????? ?? ?????????? ??? ?? ??
????????, ?? ?????? ?? «????????? ??????» ??? ?????? ?????? ??? ?? ?????? ???
????????????? ?? ?????????? ??????????, ?? ??????? ?? ?????? ??? ?????? ?????????? ??????????
?? ?? ?????????????? ?? ??????? ?????????. ???????, ??? ??? ?????? ?????????? ??????
????????? ?????? ?? ?????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ???????
????????? ?????? ??? ?????????? ?????? ?????????? ??? ?? ???.

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

60 ??????, ?? ??? ?? ???????? ?? ?????? ??? ?????? ?????????? ??????????? ??? ??
?????????? ?????????? ??? ?????? ??? ?????? ???????, ??? ?????? ?????????? ??????????? ??
????????? ? ?????????????? ??? ?????????? ?????? ?????? ??? ?? ?????????? ??????? ??
????? ??? ??? ?????????????? ?? ?????????? ?????????? ?????????? ??? ?????????? ???
????????? ??? ??? ?????? ?????? ?????? ??? ?? ?????????? ?????? ??? ?????????? ???????
????????? ?????????? ?? ?????????? ?????? ?????????? ?????????? ??? ??????????
????????????? ??? ?????? ???????.

61 ??????, ??????????? ??? ? ?????????? ?????????? ?????????? ??? ?? ??
????? ??? ??? ?????? ??? ??????? ?????????? ??????? ?????????? ??? ??????????
??????????????, ?????? ?????? ??????? ?????????? ?????????? ??? ?????? ??? ?????????? ???
????? ?????????? ?????????????? ?? ??? ?????? ???, ?? ??????, ??? ??? ??? ??? ???,
????????? ?? ??? ??????????, ?? ?? ?????????? ? ?? ?? ?????????? ?????????? ??????????
?? ?????? ??? ??? ?????? ??? ?????? ??? (?. ?????????????? ?????? Lankhorst-
Hohorst, ??? 32).

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

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

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

64 ??? ?????? ?????? ?????????????? ???? ??? ?????? ?????? ???? ?????????????? ???
????????????? ?????? ?????? ???????????. ?????????? ?? ???????, ?? ??? ?????? ??????????,,
? ?????????? ???? ??? ?????? ?????????? ???? ?? ?????????? ???? ?????????? ???? ???????
????? ???? ?? ??? ?????????? ?? ?????????? ???? ??? ?????????? ???? ?????? ???? ?????? ???
(????????????? ?????????? Marks & Spencer, ??? 35, ??? Cadbury Schweppes ???
Cadbury Schweppes Overseas, ??? 47).

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

- ??? ??? ??????? ?????????? ??? ???????, ??? ?????? ??? ?????????? ?????????? ???????????

66 ??? ?????, ????, ??? ?????? ?????????????? ??? ?????????? ???? ?????????? ???? ?????????? ??????????,,
?????????,, ? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ???? ?????? ??????????,,
????????? ??? ?????? ? «?????????????» ?????? ?????????? ?????????? ???? ?????????? ???? ??????????
????? ?????? ???, ??????????,, ???? ??? ?????????? ????, ???? ?????? ?????? ???
????????????? ??? ?????? ?????? ?????? ???? ?????? ?????????? ???? ?????? ?????????? ????
??? ?????? ??? ?????? ??? ?????? ?????????? ???? ?????? ?????????? ???? ?????? ?????????? ????.
?????????,, ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???? ?????????? ?????????? ????
????????? ???? ?????????? ???? ?????? ?????? ???? ?????? ??? ?????? ?????????? ???? ?????? ???.

67 ? ?????????? ?????????? ??????????,, ???????, ???, ??? ? ?????????????? ??? ?
????????? ???????, ??? ?????? ?????????????? ???? ??? ?????? ?????? ???, ?? ??????????
????????? ??? ?????? ???? ?? ?????????? ???? ?????? ??? ?????????????? ???? ??????????
????????? ?????? ???? ?? ?????????? ???? ?????? ??? ?????????????? ???? ??????????
????????? ?????? ???? ?????????? ???? ?????? ??? ?????????? ???? ?????? ??? ?????? ????
????????? ?????? ???? ?????????? ???? ?????? ??? ?????????? ???? ?????? ???? ???? ????
????????? ?????? ???? ?????????? ???? ?????? ??? ?????? ???? ?????? ???? ?????? ????
????????? ?????? ???? ?????????? ???? ?????? ??? ?????? ???? ?????? ???? ?????? ????
?????????.

68 ???????, ?????????????? ???, ?? ??? ?????? 28 ?? 21 ?? ?????????? ??? 28??
????????? 1992, C-204/90, Bachmann (?????? 1992, ?. I-249), ??? C-300/90, ?????????? ???
????? (?????? 1992, ?. I-305), ??????????,, ?? ?????????? ?????? ???? ??????
????????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ?? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ? ??????. ????,
?? ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????

