

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

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

JULIANE KOKOTT

??? 3?? ????? 2018 (1)

?????? C-249/17

RyanairLtd

????

TheRevenueCommissioners

[?????? ??? Supreme Court (????????? ????????????, ????????)

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

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

## I. ????????

1. ??? ?????????? ??? ??? ?????? ?????????? ????????????, ??? ??? ?????? ???, ? ????????  
??? ??? «????????? ???» ??? ? ??????? ??? «????????? ??????????» ???  
??? ?????? ??? ?????? 9, ?????????? 1, ??? ?????? ??? (2). ? ?????????? ??  
????????? ??? ?????????? ?? ?????????? ?? ?????????????????? ?? ?????? ?????????? ???  
????????? ??? ?????????? ?? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ???.

2. ?? 2006, ? ?????????? ?????? Ryanair ?????????? ?? ?????????? ??? ??????????  
????????? ?????? Aer Lingus. ??????? ? ?????? ?????? ??? ?????? ?????????? ???  
?????????????, ? Ryanair ??? ? ?????????? ?? ?????????? ?????? ??? ??????????????  
??? ?????? ?????????? ??? ?????? ??? ?????????????? ???????. ?? ?? ??????, ?  
Ryanair ??? ? ?????? ??? ?????? ??? ?????? ?????????????? ??? ??????, ?????? ??? ???  
????? ??? ??? ?????? ??? ?????????? ???.

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

?????? ?????????????? ??? ?????? ?????????? ?????? ?????? ? ?????????? ?????????????? ???  
????? ?????????? ?????????? ??? ??? (3).

4. ??????, ?? ??????? ?? ??? ?????? ?????????? ?????????? ?????????? ??????????????????, ???? ???  
????? ??????? ??? ?????????? ?? ?????????? ?????????? ?????????????? (???, ?? ?? ????,  
?????????? ????) ??????? ?? ?????????????? ??? «?????????» ??????  
????????????? ?????????? ??????????, ?????????? ?? ?????? ?????? ?????? ?????? ?????????????? ??  
????????? ? ?????????? ??? ?? ?????? «????????? ??? ?????????? ??????????» (4)  
????????????? ??? ?????????? ?????????? ??? ?? ??? ??? ??????. ??????????????, ?  
????????? ?????? ??? ?????????? ?????? ?????? ?? ?????? ?????????? ??? ??? ??????  
????????????? ?????????? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ??????????  
????????? ??? ??? ?????????? ??????????.

## II. ?? ?????? ???????

5. ?? ?????? ?????? ??? ?????????? ?? ?????? ?????? ?????????? ??? ?????? ?????????????? ???  
??? ?????????? ??? ?? ?????? ?????????? ?????????? ?????????? ??? ?????? ??????  
77/388/??? (5) ??? ??????????, ??? 17?? ????? 1977, ??? ?????????????? ??? ??????????  
??? ?????? ????, ??? ?????????? ?? ??? ?????? ?????? ?????? - ??? ?????? ?????? ????  
????????????? ?????: ?????????? ?????????? ??? (??? ????: ??? ?????). ?????? ??????  
????????? ?????????? ?? ??? ?????????? ?????????? ??? ?????? 2006/112/?? (??? ????:  
????? ????) (6).

6. ?? ????? 9, ?????????? 1, ??? ?????? ??? (????? ??? 4, ?????????? 1 ??? 2,  
??? ????) ?????? ?? ???:

«1. ?????? ?? “????????? ????” ?????????? ????, ??? ?????? ?????????? ???  
?? ?????????? ????, ?????????? ?????????? ????, ?????????? ????, ??? ?????? ??????????  
????? ??? ?? ?????????? ????, ??? ?????????? ????, ??? ?????? ?????????? ????, ??? ??????????  
????????? ????, ??? ?????????? ????, ??? ?????? ?????? ????, ??? ?????? ?????????? ????, ??? ??????????.

?? «????????? ??????????» ?????????? ??? ?????????????? ??? ??????????, ???  
????? ? ??? ?????????? ??????????, ?????????????? ????, ??? ?????? ??????????  
?????????, ??? ?????????? ?????????????? ????, ??? ?????? ?????????? ????, ??? ??????????  
????????????? ??? ?????????? ????, ??? ?????? ?????? ????, ??? ?????? ?????????? ????, ??? ??????????  
????????? ????, ??? ?????? ?????? ????, ??? ?????? ?????? ????, ??? ?????? ?????????? ????, ??? ?????????? [...].

7. ?????? ??? ?????? 167 ??? ?????? ???, ?? ?????? ?????????? ?????????? ????  
????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ????  
????? 168 ??? ??? ?????? (????????? ?????????? ?????? ??????: ?? ??? 17 ???  
????? ??????):

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

? ) ??? ?????????? ? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????, [...]».

