

?????? C-371/10

National Grid Indus BV

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Inspecteur van de Belastingdienst Rijnmond/kantoor Rotterdam

(?????? ??? Gerechtshof Amsterdam

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

«????????? ??? ?????? ??? ?????????? ?????????????? ?????????? ?? ?????? ?????? ??? ?????? ???
?????? ??? ?????????? ??? – ?????????? ?????????????? – ?????? 49 ??? – ?????????? ???
?????? ?????????? ?????????? ??? ?????????????? ?????????? ?????????? ? ?????? ?????????? ???
????? ??? ??? ??? ?????? ?????? ?? ??? ?????? ?????? ????? – ?????????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????????? ??? ?????? – ?????? ?????????? ??? ?????? – ?????????????»

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1. ??????? ?????????? ??? ??????? – ?????????? ?????????????? – ?????????? ???
????????? – ?????? ?????????? – ????????, ?? ??? ?????? ?????, ??? ?????? ??? ??????????
????????? ?????? ?????? ??????

(????? 49 ??? ?? 54 ????)

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

(????? 49 ????)

3. ??????? ?????????? ??? ??????? – ?????????? ?????????????? – ?????????? –
????????? ?????? – ????????, ?? ??? ?????? ?????, ??? ?????? ??? ??????????
????????? ?????? ?????? ?????? ??????

(????? 49 ????)

1. ??????? ?????????? ??? ??????? ?? ?? ?????? ?????? ?????? ? ?????? ?????????? ?? ???
?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?? ??? ?????? ?????????? ???
?? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????? 49 ??? ?? ?? ?????? ??? ?????????? ?? ?????????? ??? ?????? ???
??? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ?? ?????? ?????? ???.

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

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

(???. ??????? 27, 30, 33, ????????. 1)

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

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

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

(?. ??????? 35, 37, 41, 46, 48)

3. ?? ????? 49 ????

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

— ?????????? ??????? ??????? ?????? ? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????
??? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ??????
????? ??? ?? ??? ??????????.

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

(??, ??????? 64, 73, 86, ??????. 2)

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

?? 29?? ??????? 2011 (*)

«????????? ??? ?????? ??? ?????????? ?????????? ?????????? ?? ?????? ?????? ???
?????? ??? ??????? ??? – ?????????? ?????????? – ????? 49 ??? – ?????????? ???
????? ?????????? ??? ?????????? ?????? ?????????? ? ?????? ?????????? ??? ?????? ???
??? ??? ?????? ?????? ?? ??? ?????? ?????? – ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? – ?????? ?????? ??? ?????? – ?????????????»

???? ?????? C371/10,

?? ?????????? ??? ?????? ?????????? ?????????? ?????????? ??? ?????? 267 ???
????????? ??? ?? Gerechtshof Amsterdam (????? ?????) ?? ?????? ??? 15?? ??????
2010, ? ?????? ??????? ??? ?????????? ??? 26 ?????? 2010, ??? ?????? ??? ???

National Grid Indus BV

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Inspecteur van de Belastingdienst Rijnmond/kantoor Rotterdam,

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

????????? ??? ??? A. Tizzano, ?????? ??? ?????? ???????, ???????????, J. N. Cunha
Rodrigues, K. Lenaerts (???????) ??? A. Prechal, ?????? ???????, R. Silva de Lapuerta,
K. Schiemann, E. Levits, A. Ó Caoimh, L. Bay Larsen, T. von Danwitz ??? M. Berger, ???????,

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

?????????: M. Ferreira, ????? ??????? ??????????,

????????? ?????? ??? ??????? ???????????? ??? ??????? ??? ??' ???????????? ???????????? ???
21?? ??????? 2011,

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

- ? National Grid Indus BV, ?????????????? ??? ??? F. Pötgens, belastingadviseur, ???
???? D. Hofland ??? E. Pijnacker Hordijk, advocaten,
- ? ?????????? ??????????, ?????????????? ??? ??? C. Wissels ??? M. de Ree ??? ??? J.
Langer,
- ? ??????? ????????, ?????????????? ??? ??? C. Vang,
- ? ?????????? ????????, ?????????????? ??? ??? T. Henze ??? C. Blaschke,
- ? ?????????? ????????, ?????????????? ??? ??? M. Muñoz Pérez,
- ? ??????? ????????, ?????????????? ??? ??? G. de Bergues ??? ??? N. Rouam,
- ? ??????? ????????, ?????????????? ??? ?? G. Palmieri, ?????????????? ??? ??? P.
Gentili, avvocato dello Stato,
- ? ?????????? ????????, ?????????????? ??? ??? L. Inez Fernandes ??? J. Menezes
Leitão,
- ? ?????????? ????????, ?????????????? ??? ??? J. Heliskoski ??? ??? M. Pere,
- ? ?????????? ????????, ?????????????? ??? ??? A. Falk ??? S. Johannesson,
- ? ?????????? ??? ??????? ????????, ?????????????? ??? ??? S. Hathaway,
????????????? ??? ??? K. Bacon, barrister,
- ? ?????????? ????????, ?????????????? ??? ??? W. Roels ??? R. Lyal,

???? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ???
??? 8?? ?????????? 2011,

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

?????????

1 ? ?????? ?????? ?????????? ?????????????? ?????? ??? ?????? ??? ?????? ??? 49
????.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? National Grid
Indus BV (??? ????: National Grid Indus), ?????? ?????????? ?????? ??? ?????? ?
????????? ??? ?????? ?????? ??? ?????? ???, ??? ??? Inspecteur van de Belastingdienst
Rijnmond/kantoor Rotterdam (????????? ??? ?????? ??? Rijnmond/ kantoor Rotterdam, ???
????: ??????????) ?????? ?? ?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????????
????????? ??? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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?? ?????? ???????