(??., ???' ????, ???, ??????, ???, ???????, ??? 14??, ????????, 1995, C-484/93, Svensson ??? Gustavsson, ??????? 1995, ?. I-3955, ??? 18, ??? ?????????????? ??????? Manninen, ??? 42, ??? ??, ??????? 23??, ??????????? 2006, C-471/04, Keller Holding, ??????? 2006, ?. I-2107, ??? 40).

69 ????? ?????????????? ?? ??? ??????? 55 ??? 56 ??? ?????????? ??????????, ?????? ?? ?? ??
?????????? ??????????? ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??????
?????????????? ??? ?????? ?????? ?? ??????????????? ?? ?????????? ?????????? ??? ??????
????????? ? ?????????????? ?????? ????? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????????????? ???, ?? ?????????? ??? ?????????? ?????????????? ??? ?????????? ???, ?? ???
????????? ??? ?????????? ??? ?????????? ?????????? ?? ?????????? ?? ??? ????? ??? ???
????????? ?? ?????? ???, ??? ????? ?????????? ??? ?????????? ?????????? ??? ?????????? ???
????????????? ??????????, ???????? ??? ?????????????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ??????????, ?????????? ??? ?????????????????? ??? ?????? ?? ??????????
????????? ??? ?????????? ???.

70 ????????, ??? ??? ????????, ?????, ? ????????????, ??? ????????????, ??? ????????????,
???????????????, ?? ?????????? ????? ????? ????? ????? ????????????, ?? ?????????? ????? ????????????, ?? ??????
????????? ?? ????????????????, ??? ??? ????? ????? ????????????, ?? ?????????? ????? ????????????, ?? ?????????? ?????.
????????????? ????????????.

— ??? ??? ?????????? ?? ??? ?????????????????? ??? ?????????????????? ??? ?????

71 ????? ??????, ????????, ??? ????????, ?? ??? ?????????? ?? ???? ?????????????? ??? ??????????????
?????????????, ? ?????????? ??? ?????????? ?????????? ?????? ???, ?????????? ??? ???? ??
????????? ?????????? ??? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ???? ?????? ?????????? ?
????????????? ?????? Lankhorst-Hohorst, ?????????? ??? ?????????? ?? ???
????????????????? ?????????? ??? ?????????? ?????????? ?????? ??? ?????????? ?????
?????????????, ? ?????? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ???
????????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ???
????????????? ??????????. ?? ?????????? ??? ?????????? ?????????? ?????????? ???
????????????? ?? ??? ?????? ??? ?????? ?????????? ??? ??? ?????????? ??? ?????? ???, ???
????????????? ?? ?????? ?????????? ?????????? ??? ??? ?????? ?????????? ??????????, ??????????????
??? ?????????? ??? ?????? ??? ?????? ?????? ??? ??? ?? ?????? ??? ?? ?????? ?????????? ??
???? ??? ?? ?????????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ??? ??????
????? ?????? ??? ?????????? ???, ? ?? ?????? ??? ?????? ??????????, ?????? ?????? ??????????
????????? ?????????? ???.

72 ??????????????? ???, ??? ????? ??????????, ??? ?????? ?????? ??? ?????????? ???
????????? ?????????????? ?????? ?? ?????????????? ??? ?????????? ?????? ??? ??????
????? ??????, ?????????? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ?????????? ???
????????????? ?????? ?????? (??., ???' ??? ???? ??? ??????, ??? ?????? ??? 16?? ??????
1998, C-264/96, ICI, ?????? 1998, ?. I-4695, ????? 26, ??? ??? ?????????????? ??????????
Lankhorst-Hohorst, ??? 37, Marks & Spencer, ??? 57, ??? ??? Cadbury Schweppes ???
Cadbury Schweppes Overseas, ??? 51).

?????? Cadbury Schweppes ??? Cadbury Schweppes Overseas, ????? 50).

74 ???? ?? ??????? ?? ?????????????? ????, ????? ?????????????? ????, ?????????????? ?????????????? ??????????????
???? ??????? ?????????????? ????, ??????????????, ? ?????????????? ??????? ?? ??????? ??????? ??????? ???,
?????????? ?????????? ????, ?????????????? ????, ?????????????? ????, ?????????????? ??????? ??????? ??????? ???,
????? ??????????? ?????, ?? ?????? ???, ?????????? ???, ?????? ???, ?????? ???, ?????????? ?? ??????? ?? ??????? ?? ?????
???? ??????? ???, ?????????????????? ?????????? ????, ?????? ??????? (????????????????? ???????
Cadbury Schweppes ??? Cadbury Schweppes Overseas, ????? 55).

75 ????. ????. ?? ?????????? ????. ????. ??????. ??????. ??????. ????. ??????. 49 ????.
????????????? ????. ??????. Marks & Spencer, ?? ??????. ??????. ??????. ????. ??????. ??????.
?????. ??????. ????. ??????. ??????. ?? ??????. ??????. ??????. ??????. ??????. ????. ??????. ????.
?? ?. ??????. ??????. ??????. ??????. ??????. , ????. ? ??????. ??????. ????. ????. ????. ????.
?????. ??????. ??????. , ? ??????. ??????. ??????. ????. ??????. ??????. ????. ??????. ??????.
?????. ??????. ??????. ?? ?. ??????. ?? ?. ??????. ????. ??????. ??????. ?? ?. ??????. ?? ?.
?????. ??????. ????. ????. ??????. ??????. ????. ??????. ????. ??????. ????. ????. ????. ????.
?? ?. ??????. ????. ????. ??????. ??????. ????. ??????. ????. ??????. ??????. ????. ??????. ????.
?????. (?????. ??????. Cadbury Schweppes ??? Cadbury Schweppes Overseas,
?????. 56).