## III. ?? ?????????? ??????????, ? ?????? ??? ?????? ?????? ??? ?? ??????????

8. ? ?????????????? ??? ?????? ??????, ? Ryanair Ltd (??? ????: Ryanair) ?????? ??????????  
?????????? ??????? ??? ?????? ??? ??????. ??? 23 ??????? 2006, ? Ryanair  
?????? ?????? ??????? ??????? ?? ?????? ??? ?????? ??? ?????? ??? ??????? ?? ?????? ??? ???????  
?????? ?? Aer Lingus. ? Aer Lingus ?????? ?????? ??????????? ??????? ???????????????,  
?? ?? ??????? ??, ??? ??? ??????????????? ?? 2006, ?????????? ?? ???????????????  
???? 2 ??????? 2006.

9. ???? ??????? ??? 27?? ??????? 2007, ? ??????? ?????? ??? ? ?????????????? ??? ?????????? ??? ?????? ??? ?? ???? (7). ??? ??? ???????, ? Ryanair ??????? ?? ?????????? ??? ??????? ?? 29 % ??????? ??? ?????????? ??? ??????? ??? Aer Lingus.

10. .... Ryanair ....  
.... ? Ryanair .... (The Revenue  
Commissioners, ....).

11. ? Ryanair ?????????? ?????? ?????????? ??? ?????????????????? ?????????????? ?????????? ???  
Tax Appeals Commission (?????????? ??????????? ??? ?????????????? ??? ??????????, ?????????) ???  
?????????? ?????????? ?????????? ??? Circuit Court (????????????????? ??????????????, ?????????). ??  
?????????? ?????? ?????? ?? ??????????? ?????????? ??? ?????????????? ?????????????? ???  
????????? ??? High Court (????????? ???????????, ?????????), ?? ??? ?????? ?????????  
????????????? ???????????, ?? ?????? ?????? ??? ?????? ??? ?????? ???????????, ??? ???  
????????????? ??? ?????????? ??? ?????? ?????, ?????????? ??? ?????? ?????? ??? ??????. ?? High  
Court (????????? ??????????) ?????????? ?????? ??? ??????????? ??? ? Ryanair ??? ??? ??  
????????? ?? ?????????? ??? ???.

12. ? Ryanair ?????? ??????? ??? ?? ?????????? ??? High Court ?????? ??? Supreme Court (???????, ????????, ???????). ?? ?????? ??? 8?? ????? 2017, ? ?????? ??????? ??? ?????????? ??? 12 ????? 2017, ?? Supreme Court (???????, ????????) ???????? ??? ?????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? 267 ??? ??? ??????? ??? ??????? ??? ????????:

1) ?????? ? ??????????? ??????? ??????? ?????????? ?????????????? ?? ??????? ???  
????????? ??? ????? ????????, ?????? ? ??????? ????????????, ?????????????? ??  
????????????????? ??? ? ??????? ?????????? ?????? ??????????? ?????????????? ???  
????? ??? ?????? 4 ??? ????? ??????? ??? ???, ??? ?????? ? ??? ??? ?????? ?  
????????? ?????????? ??? ??? ?????? ? ?????????? ??? ?????????????? ?????????????? ??  
????????? ?? ?????????????? ??????? ?? ??????? ??? ?????????? ??? ?????? ??? ?????? ??  
????????? ?????????? ????????????, ? ?????? ?????????? ??? ?????? ??? ?????? ??  
????????? ????????????

2) ?????????? ??????? «?????? ??? ????? ?????», ??? ????? ????? ??????????? ??  
?????????? ??????????? ??? ?? ??????????? ??? ????? [?? ??? ??????? ??? 27??  
?????????? 2001, Cibo Participations (C-16/00, EU:C:2001:495)], ?????? ??????????????  
?????????? ??? ??????????? ??? ??????? ??????? ??????? ??? ? ??????????????? ??? ??  
?????????? ??????, ??? ?? ??????????? ??????? ??????? ??????????? ??????????? ??? ??  
??? ?? ??????????? ?? ??????????? ??? ??????? ??? ??????? ??? ? ?? ??? ?? ??????????  
??????????, ??? ?? ?? ??????????? ? ??????? ??? ??? ?? ??????????? ??? ??;  
?????????????? ??????????????? ???????????;

13. ?????????? ?????????????? ?????????? ??? ? ?????????? ?????????? ??? ?????????? ?  
Ryanair, ? ?????????? ??? ? ?????????? ??????. ??? ? ?????????? ??? ??????????

?????????? ?? ?? ??' ??????????? ??????? ?? 14?? ??????? 2018.