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

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

«1. ????? ??? ????????, ?? “????????? ?????????????? ??????” ??????? ???
?????? ???, ????? ??? ?????????? ??? ?????? ???, ?????????? ?? ?????????? ???
?????? ???, ??? ??? ?????????? ???, ??? ?????????? ???, ??? ?????? ??? ?????????? ??? ?
????????? ???, ??? ?????????? ???, ??? [...]»

[...]

3. „????, ??? ???? ?????????? ??? ?????????? 1, ??? ?????? ??? ???? ?????? ??????
????????? ??? ???? ?????????? ?????????? ??? ?????????????? ??????, ?????????? ??? ???? ??????
???? ???? ?????????? ??? ???? ?????? ??? ?????? ?????????? ???? ?????? ??? ??????????
????????????? ???,»

5 ????? ?? ?????? 7, ??????????? 1, ??? ????????, «[?] ???? ??????????????
????????????? ??????? ?????? ?????? ?????????????? ?????? ?????? ??? ?????? ?????, ?????? ?? ?
?????????? ?????? ?? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????????????? ??? ?????????? ????. ?? ? ?????????? ?????? ?? ?????????????? ??? ??'
????? ??? ????, ?? ?????? ??? ?????????????? ?????? ?????????????? ???? ??? ?????? ?????? ??????
????? ??? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ?????? ??????»

6 ?? ?????? 13 ??? ?????????? ????????

«1. ??? ??????? ??? ???????? ?????????????? ??????? ??? ?????? ??? ?? ?????????? ???????
[...] ??? ?????????? ??? ??? ?????????????? ?????? ??? ?????????????? ?????? ??? ?????
????? ????,

2. ?????????? ??? ?????????? ?????????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????
????????? ?????????????? ??? ?????? ?????????? ?????????????? ?????? ?????? ??? ?????? ??? ?????
????????????? ??? [...] , ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????????? (????? ??? ? ?? ?????? ??? ??????????) [...] , ?????? ??????????
????? ??? ?????? ?????? ??????.

3. [...] ???? ?????? ??? ?? ?????????? ?????? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?
????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?

4. ?? ?????? ?? ???? ??????? ?? ?????? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ??
?????????? 1, 2 ?? 3 ?? ???? ??????????? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ??
????????? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ?? »

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

7 ?? ????? 16 ??? ????? ??? 1964 ??? ????? ?????????????? (Wet op de inkomstenbelasting 1964, ??? ????: Wet IB) ??????:

??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????????? ??? ?????? ??? ?????? [...]»

8 ?????? ??? ?????? 8 ??? ?????? ??? 1969 ??? ?????? ?????? (Wet op de vennootschapsbelasting 1969, ??? ????: Wet VPB), ?? ????? 16 ??? Wet IB ??? ??' ?????? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ???????.

9 ????. ?? ?????? 2, ??????????? 4, ??? Wet VPB, «[?] ???????? ???????? ???????? ?? ??
????????? ??????, ? ???????? ??? ??????????? ?? ????????, ??? ??? ??????? ??
????????? ????, ?? ???????? ??? ??? ??? ??? [...]».

10 ? National Grid Indus ?????? ??????? ?????????????? ?????? ?????? ?????????? ?????? ?? ??
????????? ??????. ?????? ?? 15 ?????????? 2000 ??? ?????? ?? ?????? ??????????????
????????????? ?? ?????? ?????? ?????.

11 ? ??????? ???, ??? ?? 10 ??????? 1996, ??????? ?? 33 113 000 ????
?????? (GBP) ??? ?? National Grid Company plc, ??????? ? ??? ?? ?????? ??????? ??
?????? ???????.

12 ??????? ??????????? ?? ?????? ?????????? ??????? ?? ?????????? ???????, ??
?? ??????? ?? ??????????????? ?? ?????????? ??????????????? ??????. ??? 15
?????????? 2000, ?? ??????????????? ?? ?????? ?????? ?????????? ?? 22 128 160 ???????
?????? (NLG).

13 ??? ?????????? ??????, ? National Grid Indus ?????????? ??? ??????? ?????????? ???
????? ??? ?????????? ?????????? ????. ??????? ?? ?? ?????? 2, ?????????? 4, ??? Wet
VPB, ? National Grid Indus, ????, ??? ?????????? ??? ?????????? ?????? ?? ?? ??????????
??????, ???' ????? ?????????? ?? ??? ?????????????? ?????????? ?????????? ??? ?? ????.
????? ????, ????, ??? ?????? 4, ?????????? 3, ??? ??????????, ? ????, ?????????? ???
????????? ??????, ? National Grid Indus ??????, ??? ?????????? ??? ?????? ???
????????? ?????????? ???, ?? ?????????? ?????????? ?????????? ?????????? ??????????. ??????????
???, ???, ?? ?????????? ??? ?????? ???, ? National Grid Indus ??? ?????? ??? ?????? ???
????? ?????????? ??? ?? ??? ?????? ??? ??????????, ?? ?????????? ?????????? ??? ??????
???, ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ??????,
????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? 7, ?????????? 1, ??? 13,
????????? 4, ??? ??????????.