76 ????? ?????????????? ? ?????????? ??? ?????????? ???????????, ?????????????? ??? ??????
?????????? ???? ? ??????? ???? ?????? ???? ?????? ? ??????? ??? «?????????????????»,
??? ??? ?????? ???? ?????? ?????? ?????????? ?? ?????? ??? ?????????? ??? ??????
????? ??? ?????? ?????????? ???, ?????????? ?? ?????????????? ?? ?????????? ??? ?????? ??
????? ???? ?? ??? ?????? ??????, ?????? ???? ?? ?????? ???? ?? ??? ?????? ?????? ??
????????? ?? ?????? ?????? ?????? ??? ?????? ?????, ?? ?????? ?????? ?????? ??? ??????
????????? ?? ?????????????? ????, ??? ??? ??? ?? ?????? ?????????? ?? ?????? ??
?????????. ?? ? ?????? ?????? ?????? ??? ?????????????? ?? ?????? ??? ?????? ?????? ??????????
????????? ???? ?????? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????????????? ??
?????????, ? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ?????????.

78 ?????? ?????? ?? ?????????? ?? ? ?? ??? ????? ?????????? ?????????? ?? ??? ?????? ?? ?????
????????? ?? ??? ??? ?????????? ?? ??? ?????? ????.

79 ????? ??????? ?? ??????????? ?? ?? ?????? 37 ??? ?????????????????? ??????????? ??
Lankhorst-Hohorst, ??? ?????? ?? ?????????? ???? ? ?????? ? ?????? ?????????? ?? ?? ?????? ??????
?? ?? ??? ?????????? ?? ?????????? ?????????? ?? ?????? ?????? ?????? ??????, ??????????
?????? ?? ?????? ?????? ?? ?? ??????? ?? ?????????? ???????????, ????, ????, ????,
???? ?????????? ?? ?? ??????? ?????? ???? ??? ?????? ?????? ????, ????, ????, ????,
????? ??????.

80 ??????????, ? ??????? ?????? ?????? ?????? ?????? ?? ?????????????? ??? ??????
????????? ?? ??? ?????????????? ??????????????, ?????? ?????? ??? ? ?????????? ?????? ???
??????? ?????????? ?? ??????? ?????? ?????? ?????????? ?????????????? ?? ?????????? ??????
????? ??? ??? ??? ?? ?????? ??? ?? ?????? ?????????????? ?? ???? ??? ?? ?????????? ?????? ??
????????????? ??? ??????? ?????? ??????????????, ?????? ??? ?????????? ?????? ??? ??

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

81 ???????????????, ?? ??? ?? ??? ?????? ?????????? ?????????? ?????????????? ?????? ?? ???????
????????? ?? ???? ?? ?????? ?? ?????????????? ?? ?????? ?? ?????????????? ?????????? ??
????????????? ?? ???? ??????? ?????????? ?????????????? ?????? ?? ?????? ?? ??????
????????????? ?? ???? ?????????? ?????? ?? ?????????? ?????????? ?????? ?? ???? ?????? ??
????????? ?? ??????, ?? ???? ?? ?????? ?????? ?? ?????????? ?? ???? ?????? ?? ???? ??????
????????? ?? ???? ?? ?????? ?????? ?? ?????? ?????? ?????? ?? ???? ?????? ?? ???? ??????
?? ?????? ?? ?????????? ?????????? ?? ???? ?????? ?????? ?????? ?? ???? ?????? ?? ???? .
????????? ?? ?????????? ??, ?? ?????? ?????? ?????? ?????? ?? ???? ?????????? ?????????? ??,
????????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?? ???? ?????????? ?????????? ??,
????????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?? ???? ?????????? ?????????? ??
?????????.

82 ????? ?????????? ? ??????? ?????????????? ??? ?????? 67 ??? ?????????? ???, ? ??????
?????????, ?????? ?????????? ??? ? ?????????? ??? ?? ?????? ?????? ?????? ??????
????????? ?????? ??? ?????????? ?????????????? ?????????????? ?????? ?????? ?????? ?? ??????????
?? ?????????????? ??? ?????????? ??????????, ??? ?????????? ?? ?????? ??? ?????? ?????? ??????????
??? ??? ??????? ????????????, ??? ??? ??????????, ??????, ???, ?????? ? ?????? ??????
????????? ??????? ??? ?????? ?? ????????????, ? ?????????????? ??? ?? ?????? ??????????,
????? ?? ?????????? ?? ?????????????? ?????????????? ??????????????, ?? ??????????????
????????? ?????? ?? ??? ?????????? ?????????????? ?????????????? ?????????????? ?
????????? ??????.