#### IV. ?????? ??????????

14. ??????? ?? ??????????? ??????? ?? ??????? ?? ??????? ??????? ?? ??????? ?? ??????? ??  
?????? ?? ??????????????? ?? ??????? ?? ??????? ?? ??????????????? ?? ??????? ?? ??????? ??  
?????????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??  
???. ??????? ?? ???????????????.

15. ?? ?? ????? ?? ???????, ?? Supreme Court (?????? ???????????) ????? ??' ??????  
?? ?????? ? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??????????? ??  
??????????, ?????? ? ??????? ?? ???????, ??????????? ? ??????? ??????? ?? ??????? ??  
?????????? ????? ?? ????? ?? ??????? ?? ??????? ?? ??????? ??.

16. ???????, ?? ????? ?? ????? ?? ????? ?? Supreme Court (?????? ???????????) ????  
? ??????????? ?? ??????????? ?? ??????????? ?? ??????????????? ?? ???????, ??? ?? ???????????  
?? ???????????, ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?? ??????? ??  
???????????: ?? ?? ??????? ?? ??????????????? ?? ??????? ?? ??????? ?? ?? ??????????????? ??  
?????????? ?? ??????????????? ?? ??????? ?? ??????????????? ?? ??????? ?? ??????? ??  
?? ? ??????? ?? ??????????? ?? ??????????????? ?? ??????? ?? ??????? ?? ??????? ??  
?? ??????????? ?? ??????????????? ?? ??????? (8). ?? ?? ????? ?? ??????? ?? ??????? ??  
?????????? ?? ??????? ?? ??????? ?? ??????????????? ?? ???????, ?? ??????? ??  
?????????? ?? ??????? ?? ??????????????? ?? ??????? (9). ???????, ? ??????? ?? ?? ??  
?????????? ?? ??????? ?? ??????????????? ?? ??????? ?? ??????? ?? ??????????????? ??  
?????? ?? ???????, ?? ???????, ??????? ??, ??????? ??, ??????? ?? ??????? ?? ???????????????  
?????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????????? (10).

17. ?? ?? ???????, ?? Supreme Court (?????? ???????????) ????? ??????????? ??  
?????????????? ?? ???????, ?????? ?? ??????? ?? ??????????????? ?? ??????? ??  
?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ???????????????, ? ??  
?? ??????? ?? ??????? ?? ??????? ?? ??????????????? ?? ??????? ?? ???????.

1. ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??  
?????????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??  
??????????????

18. ? ??????? «?????????? ?? ??????? ?? ??????? ?? ???????????????», ??? ??????? ??????????? ??  
Supreme Court (?????? ???????????) ?? ?? ??????? ?? ??????? ??, ??????????? ?? ???????????  
?? ??????????? ?? ??????? ?? ??????????? ?? ??????? ?? ??????????? ?? ???????????, ?  
?????????? ?? ??????? ?? ??????? ?? ??????????? ?? ??????? ?? ??????????? ?? ??????? ??  
?????????????? ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????????? ?? ???????????????, ?  
?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????? ??  
?? ??????????? ?? ??????????????? ?? ??????? ?? ??????? ?? ??????????? ?? ??????? ?? ??????????? ??  
(11).

19. ???????, ??? ?? ??????? ?? ??????? ?? ???????????, ?? ??????? ?? ??????????? ??  
?????? ??????????????? ?? ??????? -???, ?? ??????? ?? ??????? ?? ??????????? ?? ??????? ??  
?????????? ?? ??????? ?? ??????? - ?? ??????? ?? ??????? ?? ??????????? ?? ??????? ?? ??????? ??  
?? ??????? ?? ??????? 9, ??????????? 1, ??? ??????? ?? ??? (12), ??????? ?? ??????? ??  
?????????? ?? ???????????, ??? ???????, ???????, ?? ??????????? ?? ??????? ?? ??????? ??  
?? ??????? ?? ??????? ?? ??????? 168 ??? ???????.

20. ??? ??????? ??, ?? Supreme Court (?????? ???????????) ??????????? ?? ?

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

21. ????? ??????? ??????? ??? ?? ????? ?? ??? ????? ??????? ??? ?? ???????????????  
??? ?? ???????????, ? Ryanair ?????? ?? ??????? ?? ??????? ?????????? ??? ?? ???  
??? ?????? ??? ??????? ????. ??????? ??????? ?????? ?? ??????? ?????????????? ??? ??  
????????? ??? ??????? ??????: ??? ??????? ?????? ??? ?????????? ??? ? Ryanair  
????????? ?? ??????? ??? ????? ??????? ??? ??, ???????????, ?? ?????????? ????  
????????? ??? ?????????? ??????.