14 ??????? ???? ?????????? ??? ?????????? ?????? ?? ??? ? National Grid Indus ?????? ??
????? ?????? ?????????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? 16 ??? Wet IB, ????,
????? ??? ?? ??? ????? ??????????, ?? ?????????? ?? ?? ?????? 8 ??? Wet VPB, ???? ??? ??????
????????? ??? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ????
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ????. ????, ? ?????????? ??? ??????????
?? ? National Grid Indus ?????? ?? ?????????? ?????? ??? ?? ?????????? ??? ?????? 12
?? ?????????? ?????????? ?????????????? ??????.

15 ? National Grid Indus ?????? ??? ?? ?????????? ?? ?????????? ??????? ???????
??? rechtbank Haarlem, ?? ????, ?? ??????? ?? 17?? ?????????? 2007, ?????????? ?? ??
??? ??????? ?? ??????????.

16 ??? ???????, ? National Grid Indus ?????? ??????? ??? Gerechtshof Amsterdam ????

????? ??? ?????????? ??? rechtbank Haarlem.

17 ?? ??????? ?????????? ?????? ???' ?????? ??? ? National Grid Indus ??????? ??
????????????? ??? ?????????? ?????????????? ??? ?? ?????????? ??? ?????????? ??
????????? ??? ?? ??? ?????? ???, ?? ?????? ??? ?????? ?????? ??????, ?????????? ?? ?? ?????????? ??
????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ????. ?????? ?
????? ??? ? ?????????? ??? ?????? ??? ?????? ?????? ??????, ??? ?? ? ?????? ??? ?????? ?????? ??????
?? ?? ?????????? ????, ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????, ? ?????? ????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????????? ??? 27??
????????? 1988, 81/87, Daily Mail and General Trust (?????? 1988, ?. 5483), ??? ?? 16??
????????? 2008, C?210/06, Cartesio (?????? 2008, ?. I?9641). ??? ??, ????
????????? ?? ??? ?? ?????? ???.

18 ??? ???????, ?? ?????? ?????????? ?????? ??? ?????, ??? ? ??????? ?????? ??? ??
????, ??????? ?????? ??? ?????? ??? ?????????? ??????????????. ??? ?????, ?? ?????? ????
??? ?? ?????? ??????? ? ?????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?? ??? ??
????????? ?????? ?????????? ?????? ??? ?????????? ?????? ?????? ??? ?????? ??? ??, ??
????? ?? ??? ??? ?????? ?????????? ?????????? ?? ?????? ?????? ?????? ??????. ??????
????? ??? ?? ?????? 16 ??? Wet IB ?????????? ??? ?????? ?????? ??? ?? ?????? ??? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??, ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??????
????????? ??? ?????? ??? ?????????? ??? ?????????? ???, ?? ?????? ??? ?????????? ????
????????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???, ??
????? ?? ?????????? ?????????? ???, ???, ??????, ?? ?????????? ???.

19 ??? ??, ?? ?????? ?????????? ?????? ??? ?? ??????????, ??? ?? ??????????
??? ??????? ??? ?? ?????????? ??? 11?? ?????? 2004, C?9/02, de Lasteyrie du Saillant
(?????? 2004, ?. I?2409), ??? ?? 7?? ?????????? 2006, C?470/04, N (?????? 2006, ?.
I?7409), ? ?????? ??? ?? ?????? ???, ??? ?????? ?????????? ??? ?? ??? ??
????? ?????? ??? ??????, ?? ?????????? ?? ?????? ?????????? ??????????, ?????????? ???
????????? ??? ?????? ?????????? ?????????? ??? ?? ?????? ??? ?????? ??? ?? ?????? ????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???
?????????.

20 ???, ?? ?????? ?????????? ?????????? ???, ?? ??????????, ?????? ??? ??????
?????? ?? ?????????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????????? ???
??? National Grid Indus, ??? ?? ? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???,
?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

21 ??? ?? ??????? ???, ?? Gerechtshof Amsterdam ?????????? ?? ?????????? ??
????????? ?? ?? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????????? ????

«1) ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?? ?????? ?? ?????? ??? ??????????
?????? ?? ?? ?????? ??? ?? ?????? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ???
??? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ???, ?????? ??? ?????? ???, ??? ?? ??? ??
????????? ??? ?????????? ??? ??????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? 43 ?? (??? ?? 49 ???);

2) ?? ?????????? ?????????? ??? ?????? ???, ??? ?? ??? ?? ??? ?? ???

???? ?????? ??? ???, ??? ? ????????, ? ?????? ????????, ?????? ????????, ??? ?????? ???
?????????? ?? ?????? ?????? ?????? ??????????????? ???????????, ??? ?????? ???
????????????? ?????? ?? ?????? ?????????????? ??? ?? ?????? ?????? ?????? ??? ??????
????? ???????, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? 43 ?? (??? ????? 49 ???), ??? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
??? ?? ??? ?????? ??? ??????? ?? ??????????????? ??? ??? ?????? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? ???;;

3) ?????????? ? ????????, ??? ??????????? ?????? ??? ?????? ??? ?? ???????, ??? ?
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??????????????) ?????? ???
????????????? ??? ?????? ??? ?????? ?????? ??????????? ???????????, ??? ??? ?????? ???
??? ?? ??? ?????? ??????????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????? ???;»

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

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

22 ?? ?? ??? ?????? ????????, ?? ?????? ??????????? ?????? ??? ?????? ?? ???????????????
?? ??????? ?????????? ??????? ?? ?? ?????? ??????? ???????, ?? ?????? ?????????? ?? ???
?????? ?????? ??? ?????? ??? ??????????? ??????????? ??? ??? ? ?????? ???????????, ??? ??
????? ?????? ????, ?? ??? ?????? ??? ?????? ?? ????????, ??????? ?? ??????????? ?? ?????? 49
????? ??? ?????? ??? ?????? ???.