83 ????????, ??? ???? ?????? ?????????????? ?????? ?????????????? ??? ? ??????
????????? ?????????? ?????? ?????????? ?????? ?? ?????????????? ?? ?????????????? ??????????????
??????, ?? ??????, ??? ?? ?????????? ? ?????????? ?????? ?? ??? ?????? ??? ?????? ??? ???????????????, ?
????????? ?????? ?? ?????????????????? ?? ?????????? ?????? ?????? ?????? ?? ?????? ??? ?? ?????? ??? ?? ??????
????????????? ?? ??? ??? ??? ?? ?????????????? ?? ??? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ? ??.

84 ?? ???????????, ??? ?? ?????????? ?????????? ???, ????? ?? ?????????????? ???
1995, ? ?????????? ??? ???????? ?????????? ?????????? ??? ? ???????? ????? ??? ??????
????????? ??? ?????? ?????????? ??? ???????? ?????????? ?????????? ?????????????? ??
????????? ?? ??????? ?????? ??? ?? ?????????? ?? ?? ?????? ?????? ?????? ?????? ??????
?????????, ??? ?? ??? ?????? ??????????????, ??? ?????? ?? ??? ????? ?????????? ?? ??? ??
????????? ?? ?????????? ?????????? ?????????? ?? ??? ?????????????? ?????????? ??????
?? ??? ????? ?????? ?????????? ?? ??????.

85 ???????, ??? ?? ??????????? ?????????? ?????????? ??? ?? ?????????? ?????????????? ?
????????? ??? ?????????? ?????? ?????? ?????????????? ?????? ?????? ?????? ?? ?????? ?????? ???
????????? ??? ?????? ??? ?????????????? ???????, ??????? ?? ?????????? ??? ?????????? ???
??? ?? ?????????? ??? ?????? ?????? ??????? ?????????? ??????????. ??????? ?? ??? ??????????????
????, ? ??????? ?????? ?????? ?????????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????
??????????.

86 ?? ??? ??????????? ???????, ???? ???? ???? ???? ??????????????? ?? ??? ??????? ??????????
?? ???? ???? ???? ???? ???????, ?????????? ?????????? ?????? ?????? ?????????? ?????????? ???
????????? ??????????, ???? ???? ???? ?????? ???? ?????????? ?? ?????????? ?? ?????? ?????? ???
????????? ?????? ???? ??????????? ?????????????? ?????????????? ?????????, ?????????? ???
????? ??????????? ?? ?????????? ?? ???? ???????, ???? ?????? ???????, ?????? ?? ?????????? ??, ???
????????????? ?? ?????????? ?? ???????, ???????, ?????? ?? ?????????? ??, ?? ?????????? ??
?? ??????????? ?? ???? ?????????? ?? ???????, ???????, ?????? ?? ?????????? ??, ?? ?????????? ??

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

87 ?? ????? ?????? ??? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ???
????????????? ??? 1995 ??? ??? 1998. ??? ?????????????? ???, ?????? ??? ??????????
????, ? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ???
????????? ??, ???, ?? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????? ??????????????,
?????????, ??? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ??????????????,
?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??????, ?????????? ??? ?????? ?????? ?????? ?? ?????????? ??? ?? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

88 ?????????? ??? ?? ?????????? ? ?????? ??? ?????? ?????? ?????? ?? ?????, ??????
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

89 ???????????, ?? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ??????
????????? ???, ?????? ?????? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??????, ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ?? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
(??., ???? ??? ?????? ???, ??? ?????????????? ?????? Test Claimants in Class IV of the
ACT Group Litigation, ?????? 59 ?? 60).

90 ?? ?? ?????? ?????? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ???
????? ?? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ?????? ???, ?????? ?????? ?? ?????? ???
????????? ?? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ??? ?????? 43 ??, ?????? ?? ?????? ??? ?????? ???, ??? ??????
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? (??., ???? ??? ?????? ???, ???
????????? ?????? ?????? Test Claimants in Class IV of the ACT Group Litigation, ?????? 70,
????? ??? Denkavit Internationaal ??? Denkavit France, ?????? 37).

91 ??? ?? ?????, ?????????????? ???, ??? ?????? ?????????? ??? ?????? 49 ??? ??????
?????????, ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?? ??????, ?????? ?????? ? ?????? ???, ?? ?????? ?????? ??????
??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
?????????.

92 ??????, ??? ?????? ??? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??? ?? ??????
43 ?? ?????????? ?????? ?????? ?????? ?????? ? ?????? ?????? ?????? ?? ?????? ??????
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

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

93 ?? ?? ??????? ??????? ??, ?? ?????? ??????????? ??????, ???' ??????, ?? ? ???????
 ???? ?????? ??????? ??????????????? ?? ?? ?????? ??????????? ?? ??????? ??????? ??
 ???? ??????? ??????? ??????????? ?? ?? ??? ?????? ???????, ????:

- ????? ?????????? ??? ??????? ??? ????? ?????? ???????????? ???, ??? ? ?????????? ??????????
??? ??????, ??? ? ?????????????? ?? ??? ????? ?????? ??????,

— ????? ?????????? ??? ?????? ??? ????? ?????? ?????????? ??? ?????? ?????????????? ??? ?????? ?????????????? ???
????? ?????? ????, ??? ?????????? ?? ?????? ??? ?????? ?????? ?????????????????? ??? ?????????????? ???
????? ????, ??? ??? ?? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ????
?? ? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???, ?