22. ???????, ??? ?? ?????????? ??? ??????? ??????? ?????????? ?????????????? ???,  
???? ???????, ??? ?????????? ??????? ??? ??' ??????? ??? ?????????? ???  
«????????? ??? ?????????? ??????????» ??????? ??? ?????????? ?? ? Ryanair ???  
?????? ?? ??????? ??? Aer Lingus ??????? ?????????? ?????? ?????? (??' ???  
????????? ???). ??? ?? ??? ????? ??? ?????, ??????, ?????? ? ?????? ??? ??????????  
????????????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ?? ?????????? ???  
????????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??  
????????? ??? ?????????? (??' ??? ?????? ?????? ???). ??? ?????? ???, ??? ??????  
??? ?????? ??????? ??? ?????????? ??? ?????? ??? ?????????? ???????????, ?????????? ??  
????????? ??? ?????????? ??? ?????? ??? ?????????, ?? ?????? ??? ???????, ??? ???????,  
????????? ??????.

23. ?????, ??? ? «?????????» ??? ?? ??????? ?????????? ??????? ???????, ???  
??? ?? ?????????? ??????? ?????????? ??? ??????? ??? ??????? ? ??????? ???????  
?????? ?? ??????????, ??? ?? ??????? ?????? ? ??????? ??????? ??????? ??????? ???  
????????? ??? ??????? ?????? ??? ?? ?????? ?????????? ?????????????? ?????????????? (??'  
????? ??????? ???). ??? ?????? ?????? ??? ?????????? ??? ?????????????? ?????????? ???  
??? ??????????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ?? ??? ?????? ??????? ??? ?????????? ??? ?????? ??? ??????????????  
?????????????. ?? ?? ??????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ?????? (??' ??? ?????? ??????? ??? ?).

24. ?????, ?????????? ??? ?? Supreme Court (????????? ??????????) ??????? ??? ??  
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??  
??????, ?? ?????? ??' ?????? ?? ? Ryanair ??? ?????? ?????????? ?????????? ??? ??  
??????.

2. ????? ??????? ??? ?? ??????? ?? ?? ?????????? ??? ??????????

25. ??? ?????????? (????? 18), ??? ? ?????? ?????????? ??????? ???  
????????? ??? ?????? ?????????? ?????????????? ??????????, ??????? ?? ???  
????????? ??? ??????????, ? ?????? ??? ?????? ?????????? ?????????? ??? ???????  
????????? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????? 9,  
????????? 1, ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ?????????? (13). ?????? ?????? ???, ???  
????????? ??? ?????? ?????? ?????? ?????????? ?????????????? ??? ?????????? ???  
????????? ??? ?????? ?????? ?????????? (14). ?? ?????? ??? ?????? ?????? ???, ?????? ???  
??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????? ?????? (15).

26. ??????????? ???? ?????? ?? ?????????? ????? ???? ?????? ?????? ?????? ??? ????  
????????? –?? Supreme Court (????????? ??????????) ????? ?????? ?????? ?????? ?????????? –  
??? ??? ?????????????? ??? ?????????????? ?? ?????????????? ?????? ?????????? ?????????? ???  
????? ????, ?????????? ?? ?????????????? ???? ?????? ?????? ?????????? ?????? ??? ?????????? ???  
????? ??? ?????????? ????, ?? ?????? ?????? ?????????? ?????? ?? ?????????? ??? ?????????? ???  
????????? ??? ?????????????? ??? ?????? ?????? ?????????? ?????? ?????? ?????????? ??????????  
(16). ?????? ??? ?????? ?????? ??????, ? ?????? ?????????????? ??? ?????????? ???  
?????????, ??? ?????????? ?????????? ?????????? (17). ?????? ?????? ?????? ??? ???  
????? ??????, ??? ??? ??? ?????? ?????? ?????????? ??? ??????, ??? ? ?????????? ??????????  
?????????????, ??? ?????? ?? ??? ?????? ?????????? ??? ?????????????? ??????????????  
?????????, ??? ?? ?????? (18).

27. ??? ???????, ?? ?????????? ?? ??? ?????????? ?????? ?????????? ?????? ?????? ???  
????????? ?? Supreme Court (????????? ??????????), ? ?????????? ??? Ryanair ??  
????????? ??? ?????? ?? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?? ?????????? ?????? ?????????? ??? ?????? ??? ??????, ?? ?????????? ??????????  
?????????, ?? ?????? ?????????? ?????????? ?????????? ?????????? ??? Aer Lingus. ??? ???  
???? ?????????? ?? Circuit Court (????????? ??????????) ?? ?????????? ??? ??? ???  
????? ????. ??? ?????????? ? ?????????? ??? ??' ?????????? ??????????, ?? ??????  
??? ? ?????????? ?????????? ?????? ??? ?????????????? ???, ?? ?? ??????, ? ?????????? ???  
????????? ??? Aer Lingus ?????? ??? ?????????? ??????, ??? ?????? ?? ??????????  
??? ?? ??? ?????? ?????????? ??? ?????????? ?????????? ??? ???.

3. ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ???  
????????? ??????????;

28. ???????, ? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ?????? ???  
????? ??? ?????? ?? ?????????? ??????????. ??? ?????? ?????? ??? ?? ?????????? ??????  
????????? ?????? ?????? ??????, ?????? ?? ?? ?????????? ??? ?????? ??? ??????????, ?? ???  
????? ?????????? ?? ?? ??? ?????? ?????????? ?????????? ?????? ?????? ?????? (19). ?? ?? ???  
????????? ?????? ?????? ?????????? ?????? ??????, ??? ?? ?????? ?????? ??????????????  
????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ???.

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

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

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

31. ??? ???????, ??? ??????? ?????? ??????? ??? ??????? ??????????? ??? ????? ??  
?????? ?? ??????? ?????? ??????????? ??? ??????? ?? ??????????? ??????????? ???  
??? ??????????? ?????? ???????????, ??? ??????? ??????????? ?? ??? ??? ???  
??? ??????????? ??? ??? (20). ??? ??????????? ??? ??????? ??? ??????? ??????? ???  
?? ???????, ??? ??? ??? ????? ??? ?????????? ?? ??????? ?????? ?????? ??? ??? ???  
??? ??????? ??????? ??? ?????????? ?? ??? ??????? ?????????? ?????? ??? ?? ???  
????????????? ??? ?? ??? ??? ????? ?????????? ??? ??????? ??? ?????? ??? ?????  
????????????? (21). ??? ?????? ?????? ??? ?????????? ?? ?????? ??? ?????? ?????  
??? ??????? ?????? ??? ?????? ?????? ??? ?? ??? ?????? ??? ?????? ?????? ?????  
????????? ??? ?? ??? ??????? ?????? ???????.

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

4. ??? ?????? ??????? ??? ?????? ?????? ?? ?? ??????????? ??????????? ???  
????????? ??? ??????

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

34. ???????????, ? ?????? ??????? ??? ?????????? ?????????? ?????? ???????  
??????????, ??? ?????? ? ?????? ?????????? ?????????? ?????????? ???????????, ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???????????????, ???  
????????? ?? ?????????? ??? ?????? ??? ?????? ??????. ??? ?????? ?????, ???  
?????????????, ? Ryanair ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ?????? ?????????? ??? ?????? ??????. ?? ?????? ?? ???????,  
????????? ?????? ?? ?????? ??? ?????????? ?? ?????????? ?????? ?????? ??????????  
????????? ?????? ??????.

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

36. ??? ?????????? ??? ??? ?????? ?????????? ?? ??? ?? ?????????? -???  
????????? ??? ? ?????? ??? ?????? ??? ??' ?????????? ?????????? - ?? ?????????? ?? ???  
???? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ???.. ?? ?????????? ??? ?? ??????????  
???? ?? ??? ??? ?????????? ?????????? ?????????? ??? ?????? ?????????????? ??????????????  
?? ?????? ??? (????? 19, ?????????? 1, ??? ?????? ???) ??? ??? ?? ??? ???  
????????? ??????. ?????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ?? ???  
????????? ?????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ?????????? ???  
????????????? ??? ?? ?????? ??? ??????. ? ?????????? ??? ?????? ?????????? ??? ?????? ???  
??? ??? ?????? ??? «?????» ?????????? ??? 100 % ?? ?????? ?????? ??? ??? ???

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

37. ?? ?? ??????, ??????? ?? ?? ?????????? ?? ???????????, ? ????? ??????? ??  
?????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ?? ????????  
????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??????????  
?????????????. ??????????, ?? ?????????? ?????? ?????? ?? ?????????? ??????????  
????????????? ?? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? (22)  
????????????? ??????. ??? ???????, ??? ???????, ??? ???????, ??? ??????? ??????  
????????????? ?????????????? ?????? ?? ? ?????? ?????? ? ?????? ?????? ?????? ??  
?????, ?????? ??? ?????? ?????? ?????? ??? ?????????? ?????????????? (23).

38. ? ?????????? ?????? ?????????? ?? ?? ?????? ? ?????????? ?????? ??????????  
?? ?????? ?? ??? ?????? ??? ?????????????? ??? ?????????????? ?????? ?? ???????  
?? ?????? ???, ?????? ??? ?????? ?????????? ?????????? ?????????????? ?????????? ???  
????? ??????, ??? ?? ?????? ??? ?????????? ??? ??? ?????? ?????????? ?????????? ???,  
????? ?????? ??? ?????????? ??? ?????????? (?????????) ?????????? ??????.