23 ? ??????????, ? ????????, ? ????????, ? ???????????, ? ??????????? ??? ? ???????,
????????? ?????? ??? ? ?????????? ??? ??????? ?????????? ??????????? ??? ?? ??? 49
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ?????????? ???????,
????????????? ??? ?????? ?????? ??????????? ?????? ??? ?????? ??? ?????????? ??? ??
????????????? ??? ??? ?????????????? ?????????? Daily Mail and General Trust ??? Cartesio ???
????????? ??? ??? ?????????????? ?????????? ??? ??????????? ??? ?????????? ??? ??
????????? ??? ?????? ???.

24 ?? ?? ??? ?????? ??????????? ??????? ?????? ??? ? National Grid Indus, ??????? ??? ??
????????? ??? ?????? ??? ??????????? ??????????? ???, ?????? ?? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?? ??????????? ??? ?? ?????????????? ??? ?? ???
?????????. ??? ????????, ? ??????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?? ???
????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????? ???, ? ?? ?????? ?????? ?????? ?????????? ??? ?????? ???
????????? ???.

25 ?? ??????????, ??? ?? ?????????? ???, ??? ?? ?????? 54 ???, ?? ??????? ???
????? ??????? ??????? ?? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????, ??? ??????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
?????????????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??????????????, ?? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

26 ??????? ??????????? ???????, ??? ?? ?????? ??? ??????, ??? ??????? ???
????????? ?? ?????? ??? ??????????? ?????????????? ?? ?????? ?????? ?????? ???
????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ???, ?? ??????
?? ?? ?????? 49 ??? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????????? ??? ?? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???

?????????? ??????, ??????? ?????????????? ??????? ?? ??????, ??? ?????? ?????? ?????????? ?????????? ???? ?????? ??? ??????, ?????? ?????? ???????, ?????? ?? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 54 ????, ?????? ?? ?????? ?? ? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? Daily Mail and General Trust, ??????? 19 ?? 23- ??????? ??? 5?? ?????????? 2002, C?208/00, Überseering, ??????? 2002, ?. I?9919, ??????? 67 ?? 70, ??? ?????????????? ?????? Cartesio, ?????? 109).

27 ?????, ?????? ?????? ??? ?????? ?? ?????????? ?? ?????? ?????? ?? ?????????? ?????? ???
????????? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
?? ?????? ?? ?????? ?? ?????? ??, ?? ?? ??????, ?????? ?? ?????? ?? ?????? ?? ?????? ??????
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ??
?? ?????? ?? ?????? ?? ?????? ?? (????????? ?????? ?????? Cartesio, ?????? 110). ???
?????????, ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?????? ?????? ?????? ???, ?????? ?????? ?? ?????? ??
????????? ?? ?????? ?????? ?? ?????? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ??
????? (????????? ?????? ?????? ???? Überseering, ?????? 70).

28 ????? ???, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ? ???????, ??? ???????, ??? ???????, ??? ???????, ???
????? ??? ???????????, ??? ?????????, ??? National Grid Indus ??? ???????, ??? ??,
??????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????,
?? ????, ??? ?????, ??? ?????, ??? ???????, ??? ???????, ??? ???????.

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

30 ?????????, ? ??????? ?? ?????????????? ?? ?????? 27 ??? ?????? ?????????? ?????????? ?????????? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? (?? . ?????????????? ?????? Cartesio, ????? 112).

32 ????? ??????? ????? ?????? ?????, ?????? ? ?????????? ??? ?????????? ?????????? ??? ?????
??? ?????????? ?????????? ??? National Grid Indus ??? ?????????? ??? ?????????? ???
????????????? ??? ?????? ?? ?????????? ?????????? ??????, ? ?? ????? ?????????? ??? ?????
????????? ??? ?? ?????????? ??? ?????? ?????? ?? ?????????? ?????? ?? ?????????? ?? 49 ????. ??
????????? ?????????? ??? ?????? ?? ?? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????

???? ????? ???? ???? ??????? ???? ??????? ???? ?????? ???? ???????, ? ??????? ????
???????, ??????? ?? ???? 54 ????, ????, ????? ??????? ???? ??????? ???? ??????? ????
????????? ?????????????? ??? ?????????? ??????? ???? ?????????? ???? ?????????? ????
????? ??? ???? 49 ????, ?????? ??? ???? ?????? ??? ?????? ?????? ?????? ???? ?????? ????
????? ??? ?????? ?? ???? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ????
????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???.

33 ??? ????????, ??? ?????? ??????? ???? ???? ???? ???? ??????? ???? ???????
????????? ??????? ?? ???? ?????? ??????? ???? ???? ?????????? ???? ?????? ??????? ????
??? ??? ???? ?????????? ?????????? ??? ?????? ???? ?????? ?????? ???? ?????? ????
??? ?????????? ??? ???? ?????? ??? ?????? ?????? ?????? ?????? ???? ?????? ????
????? 49 ????, ??? ???? ?????? ??? ?????????? ???? ?????????? ???? ?????? ??? ????
????? ??? ?????? ?????? ??? ?????? ??? ???? ?????? ?????? ???.