– ????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????????? ??? ?????? ?????? ??????????????????,
????? ??? ?????? ?? ??????????? ?? ??? ?????? ?????? ?????? ?????????????????? ? ?????????????????? ??? ?
?????????? ?????????? ?????????, ?? ?????? ???.

95 ????????, ??? ?????? ?????????? ??????? ?????????? ??? ??????????
?????????????, ????????, ????????, ??? ?????? 43 ??, ??? ?????? ?????? ?????????? ??? ????
?????? ?????????????? ????????, ?????????? ??????? ??? ?????? ??? ?????????? ?????????????? ?? ????
?????? ??????, ? ?????? ??????? ?????? ? ?????? ? ?????? ??? ?????????? ??? ?????????????? ???
????????? ??? ?????? ??? ?? ??? ?????????? ?? ?????? ?????????????? ?????????? ???
????????? ??? ?????????? ??? ?? ??? ?????????? ??? ?????? ?????????????? ???, ??? ??? ??? ???
????????? ??? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ? ????, ?????????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ???
????????????? ?? ??? ?????? ???????, ??? ?????? ??? ?????? ??? ?????? ???

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

96 ???????, ? ??????? ??? ?????? ??? ????? ?????????? ?????? ?????? ??? ??
??? ????? ?????????? ??? ?????? ?????????? ?????????? ??????.

97 ??? ????? ?? ??????, ??? ????? ??? ??? ?????? ?????????? ??? ???????
????????????? ?????????? ?????????? ???, ????? ?????????? ??? ?????? 36 ???
????????? ?????????? ??? ?????? 43 ?? ?? ?????? ??? ?? ?????? 48 ?? ?????????? ???
????? ??? ?????????? ??? ?????? ?????? ?????? ?? ?? ?????? ?????? ?????? ???
????? ??? ?????????? ???, ??? ?????? ?????? ?????? ?????? ? ?? ?????? ?????? ??????
????? ??? ??? ?????????? ???, ?? ?????? ?? ?????? ?? ?????? ?????????? ?????? ???
????? ??? ?????? ??? ??????????.

98 ???????, ??? ??????? ??? ?????? 43 ?? ? ?????? ?????? ?????? ?????? ???
?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ???, ? ?????? ??? ?????? ?????????? ?????????? ???
????????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ???
??? ??? ?????????? ???, ? ?????? ?????? ?????? ?????? ??? ?????? ???.

99 ???????????, ???, ?? ??? ?????? ???????, ?? ?????? ?????? ??? ??? ?????? ??
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ?????????? ??? ?????? ??
?????? ???, ?? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??????
????????? ???, ??? ?????? ??? ?????? ?????? ?????? ? ?????? ?????? ??? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ???, ? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? 48 ??, ?? ?????? 43 ?? ???
????? ???.

100 ?? ??? ?????? ??????, ??? ??????? ??? ?????? 43 ?? ? ?????? ?????? ??? ?????? ??
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??
?? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??
??? ? ??? ?????????? ???, ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ???, ? ?? ?????? ?????? ?? ?? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???.

101 ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ???, ?????? ???, ??? ?????? ?????? ??? ?????? 33 ?? 34
??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ???, ?????? ?????? ??? ?????? ???
????????? ????. ??? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ?? ??? ?????? ???, ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? 49 ?? ??? 56 ??.

102 ???????, ??? ?????? ?????? ??? ?????? ?? ?????? ? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? 43 ??, ??? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ???, ? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

???

103 ?? ?? ??????? ??????? ???, ?? ?????? ??????????? ?????, ???' ??????, ??, ??
????????? ??? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???, ???
????????????? ?? ?? ?????? 56 ??, ? ?????????? ?????? ?????? ?? ?????? ?? ?????? ??
31 ?????????? 1993 ??? ?????? ??? ?????? ??? ?????? 57, ?????????? 1, ??.

104 ?????????????, ???????, ???, ??? ?????????? ??? ?? ?????? 33, 34 ?? 101 ??
????????? ???????, ??? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ?? ??????????
?? ?? ?????? ??? ?????? 43 ?? ?? ?? ?????? 56 ??.

105 ???????, ??????? ? ??????? ??? ??????? ???????.

???

106 ?? ?? ??????? ???, ?? ?????? ?????????? ?? ?????????? ??? ??????, ?? ??????
????????? ???, ???' ??????, ??, ?? ?????????? ??? ?? ?????????? ??? ??????????
????????? ?????????? ??? ?????? ?????????? ?? ?????? ?? ?????????? ?? ?? ??????????
??????, ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ??????
??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?? ?????????? ??? ??????????
????????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??????????
????????????? ???, ???????, ?? ?????? ??????????. ??? ?????? ??????????,
????????? ?? ?????? ?? ?????????? ?? ?????? ??? ?????? ?? ??? ??????????????
???????? Brasserie du Pêcheur ??? Factortame ??? ?? ??? ?????? ?????? ?? ??????????
????? ? ?????? ?? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ??????
?????? ??????????.