5. ? ?????? ?????? ?? ?????????? ?????????? ?????????? ??? ?? ?????? ?????? ??????  
?? ??? ?????????? ?????? ??????????

39. ???????, ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ??????? ??  
????????? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??????????  
????????? (24). ?? ??????????, ??? ?????? ?????????? ?????????? ??????????, ??????  
????? ?????????? ? ?????? ?????? ??? ?????????? ?????????? ?????????? ??? ???  
(?????????) ?????? ?????? ??? ?????????? ?????????????? ?????????????? ??? ?????? ???  
?????????????. ??? ?????? ?????? ??? ???????, ??? ?????????? ?????? ?????????????? ???  
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ??????????.

40. ?????? ?? ?? ?????????? ?? ???????????, ?????? ??? ?????? ?????? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ???  
????????? ??? ??? ??? (25). ?????? ??? ?????? ?? ?????? ? ?????? ??? ??? ??? ???  
????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??? ???  
????????? ??? (26).

41. ?? ?????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????????? ??  
????? ??? Aer Lingus ??????? ?????????????? ?????? ??? ?????????? ??? ??????????  
?? ??? ??? ??? (?????????) ?????? ?????? ??? ?????????????? ??? ?????? ???  
????????????? ??? ??? ?????? ??? Aer Lingus. ?? ?????? ??? ??? ?? ?????? ?????? ??  
????????????? ?? ?????? ??? -????? ? Ryanair ??? ?????? ?????????? ??????????????- ???  
????????????? ??????. ? ?????? ??? ?????? ??? Aer Lingus ?? ??? ? ??????????  
????????????? ?? ?????????? ? ?????????? ?????????? ??? ?????????? ???, ??? ??????????, ??  
????????????? ?? ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ??? ?? ??????????  
?????. H ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????  
????? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
?????.

42. ?????? ?? ?? ?????????? ?? ???????????, ??? ?????????? ??? ?????? (????? 26),  
?? ?????? ??? ?????? ?????????? ? ?????????? ?????? ??? ?????? ??? ??? ?  
????????? ??? Aer Lingus ??? ?????? ??? ??? ?????? ?????? ??? Ryanair ??????  
????????? ?? ?????????? ??? . ?????? ??? ?????? ?????????? ??? ? ???????, ? ??????  
????????????? ??? ?????????? ?????, ??? ?????? ?????? ?????????? ??? ??????????  
????????????? (27). ? ?????? ??? ??? ?????? ?? ?????????? ??? ??? ?????? ???

????????? ??? ??? ?????????????????? ? ??????? ??? Aer Lingus (28).

V. ???????

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

1) ? ?????????? ??? ???????? ??? ?????????? ?????????? ?????????? ?? ??? ???? ?? ??? ???? ?????  
??????, ?????? ??? ??????? ?????????? ??? ?????????? ?????????? ?????????????????? ??? ?????????? ?????  
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? (?.? ??? ?????? ???  
????????? ?????????? ?????????? ??????) ?????????? ?????????????? ??? ??? ??? ?????? ???  
?????? 4 ??? ??? ?????? ?????? ??? (?? ?????? 9, ?????????? 1, ??? ??????  
2006/112/??).

1      ??????? ??? ?????????????: ? ??????????.

2 ??????? 2006/112/?? ??? ????????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ??? ??????? ??????? ??? ?????????? (?? 2006, L 347, ?. 1).

3 ?????????? ??? 20?? ??????? 1991, Polysar Investments Netherlands (C-60/90, EU:C:1991:268, ????? 17), ??? 14?? ?????????? 2000, Floridienne ??? Berginvest (C-142/99, EU:C:2000:623, ????? 17), ??? ??? 16?? ??????? 2015, Larentia + Minerva ??? Marenave Schiffahrt (C-108/14 ??? C-109/14, EU:C:2015:496, ????? 20).

4 ?????????? ??? 27?? ??????????? 2001, Cibo Participations (C-16/00, EU:C:2001:495, ????? 21), ??? 29?? ?????????? 2009, AB SKF (C-29/08, EU:C:2009:665, ??????? 30 ??.), ??? 6?? ??????????? 2012, Portugal Telecom (C-496/11, EU:C:2007:557, ????? 34), ??? ??? 16?? ??????? 2015, Larentia + Minerva ??? Marenave Schiffahrt (C-108/14 ??? C-109/14, EU:C:2015:496, ????? 21).

5      ?? ???. ???. 09/001, ?. 49.

6      ?????????? ?????????????? ?????????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ???  
????????? ????.

7 ??????? C(2007) 3104, ??? 27?? ?????? 2007 (?????? COMP/M.4439). ? ???????  
??? ?? Ryanair ??????? ?????????? ??? ?????????? ????? ?????????? ?????? ?????????? ??? ?? ??????  
??????????, ???. ??????? ??? 6?? ?????? 2010, Ryanair ??? ??????? (T-342/07,  
EUT:2010:280).