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

34 ?? ?? ??????? ?? ???? ??????? ???, ?? ?????? ?????? ?? ?????????? ?? ???? ???????,
?? ?????? ?????????? ??? ?????? ??? ???? ?????????? ?? ???? 49 ????, ??????????
????????? ??????? ???????, ??? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ??????? ??
????????? ?????????? ??? ?????????? ?????? ?????????, ???? ?????? ?????????? ??????? ??
?? ?????? ?????? ??? ??????? ??? ???? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
??? ?????????? ?????????? ???, ?????????? ??? ???? ?????? ??? ???? ?????? ?????? ???
????? ??? ?????? ?????????, ??? ?????? ?????? ???, ??? ?????, ?? ?????????? ?????????? ???
????????? ??? ?????????? ??? ???? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ???????, ?? ?????? ?????? ??? ???? ?????????? ??? ???? ?????? ??
????????????? ??? ???? ?? ?????? ??? ???? ?????? ?????, ??? ?????, ?? ?????????? ?????????? ???
?? ???? ?????? ??? ???? 49 ????, ?????????? ??? ???? ?????? ??? ???? ?????????? ???
????????? ??? ?????? ?????????? ??? ???? ??? ?????? ??? ?????????? ??? ???? ?????? ???
????????? ??? ?????? ?????????? ???.

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

35 ?? ????? 49 ????, ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??????????. ????, ??? ???? ?? ?????? ???, ?? ?????? ??? ???? ?????? ??? ?????????? ???
????? ??? ?????????? ?????????? ??? ???? ?? ?????? ??? ?????? ??? ?????????? ??? ???? ?????? ???
????????? ??? ?????????? ??? ???? ?????? ??? ?????? ??? ?????????? ???, ??? ?????? ???
????????? ??? ?????? ?????????? ??? ???? ?? ?????? ??? ???? ?????? ??? ?????? ??? ????
????????? ??? ???? ?????? ??? ???? ?????? ??? ???? ?????? ??? ???? ?????? ??? ???? ??
????????? ??? (??. ?????????? ??? 16?? ?????? 1998, C-264/96, ICI, ?????? 1998, ?. I-4695,
????? 21- ??? 6?? ?????? 2007, C-298/05, Columbus Container Services, ?????? 2007, ?.
I-10451, ????? 33- ??? 23?? ?????? 2008, C-157/07, Krankenheim Ruhesitz am Wannsee-
Seniorenheimstatt, ?????? 2008, ?. I?8061, ????? 29, ??? ??? 15?? ?????? 2010, C-96/08,
CIBA, ?????? 2010, ?. I?2911, ????? 18).

36 ??????? ?????? ??? ?????? ?????????? ??? ???? ?????????? ??? ???? ??????????
????????? ??? ???? ?? ?????????? ??? ???? ?????? ??? ?????????? ??? ???? ?????????? ????
????????? ??? ???? ?????? ??? ?????? ??? ???? ?????????? ??? ???? (??. ?????? ??? 5??
????????? 2004, C-442/02, CaixaBank France, ?????? 2004, ?. I-8961, ????? 11, ???
????????????? ?????? Columbus Container Services, ????? 34- Krankenheim Ruhesitz
am Wannsee-Seniorenheimstatt, ????? 30, ??? CIBA, ????? 19).

37 ??? ?????? ??? ?????? ?????, ?????????? ??? ???? ?????? ?????????? ??? ???? ????
?????, ??? ?????? ??? ?????? ??? ???? ?????? ??? ???? ?????? ??? ???? 49 ????,

????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????????? ?????????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ??? ?????? ?????? ??? ??????????
???? ??? ??? ?????? ??? ?????? ??? ?????????? ?????????? ????. ????????????, ?????? ???
????????? ??? ?????? ??? ?????? ?????? ????????, ? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ?????????? ?????????? ???, ???
????????? ?????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ???
????? ??? ??? ????. ?? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????????? ???
????? ??? ?????? ?????? ??? ?????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????????? ???
????????? . ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ??? ??? (??., ??? ??? ?????, ?????????????, ?????????? de Lasteyrie du Saillant,
????? 46, ??? N, ????? 35).

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

39 ? ????????, ? ?????? ??? ? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ?? ??? ???
????????? ? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ????. ??????????????
????? ??? ?????????? ??? ?? ?????????? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????????? ?????? ??? National Grid Indus, ? ?????? ???, ??? ???
?? ??? ??????????, ?????????? ??? ?????? ?????? ??? ?????? ????. ??????????, ? ??? ???
????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
?????????.

40 ? ?????????????? ??? ?????? ?? ?????????? . ? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? National Grid Indus. ??? ?????? ?????? ??? ?????? ??? ?? ???
????????? ?? ? National Grid Indus ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???
????????? ?????? ???.

41 ????????, ? ?????????? ?????? ?????????? ??? ??????, ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???' ?????? ?????????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

42 ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? . ?????? ???, ???, ??? ?????? ???, ???, ? ?????? ??? ?????? ???

?? ??????????? ?? ??????? ?? ?????? ?? ?????????? ?????? ?? ?????? ?? ??????????? ??
????? ?? ?????? ??????? ?? ?????? (????????? ?? 13?? ?????????? 2005, C-446/03,
Marks & Spencer, ?????? 2005, ?. I?10837, ????? 35- ?? 12?? ?????????? 2006, C-196/04,
Cadbury Schweppes ??? Cadbury Schweppes Overseas, ?????? 2006, ?. I-7995, ??? 47- ??
13?? ?????? 2007, C-524/04, Test Claimants in the Thin Cap Group Litigation, ????? 64, ??
?? 18?? ?????? 2009, C-303/07, Aberdeen Property Fininvest Alpha, ?????? 2009, ?. I?5145,
????? 57).