107 ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????
??????, ?? ?????? ?????????? ??? ?????? ??? ?? ?????????? ?????????? ??? ??????
????????? ?????????? ??? ?????????? ???, ?????? ??? ?? ??? ?????? ?????????? ??? ??????
????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????????? ??.

108 ???, ?? ?????? ?????????? ??? ??, ??? ?? ?????????? ??? ?? ?????? ??? ??
????? ???????, ???????, ??? ?? ?????? ??? ?????? ?? ?? ?????????? ??? ??????
????? ???????, ???????, ??? ?? ?????? ??? ?????????? ?? ?? ?????????? ??? ?????? ???
??? ???????, ???????, ??? ??????????.

109 ?????????? ??? ?????? ??? ? ?????? ?????????? ??? ?????????? ??? ??
????????? ??? ?????? ?????? ?????????? ?????? ??? ?????????? ?????????? ??? ??????
????? ??? ?????? ??? ?????? ??? (?? ?????? ??? ?????? ?????????? ?
?????????), ??? ??? ?????? ??? ?????????? ?????????? (??. ??? ??????????????)
????????? Metallgesellschaft ??., ??? 81, ??? Test Claimants in the FII Group Litigation,
????? 201).

110 ??? ?????? ???????, ?? ?????? ?????????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ???,

??????????, ?? ??????????? ????? ?????? ??? ????? ?????????? ????? ?????????? ??? ?????????? ??
???????? (????????????????? ??????? Test Claimants in the FII Group Litigation, ????? 202 ??
????????????? ??????????).

111 ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??????????
????????? ????, ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??
????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?????? ?????? ??????, ??? ?????? ?????????, ??????, ??? ?? ??????
????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? (????? ??? ??????????) ???, ???????, ??? ??? ??????????
????????? ?????? ? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ??? (????? ??? ?????????????????) (????????????????? ?????? Test
Claimants in the FII Group Litigation, ????? 203 ??? ?????????????? ??????????).

112 ???????, ?? ??? ?????? ????? ?????????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??
?????????? ??????, ?? ??????? ?????? ?????? ?????????? ??????????? ??? ?????? ??? ?????????? ??
????????????? ?????, ??? ??? ??? ?????? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ?????? ?????????? ? ?????????? ??? ?????? ??? ?????????? ?? ??? ?????? ??? ?????? ?? 87 ??
88 ??? ?????????????? ?????? Metallgesellschaft ??., ??? ?????????????? ??? ??
????? ??? ?????????? ??? ?? ?????????????? ?????? ?????? ?????? ? ?????? ?????? ?????? ??
????????? (????????????????? ?????? Test Claimants in the FII Group Litigation, ????? 205 ??
????????????? ??????????).

113 ?????, ?????????? ???, ?? ?????????? ?? ?????? ?????? ?????? ?????, ? ??????
?????????? ??? ?????????? ?????????? ?????? ?????? ??? ?????? ?????????? ?? ??? ??
????? ??? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????????????? ?? ?? ?????? ?????????? ?????????? ?????? ??? ? ?????????? ?????? ?????????? ??
????????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??
????????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??
????????? ?????? ?????? ?????? ?????? ???, ?? ?? ?????????? ?????? ?? ??????, ??? ?? ??? ??
????????, ??? ?? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??? ?? ??? ??
?? ?????????? ?? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??
????????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

114 ??? ?? ?????????? ?????, ?????????? ??? ?????? ?????????? ?? ?????????? ?? ??
????????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ?????? ???.

115 ???? ?? ?????????? ? ?????????? ?????????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??????
?? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
(????????????? ?????? Brasserie du pêcheur ??? Factortame, ?????? 51 ??? 66, ??????)

??? 30?? ?????????? 2003, C-224/01, Köbler, ?????? 2003, ?. I-10239, ?????? 51 ??? 57, ????? ? ?? ?????????????? Test Claimants in the FII Group Litigation, ????? 209).

116 ? ?????????? ??? ?????????? ??? ?????????????? ?????? ??? ?????? ?????????????????? ?
?????? ? ?? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?? ?????? ??? ?????????? ???
????????? ?????? ??????, ???' ????, ?? ?????????????? ??? ?? ?????? ??????????
?????? ? ?? ?????? ?????????? ??? ?????????? (????????????? ?????? Test
Claimants in the FII Group Litigation, ??? 210 ?? ?????????? ??????????).

117 ??? ?????? ??? ?????? ??? ?????? ?????? ??????????? ??? ?????? ?????? ??????????
???? ???? ?? ?? 43 ?. ???????, ?????????? ??? ?????????? ????? ???? ???? ? ?????
????????? ?? ?????? (?. ??? ?????????????? ?????????? Brasserie du Pêcheur ???
Factortame, ?????? 23 ?? 54, ?????? Test Claimants in the FII Group Litigation, ???
211).