8 ?????????? ??? 14?? ??????????? 1985, Rompelman (268/83, EU:C:1985:74, ????? 24),  
??? 29?? ??????????? 1996, INZO (C-110/94, EU:C:1996:67, ????? 17), ??? ??? 22??  
?????????? 2015, Sveda (C-126/14, EU:C:2015:712, ????? 20).

9 ??., ????????, ?????? ?? 21?? ?????????? 2017, SMS group (C-441/16,  
EU:C:2017:712, ??? 46).

10 ?????????? ?? 27?? ?????????? 2001, Cibo Participations (C-16/00, EU:C:2001:495,  
????? 21). ?? 6?? ?????????? 2012, Portugal Telecom (C-496/11, EU:C:2007:557, ???? 34).

??? ??? 16?? ??????? 2015, Larentia + Minerva ??? Marenave Schiffahrt (C?108/14 ??? C-109/14, EU:C:2015:496, ????? 21).

11 ??? ?????????? ??? 22?? ??????? 1993, Sofitam (C-333/91, EU:C:1993:261, ????? 13, ??? 27?? ??????????? 2001, Cibo Participations (C-16/00, EU:C:2001:495, ????? 19), ??? ??? 6?? ??????????? 2012, Portugal Telecom (C-496/11, EU:C:2012:557, ????? 32).

12 ??? ??????? ??? 20?? ??????? 1991, Polysar Investments Netherlands (C-60/90, EU:C:1991:268, ????? 17), ??? 14?? ??????? 2000, Floridienne ??? Berginvest (C-142/99, EU:C:2000:623, ????? 17), ??? ??? 16?? ??????? 2015, Larentia + Minerva ??? Marenave Schiffahrt (C-108/14 ??? C-109/14, EU:C:2015:496, ????? 20).

13 ??? ??????? ??? 20?? ??????? 1991, Polysar Investments Netherlands (C-60/90, EU:C:1991:268, ????? 14), ??? 14?? ??????? 2000, Floridienne ??? Berginvest (C-142/99, EU:C:2000:623, ????? 17), ??? 27?? ??????????? 2001, Cibo Participations (C-16/00, EU:C:2001:495, ????? 19), ??? ??? 16?? ??????? 2015, Larentia + Minerva ??? Marenave Schiffahrt (C-108/14 ??? C-109/14, EU:C:2015:496, ????? 20).

14 ??? ??????? ??? 27?? ??????????? 2001, Cibo Participations (C-16/00, EU:C:2001:495, ????? 21), ??? 6?? ??????????? 2012, Portugal Telecom (C-496/11, EU:C:2012:557, ????? 34), ??? ??? 16?? ??????? 2015, Larentia + Minerva ??? Marenave Schiffahrt (C?108/14 ??? C-109/14, EU:C:2015:496, ????? 21).

15 ??? ??? ?????????? («????») ??????? ??? ??? ????? ??????? ?? ??? ??????????? ??????? ?????????? ?????????? ??????? ???????, ?. ?????????? ??? 12?? ??????? 2001, Welthgrove (C-102/00, EU:C:2001:416, ?????? 16 ??.), ??? ??? 12?? ?????????? 2017, MVM (C-28/16, EU:C:2017:7, ????? 34).

16 ??? 14?? ?????????? 1985, Rompelman, (268/83, EU:C:1985:74, ????? 23), ??? 8?? ??????? 2000, Schloßstrasse (C-396/98, EU:C:2000:303, ????? 39), ??? ??? 22?? ??????? 2015, Sveda (C-126/14, EU:C:2015:712, ????? 20).

17 ??? 14?? ?????????? 1985, Rompelman (268/83, EU:C:1985:74, ????? 24), ??? 8?? ??????? 2000, Schloßstrasse (C-396/98, EU:C:2000:303, ????? 40), ??? ??? 21?? ??????????? 2017, SMS group (C-441/16, EU:C:2017:712, ????? 46).

18 ??? 8?? ??????? 2000, Breitsohl (C-400/98, EU:C:2000:304, ??????? 34 ??.).

19 ??., ???????, ??????? ??? 16?? ??????? 2015, Larentia + Minerva ??? Marenave Schiffahrt (C-108/14 ??? C-109/14, EU:C:2015:496, ????? 25), ??? ?????????? ??? ??????? ?????????? J. Mazák ??? ?????? Securenta (C-437/06, EU:C:2007:777, ?????? 30 ??.).