43 ????? ?? ??????? ???????????, ? ?????????????? ??? ?????????????? ???????????????
?????????????? ?? ???? ?????? ??? ?????? ?????????????? ??? ?? ?????????????? ?????????? ??????????
??? ??????????? ?????????? ??????? ??? ?????? ??????, ??????? ?? ??? ??? ??? ??
????????????? ?? ??????? ??????????. ???????????, ?? ??? ?? ?????????? ?????? ??????
????? ?? ?????????? ??????? ??? ??? ??? ??? ?????????? ??? ??????????????? ???
?????? ??? ?? ?????????? ??????? ? National Grid Indus ??? ?? ???????????
?????? ???.

44 ????? ?????, ? National Grid Indus ?????????????? ??? ? ??????? ?????? ??? ??????? ??
????????????? ??? ???? ?????????????? ?????????? ?????? ? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ??? ??????????????.

45 ?? ???????????, ???. ?? ???????????, ??????, ??? ? ?????????? ???. ?????????? ???.
?????????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.
?????????? ???. ???. ???. ?????? (??., ???. ???. ???. ???., ???????????????) ?????? Marks
& Spencer, ???. 45, ???. N, ???. 42, ???. ?????? ???. 18?. ?????? 2007, C-231/05, Oy
AA, ?????? 2007, ?. I-6373, ???. 51, ???. ???. 15?. ?????? 2008, C-414/06, Lidl Belgium,
????? 2008, ?. I-3601, ???. 31). ??????, ???. ?????? ?????? ???.
????? ???. ?????? ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.
????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.
????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.
????? ???. ?????? (????? ???. 19?. ?????? 2009, C-540/07, ?????? ???. ??????,
????? 2009, ?. I-10983, ???. 29 ???. ???. ?????? ???. ??????).

47 ????? ???? ??????? ???? ?????????? ?????????? ???, ??????? ?? ???? ???? 7, ??????????
1, ??? ????????, ? National Grid Indus, ???? ?? ??????? ???? ?????? ?????????? ?????? ????

???? ??????????? ??????????? ???, ?????????? ?????? ?????? ??? ?????????? ??? ?????????? ??????
?????. ??????, ??? ???? ?????? ?????????? ??? ??????, ? National Grid Indus ?????? ??
???? ????? ??????????? ??? ???? ?????, ?????????? ?????? ??? ?????? ??? ?????? ??? ?? ???,
?????? ?? ?? ????? 16 ??? Wet IB, ??? ?????? ??? ?????????? ??? ?????????????? ???????????
??? ??????? ?????? ?? ?????? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
?????? ??????? ??? ?????? ????. ?? ?????????? ??? ?????????????? ??? ?????? ?? ?????? ???
?? ??? ?????? ???????????, ??????? ?? ?? ????? 13, ?????????? 4, ??? ???????, ???
????????? ?????? ???.

48 ?????????????? ?????? ??? ?????????? ??????, ???????? ????? ? ?????????? ????? ?????? ?????? ?????? ?????
?????? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ?? ?????????? ?????? ??????????
?????? ??? ????? ?? ?????????? ?????? ??????. ??????????????, ? ?????? ??? ?????? ??? ?????? ??? ??
????? ?????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ??????
????? ?????????? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????????? ?????????? ?????? ??? ?????????? ??????, ?????? ??? ?? ?????????? ??? ?? ?????? ???
????, ?? ??????? ?????????? ?????????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ??? ??
?????????????. ?? ??????? ?????????? ??? ?????????? ?????? ?????????? ?????? ?? ?????????? ??? ??
??? ?? ????? ?????????? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????????? ?????? ?????
?????????????, ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ? ?????? ?????????? ??? ??.

49 ?? ??????????? ??? National Grid Indus ??? ? ???????? ??? ?????? ??? ?????? ???
?????? ?? ?????????????? ?????? ??????? ??? ?????? ???????, ??? ??? ???
????????????? ???????, ?????? ?? ??????????. ????????????, ??? ?????????????? ??
?????? ?????????? ?? ?????????? ?????? ?????????? ??? ?????? ??? ??????????, ???
????? ?????????? ?? ?????????? ??? ?????????? ?????? ?????? ??? ?????????? ??? ???
?????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
?????????.

50 ??????? ??????? ?? ?????????? ?? ???????, ??? ? ??????? ????? ????? ?????, ???
?????????? ?? ??? ????? ?? ?????????? ??? ????? ??????? ?? ?????? ??? ????? ??????????
(?????? ?? 30?? ??????? 2011, C-262/09, Meilicke ???., ??? ??? ????? ?????? ??????????? ??
???????, ??? 42 ??? ??? ??????????? ??????????).

51 ??????? ?? ?????????? ??????? ???, ??? ????? ?????? ????? ?????? ?????? ?????? ?????? ?????
???????, ??? ? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ? ?????????? ???
????????? ??? ???? ??? ???? ??? ???? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
????? ?????????? ??? ???? ??? ???? , ??? ?????????? ??? ???? ??? ???? ??? ???? ???? ???? ???? ?
????? ?????? ??? ???? ??? ???? ??? ???? ?????????? ?????????? ??? . ??? ???? ???? ?????????? ?
????????? ??? ???? ?????? ?????? , ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ???? ??? ???? ?????? ??? ??????.

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

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

53 ????, ???? ?, ? ?????????? ???????, ?????????????? ??? ?????????????? ??????? N,
????????????? ???, ?? ??????? ??? ??? ?????? ???????????????, ?? ?????? ??? ?????? ??????????
?????? ?? ?????? ??? ?????? ??? ??????????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????????
????????????? ???????, ??? ?????????? ??? ?? ?????????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????????? ??????.