118 ??? ?????? ?? ?????? ??????????, ?????? ?? ?????????? , ???, ??? ? ?? ?????
?? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?????, ??? ? ?? ?????? ???
????????? ??? ??????, ??? ?????? ?????? ??? ??????, ?? ?????? ???, ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? . ???????, ?? ?? ?????? ?????? ??????, ???
?? ?????? ??? ?????????? ??? ?????????? , ?????? ?????? ?????? ????????????, ???
????????? , ?????? ?????? ?????????, ? ??? ?????? ?????? ??? ?????????? ?????????
????????? ??? ?? ?????????? ?????? (????????????? ?????? Test
Claimants in the FII Group Litigation, ??? 212 ?? ?????????? ?????????)).

119 ??? ? ? ?????? ?? ?? ??????? ?????? ??????????, ?? ?????? ?????????? ?????? ??
????? ???? ?? ?? ??????? ??? ?????????? ??? ?????????????? ??? ?????? ?????????? ???
????? ??. ?????? ?? ?????????? ?????? ?????????????? ????? ? ?????? ?????????? ???
????????? ??? ?????????????? ?????, ? ?????????? ? ?????? ?????????? ?????????? ???
????????????? ?????? ?????? ? ?? ?????????? ?????? ?????, ?? ?????????? ? ??????????
????????????? ?????? ?????, ?? ?????? ??? ? ?????? ?????? ?????????? ?????? ?????? ??
????????????? ??? ?????? ? ?? ?????????? ?????????? ?????? ?? ?????????? ?????? ??????
????? ? ?????? (????????????? ?????? Test Claimants in the FII Group Litigation,
????? 213 ?? ?????????? ?????????)).

120 ?? ??? ??????????, ?? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????
????????? ??? ?? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ???
????????? ? ?????????????? ?????????? ? ?????? ?????? ?????????? ??? ?????????? ??? ??
???? ?????????? ??? ? ?????? ?????? ?????????? ?????????? ?????? (?????????????).
????? Test Claimants in the FII Group Litigation, ??? 214 ?? ?????????? ?????????)).

121 ?? ??????????, ?? ?????? ??????????, ?? ? ?????????? ?? ? ?????????? ??? ??
????? ?????? ?????? ?????? ??? ?????? 43 ?? ?????? ???????, ?????? ?? ?????? ???
?? ?, ?? ??? ???? ?????? ??? ? ?????? ???????, ?? ?????????? ??? ?????????? ??? ??
????????? ??? ?????? ??? ?????????? ????? ?????????? ?????????? ??? ?????????? ??? ??
????? ??? ?????? ??? ?????????? ?? ?????????? ??? ? ?????????????? ?????????? ??? ?? ??
28?? ?????????? 1986 ??? ?????? ?????????? ??? ?????? . ?????????? , ???? ??
????? ??? ?????????????? ?????? Lankhorst-Hohorst, ?? ?????? ?? ?????? ?? ??
????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? ?????? ??????????????
?? ?????? ??? ?? ?????? ??? ?????????? ??? ?????????).

122 ??? ?????? ?? ?????? ??????????, ?????? ?? ??? ?????? ?????? ?????? ???
????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??
????????? , ?????????? ?? ??? ?????? ?????????? ?? ?????????? ??? ?????????? ???

????????? ??? ?????????? ??? ??????????? ?????? ??? ????? ??????????? ??????, ??? ??
????? ??? ?? ??????????? ?? ??? ?????????? (????????????????? ?????? Test
Claimants in the FII Group Litigation, ??? 218 ??? ?????????? ??????????).

123 ?? ??? ?????????? ??? ??????????? ???????????, ?? ??? ????? ??????????? ??????????
??? ?????????? ????, ????, ??? ??????????? ?? ??????????? ??? ??????????????? ???
?????????? ????, ?? ?????? ??????????? ?? ??????????? ??? ?????????? ??? ?????????? ???
?????????? ????, ?? ?????? ??????????? ?? ??????????? ??? ?????????? ??? ?????????? ???
?????????? ????, ?? ?????? ??????????? ?? ??????????? ??? ?????????? ??? ?????????? ???
?????????? ????, ?? ?????? ??????????? ?? ??????????? ??? ?????????? ??? ?????????? ???
?????????? ????, ?? ?????? ??????????? ?? ??????????? ??? ?????????? ??? ?????????? ???
????????? (????????????????? ?????? Test Claimants in the FII Group Litigation, ??? 219
?? ?????????? ??????????).

124 ?????? ?? ?????????????? ??? ?? ?????? ???????????, ??? ?? ?????????? ?? ??? ??
??????????, ????, ?? ?????????? ?? ? ?????????? ?????????? ?? ?????????? ?? ?????????
?? ??????? ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ?? ?????????? ?? ??????????
????????? ?? ?? ?????? ?????????? ??? ?????? (????????????????? ?????? Brasserie du
Pêcheur ?? Factortame, ??? 84).

125 ?? ??????????, ?? ?? ??? 106 ?? ?????????????? ?????????? Metallgesellschaft
??., ????, ????, ????, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ????, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ????, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ????, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ????, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ????, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ????, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ????, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ????, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ????, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???.