20 ?? ??? ??? ??? ???, ?? ?????????? ??? 22?? ??????? 1993, Sofitam (C-333/91, EU:C:1993:261, ????? 10), ??? 26?? ????? 2005, Kretztechnik (C-465/03, EU:C:2005:320, ????? 33), ??? ??? 29?? ?????????? 2009, AB SKF (C-29/08, EU:C:2009:665, ????? 55). ??????????, ??? ?????? MVM, ?? ?????????? ?? ??? ??? ????? ???????, ? ?????? ??? ?????? ?????? ?? ??? ?????????? ?????????? ?????? (?. ??????? ?? 12?? ?????????? 2017, MVM, C-28/16, EU:C:2017:7, ????? 39).

21 ??? ?????? MVM, ?? ?????????? ?????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????), ?????? ??

22     ???? ???? ?????????????? ?????????????? ??? ?????????????? ?????????????????? ??? ?????? ??? ??????  
???? ??????? 9, ?????????????? 1, ??? ?????????? ????, ???., ???. ?????????????? ??? ?????? ??????  
Posnania Investment (C-36/16, EU:C:2017:134, ?????? 25).

23 ?????????? ??? 20?? ??????? 1996, Wellcome Trust (C-155/94, EU:C:1996:243, ?????  
35), ??? 6?? ??????????? 1997, Harnas & Helm (C-80/95, EU:C:1997:56, ????? 16), ??? 14??  
?????????? 2000, Floridienne ??? Berginvest (C-142/99, EU:C:2000:623, ????? 29), ??? 8??  
?????????? 2007, Investrand (C-435/05, EU:C:2007:87, ??????? 32/36), ??? 29?? ??????????  
2009, AB SKF (C-29/08, EU:C:2009:665, ????? 31), ??? ??? 30?? ????? 2013, X (C-651/11,  
EU:C:2013:346, ????? 52).

24      ?? ??????????? ???. ?????? ??????? ?????? ?????? ?????? ?????? ???. ?????? ?????  
?????? ???. ???. ???????, ???. ??????? ???. 27?? ??????????? 2001, Cibo Participations (C-  
16/00, EU:C:2001:495, ???. 32). ???????, ??????????? ??. ??????????? ???. ??????? ???. 29??  
?????????? 2009, AB SKF (C-29/08, EU:C:2009:665, ???. 64). ?????? ??????? ??. ??????????? ???.  
???. ??????? ???. ???. ??????? ???. 6?? ??????????? 2012, Portugal Telecom (C-496/11,  
EU:C:2012:557, ???. 37), ??? ???. 16?? ??????? 2015, Larentia + Minerva ??? Marenave  
Schiffahrt (C-108/14 ??? C-109/14, EU:C:2015:496, ???. 25).

25 ?????????? ??? 27?? ??????????? 2001, Cibo Participations (C-16/00, EU:C:2001:495,  
????? 31), ??? 26?? ????? 2005, Kretztechnik (C-465/03, EU:C:2005:320, ????? 35), ??? 29??  
?????????? 2009, AB SKF (C-29/08, EU:C:2009:665, ????? 57), ??? ??? 17?? ??????????? 2013,  
Iberdrola ??. (C-566/11, C-567/11, C-580/11, C-591/11, C-620/11 ??? C-640/11,  
EU:C:2013:660, ????? 28).

26 ?????????? ??? 27?? ??????????? 2001, Cibo Participations (C-16/00, EU:C:2001:495, ????? 33), ??? 26?? ????? 2005, Kretztechnik (C-465/03, EU:C:2005:320, ????? 37), ??? 6?? ??????????? 2012, Portugal Telecom (C-496/11, EU:C:2012:557, ????? 37), ??? ??? 17?? ?????????? 2013, Iberdrola ?.?. (C-566/11, C-567/11, C-580/11, C-591/11, C-620/11 ??? C?640/11, EU:C:2013:660, ????? 29).

27 ??., ???????, ???????? ??? 14?? ?????????? 1985, Rompelman (268/83, EU:C:1985:74, ???? 24), ??? 29?? ?????????? 1996, INZO (C-110/94, EU:C:1996:67, ???? 17), ??? 22?? ?????????? 2015, Sveda (C-126/14, EU:C:2015:712, ???? 20), ??? ??? 21?? ?????????? 2017, SMS group (C-441/16, EU:C:2017:712, ???? 46).

28 ???????, ?? ?????? ??????????? ?????????????? ?????? ?????? ??? ?? ?????? ??? ?  
?????? ?????? ??? Ryanair ??? ?????????? ?????? ?????????????? ?????????? ? ?,  
?????????, ?? ?????????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???, ???  
????????? ?????? ??? ?????? ????. ?????? ?????????? ??? ?????? ???' ??????????  
????????? ??? ?????? ??? ?????????? ??? ??????????.