54 ?????? ?? ?????????? ??? ??? ?????????????? ?????? N, ? ?????? ?????????? ???
?????? ??????? ?? ??????? ??? ?????, ??? ?? ??????? ?? ??? ?????? ?????? ??? ?????? ???
?????????? ??????? ???, ?? ??? ??? ??? ?????? ?????????? ??????? ?? ?????? ??? ??????????
????????? ??? ??? ?? ???????, ?? ?????????? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ???
????????? ?????????? ?? ?????? ?? ??? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ???
????????????? ??????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? (????????????? N,
????? 54).

55 ?????? ??? ?? ???? ? National Grid Indus ?????????? ??? ??????? ?????????? ??? ??????
??? ?????????? ?????????? ??? ??????? ??? ?????????? ??? ?????????? ?????? ??? ???
?????????? ?? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ?????? ??? ??????
?? ??? ?????????? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
??, ?.?, ? ??? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????.

56 ????, ?????, ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ??? ??????
????????? ? ?????????? ??? N, ? ?? ?????????? ???, ??? ?????? ??? ??????
?????, ??? ?? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????.

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

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

59 ??? ??? ??????? ???, ?? ?????? ??? ?????? ?????? ??? ?????? ???, ?????????? ???

????? ??? ??????????? ? ????????, ?? ??? ???? ?????? ?????? ?????????????????? ?????????? ???
????????????? ??? ???? ?? National Grid Indus ??????? ??? ?????? ?????? ?????????? ???
????? ??? ?????????? ?????? ?????? ???, ?????? ??? ?????? ? ?????? ??? ?????? ??? ??????????
??? ?? ??? ?????? ??????. ????????????, ? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????
????????? ??? ???? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??????
????? ??? ???? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?? ?????? ??? ?????? ????????, ?????? ?????????????? ?????? ??? ?????? ??? ?????? ??????
????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??????.

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

61 ???????, ??? ?????????? ??? ?? ?????? 58 ??? ?????? ????????, ?? ??????????
?????? ??? ??????? ??? ?????? ???' ????, ?? ?????? ???, ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
?????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ????????, ??? ?? ?????? ??? ?????? ?????? ??? ?????? ???
?? ?????? ??? ?????????? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ????????, ??? ?? ?????? ??? ?????? ?????? ?????? ???, ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

62 ?????? ?? ?????????? ?????? ??? ? ?????? ?????? ??? ??????? ?? ?????? ??? ???????
??? ????? 54 ??? ???? ?????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ???? ?????? ?????? ??? ?????????? ?????? ??????. ?????????? ??? ???? ????
????????? ??? ???? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????
???????, ?????? ??? ???????????, ?? ?????? ??? ?????? ?????? ?????????? ??? ???? ????
????????? ??? ?????? ??? ?????????? ?????? (??., ??? ??? ?????? ???, ?????????? ???
15? ?????? 2004, C?365/02, Lindfors, ?????? 2004, ?. I?7183, ????? 34- ??? 12? ??????
2005, C?403/03, Schempp, ?????? 2005, ?. I?6421, ??? 45, ??? ??? 20?? ????? 2008, C-
194/06, Orange European Smallcap Fund, ?????? 2008, ?. I-3747, ????? 37). ??? ????????, ?
????????? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?? ???????, ?? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????????????? ??? ?????????? ?????? ?????? ?????? ?????????? ?????????? (??.
?????? ??? 28? ?????????? 2008, C?293/06, Deutsche Shell, ?????? 2008, ?. I?1129,
????? 43).

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

64 ??? ?? ?????? ?????????? ??? ?? ?????? 49 ??? ?????? ??? ?????????? ?????? ??? ??????
????? ??? ?????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????????????
????????? ?????? ?????????? ?????????? -?? ?????????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?? ?????????? ?????? ?????? - ??? ??? ?????? ??? ?????? ??? ??????
? ??????, ??? ??? ?????? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ???, ??? ??? ?????? ?????? ?? ??? ??? ?????????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
- ??? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???

65 ??? ?? National Grid Indus ??? ?? ???????, ? ??? ?????? ?????? ??? ?????? ??? ??
????? ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ???
????????? ??? ?????? ??????????. ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?? ?????????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

66 ? ?????? ?????? ?????????? ??? ? ?????????? ?????? ??? ?????? ??? ?????????? ?
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????. ?????? ??? ?????? ??? ??????
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

67 ????????, ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???

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

68 ?? ??????????, ??????????? ??? ? ?????? ??? ?????????? ??? ?????????? ?????? ???
????? ??? ???????????, ??? ?????? ??? ?????? ??????, ??? ?????????? ?????? ???
????????? ?? ?? ??? ?????? ?????????? ??? ??? ??? ?????? ??? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
?? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
?????????.

69 ??? ??? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????????? ???
????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ? ?????????? ???
????? ??? ?????????? ??? ?????? ?????? . ? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? National Grid Indus.

70 ??????, ??? ? ?????? ?????????? ?????? ??? ?????? ??? ?????? 69 ??? ?????? ???,
? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ?? ?????? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

72 ??????, ?? ??? ?????? ??????????, ? ??? ? ??? ? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????
????? ??? ?????? ??? ?????? ???.

73 ??? ??? ?????? ????, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???

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

74 ?????? ??????, ??????? ?? ??????? ?????? ?????? ?????? ? ?????????? ?? ?????????? ?????? ?,
?????? ??????? ?? ?? ?????? ??? ??????. ? ?????????? ?????? ?????? ?????? ?? ?????? ?????? ??? ??
?? ?? ?????? ?? ?????????? ?????? ??????, ??? ??????? ?? ?????? ?????? ??? ?????????? ??? ?????? ???
????????? ?? ?? ??? ?????????????? ?????? ??????? ?? ?????? ?????????? ??????, ?? ?????? ??? ?
????????? ?????????? ???????.