126 ??????, ? ?????????? ??? ?????????? ??? ?????????? ?????????????? ?? ??????????
????????? ? ?????????? ??? ?????????? ?? ?? ?????????? ??? ?????????? ?????? ?????????? ???
?????????? ? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ??
?????????? ??? ?????????? ?? ?????????? ??? ?????????? ?????????? ?????? ?? ?????????? ??? ??
?????????? ??? ?????????? ?? ?????????? ??? ?????????? ?????????? ?????? ?? ?????????? ??? ??
????????????? ?? ?????????? ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ?? ?????????? ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???,
????????? ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???, ???.

127 ?????? ?????????? ??? ? ??????? ??? ?????? ??? ?????? ?????? ??????????, ?? ??????????,
??????????, ?? ?? ?????????? ?????????? ??? ???, ??? ?????? ??? ?????????? ???
????????????? ??? ?????? 92 ?? ?????? ?????????? ?????????? ???, ???????, ??????? ??????????
??? ?????????? ?????????? ???????, ??????? ??? ?????? 43 ??, ?????????? ??? ??????
?????????? ?? ?????? ?? ? ??????? ??? ?????????? ??? ?????????? ?????? ?? ?????????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?? ??????????
????? ??? ?????? ??? ?????????? ???.

128 ???????, ??? ??????, ??? ???, ??? ??????, ??? ??????, ??? ??????, ??? ?????? ??? ?? ??????
?????? ?????? ?? ?????? ??? ?????? ???:

- ?????????? ?????????? ?????????? ??????????, ?????????? ??? ?????????? ?????? ?????? ??????
????? ??????? ?????? ?? ?????? ?? ?????? ?????????? ??? ?? ??????? ?????? ?????
????????????? ??????? ??????? ?????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ??????????
??? ?????????? ??? ?????????? ??? ?? ?????? ?????? ?????? ??? ?? ?????????? ??? ?????? ??????????
????????????????? ??? ?????????? ?????? ??? ?????????? ??? ?? ?????? ?????? ?????????? ??????????
????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ???
????????????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????????? ???
????????????? ??? ?????? ?????? 51 ??? ?????????????????? ??????????, Brasserie du Pêcheur ???
Factortame, ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
?????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????????.

- ?????? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??????
????????? ??? ?????????? ??????????????, ?????????? ??? ?????? 43 ??, ?? ??????
?????????, ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??
????????? ??????, ?????? ?? ?????? ??? ?????????? ?? ?? ?????????? ?????????? ?????? ??????
????????? ??? ?? ?????????? ?? ?? ?????????? ?? ?? ?????? ??? ?????? ???, ???, ??
????????????? ?? ?????? ??? ?? ?????????? ?? ?? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ????.
?????, ?????????? ?? ?????? ??? ?????????? ?? ?? ?????? ??? ?????????? ?????? ??? ?? ?????? 43 ??
?? ??? ?????? ??? ?????? ??? ?????????? ?? ?? ?????? ??? ?????????? ?????? ??? ?? ?????? ??? ?????? ???
?? ? ?????? ??? ?????????? ?? ?? ?????? ??? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ???
????, ?? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

??? ??? ?????????? ??? ?????? ?????????? ??? ?????????????? ??? ?????? ???
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129 ??? ??? ??' ?????????? ??? ???????, ? ?????????? ??? ?????? ?????????? ?????????? ???
?? ??????????, ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ?????????? ??????
????????? ??? ? ?????? ??? ?????? ???, ?? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ???
????????? ???, ?????? ??? ??? ??? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ??????????
?? . ?? ??? ?????? ?????????? ??? 300 ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ???
????? ?????? ??' ?????? ?????? ??? ?????? ??? ?????? ??? ??????.

130 ?????????? ? ?????????? ???, ?? ?????????? ? ?????????? ??? ?????????? ?????? ?????????? ??????
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ?????? ??? ?????? ??? ?? ??? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ??????.

131 ???????, ? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

132 ??? ??? ?????? ???, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

133 ??????? ??????, ??? ?????????? ?????? ?? ?????????????? ??????? ?? ?????????????? ???
????????? ???????.

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

134 ?????????? ??? ? ??????? ?????????????? ??? ?? ??? ????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????????? ??? ?????? ?????????????? ?????????? , ?' ???
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????????
????? ?????????? ?????????????? ??? ?????????? , ??? ??? ?? ??? ?????????? , ??? ??????????????

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

1) ?? ????? 43 ?? ?????????? ?????????? ?????????? ?????? ? ?????? ?????????? ??
????????? ?????? ?????????? ?????????? ?? ???????, ??? ?????????? ?????? , ???
????? ?????? ??? ?????????? ?????? ?????????????? ?? ?????? ?????? ?????? ??????
????? ??? ???????, ? ?????? ??? ?????? ?????? ?????? ? ?????? , ? ?? ???????
????????????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ? ?? ??? ???????
????????? , ?????? ?? ? ?????????? ???, ?????? , ?????????? ?? ???????
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2) ?????????? ??????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
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3) ?????????? ?????????? ??????????? ??????????, ?????????? ??? ?????????? ?????? ?????????? ?????
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????????????? ??? ?????? 51 ??? ?????????? ??? 5?? ?????? 1996, C-46/93 ??? C-
48/93, Brasserie du Pêcheur ??? Factortame, ?????? ?????? ??? ?? ?????????? ??
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* ?????? ??????????: ? ??????.