75 ?? ??????????? ?? ?????????? ?????????????? ??????? ?? ?? ???????????
????????????? ?? ?? ? ?????????????? ??????? ?? ?? ???? ?? ?????????? ??
????????????? ?? ?? ???? ?? ?????? ?????? ?????????????? ?????? ?????????? ?? ?? ?? ??????????????
????? ?? ?? ?????????????? ?????????? ?? ?? ?????? ?????? ??????? ?? ?? ?? ?????? ??????????????
????????? ?? ?? ?? ?????? ?????? ?? ?? ?????????? ?? ?? ?????? ?????????? ?????????????? ???.

76 ? ?????????????????????? ??? ???? ???? ? ? ?????.

78 ??? ????????, ??? ?????? ???? ??? ?? ?????????????? ? ??????????, ? ?????????? ???
? ??????? ??????????, ?? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ?? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
?? ????. ??????, ?????? ?? ?????????????? ???, ?????? ? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ???, ?????? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
?????????, ? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??? ?????? ?????? ??????
?? ????, ??? ??? ??? ?????? ????. ??????, ?? ?????? 4, ?????????? 1, ??? ??????
2008/?? ??? ??????????, ??? 26?? ????? 2008, ??? ??? ?????? ?????? ??? ????

? ?????????? ??????????? ? ?????????? ?? ? ?????????? ??????????, ????????, ?????? ??? ??? ??? ??????
(?? L 150, ?. 28), ?????? ???, «[?]?????? ??????? ??? ??????? ?????, ? ??????? ??? ??? ???
????????????? ??? ??????????? ??? ??? ??? ?????? ??????? ??? ??? ??????? ??? ???
???????????. ??? ???????, ? ?? ??? ?????? ?????? ??????? ??? ?????? ?????? ??????????? ??
?????????? ?? ?????? ??? ?? ?????? ?????? ?????? ?????????? ??????????? ?? ??? ??
?????????? ? ?? ??????????? ??? ?????? ?????? ?????? ??? ??? ?????????? ?????????? ??? ???
????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?? ?????????? ?? ?????? ??? ???
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ??? ??? ???
????????? ??? ?? ??? ??????. ???????, ? ?????? 2008/55, ??? ?????? ?? ?????? ??? 5 ??? 9,
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????????? ???
????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??????.

79 ????????, ? ????????, ??? ? ???????, ?????????? ?????????????? ??? ? ???????, ???
????? ??? ?????? ?????? ?????????? ?????????????? ??? ??? ?????? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????? ?????????? ?????????? . ? ?????????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
????????????? ??? ??? ??? ?? ?????????? ?????? ??? ?????? ?? ?????? ?????????? ???
????????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????.

80 ??? ? ?????? ?????????? ?????????? ??? ?????? 99 ??? ?????????? ???, ??
????????? ??? ?????????? ?? ?? ?????????? ??? ??? ?????????? ??? ??? ?????????? ?????????? ???
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81 ??? ?????, ??? ??? ?? ??????? ??? ? ??????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ??? ?? ?????????? ??? ??????????
??????, ?????????????? ??? ? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????? ?????? ???, ??? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????? ??? ??? ?????? ???
????? ????.

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

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

84 ????? ??????, ????? ?? ?????? ?? ??????? ???? ?????? ?????????? ?? ???? ?????? ?????????? ?? ???? ?????? ??????
????? ?? ???? ?? ???? ?? ??????? ?? ??????? ???? ?????? ?????? ?????????? ?????????? ?????????? ?? ???? ??
????????????? ?? ???? ?????? ?? ???? ?????? ?????? ?????? ?????? ?????????? ?????????? ?? ???? ??
????????? ? ?????? (??., ??? ??? ?????? ??????, ?????????????? ?????? ICI, ????? 26.
????????? ?? 26?? ?????????? 2000, C-478/98, ?????????? ?? ???? ??????, ?????????? 2000, ?. I-
7587, ????? 45. ?? 21?? ?????????? 2002, C-436/00, X ?? Y, ?????????? 2002, ?. I-10829, ?????
62, ??? ??? 4?? ?????? 2004, C-334/02, ?????????? ?? ???? ??????, ?????????? 2004, ?. I-2229,
????? 27, ??? ?????????????? ?????? Cadbury Schweppes ??? Cadbury Schweppes
Overseas, ????? 50).

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

86 ????? ????????, ??? ?????? ??? ??? ????? ?????? ?????? ?? ?????? ? ?????? ? ?????? ? ?????????? ???
?? ????? 49 ????:

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

— ?????????? ??????? ??????? ??????? ? ?????? ? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????
??? ??? ?????? ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ??????
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87 ?????????? ?? ? ??????? ?????????? ?? ???? ?? ???? ?? ???? ?????????? ?? ???? ?? ???? ?? ????
???? ?????????? ?????????????? ?? ???? ?????? ?????? ?? ???? ?????????? ??????????, ?' ????
????????????? ?? ???? ?????? ?? ???? ?????????? ??????. ?? ???? ?? ???? ????? ??????????
???? ?????????? ?????????????? ?? ???? ?????????? . ?? ???? ?? ???? ?????????? . ?? ???? ??????????

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

1) ??????? ?????????? ??????? ?? ?? ?????? ??????? ??????? ???? ???? ???????

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

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?????? ??????? ?? ?????????? ?? ?????? 49 ???? ?? ?? ?????? ??? ?????????? ??

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

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

2) ?? ?????? 49 ????:

- ??? ?????????? ??????? ??????? ??????? ??????? ??? ??????? ?? ??? ?? ???? ??

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

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