

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

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

JULIANE KOKOTT

??? 6?? ????????????? 2018 (1)

???????? C?502/17

C&D Foods Acquisition ApS

????

Skatteministeriet

[?????? ??? Vestre Landsret

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

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

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

I. ?????????

1. ?? ?????????? ??? ?????????? ??????????????? ?? ??????? ??????? ?????? ??????? ??
????? ?? ??? ?????????? ?????????? ?????????? ??? ??????????????? ??? ?? ?????????????? ??
????????? ?????????? (2). ? ??????????? ??????? ?????? ??? ???????????, ????? ??? ?????
????????????????? ?????????? ??? ??????????????? ?????????? ?????????? ????? ??????????
????????????????? (3).

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

II. ?? ?????? ???????

3. ?? ?????? ?????????? ??? ?????????? ??? ??????? ?????????? ?????????? ??????????????? ???
??? ??????????? ??? ?????????? 2006/112/E? (??? ????: ?????? ???) (4).

4. ?? ????? 9, ??????????? 1, ?? ??????? ?? ?????????? ?? ?????:

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

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

5. ?? ????? 135 ?? ??????? ?? ?????????? ?????? ?????? ?? ?????????:

«1. ?? ?????? ?? ?????????????? ?? ?????????? ??????: [...]

??) ?? ??????, ?????????????????? ?? ?????????????????, ?? ??????? ?? ?????? ??
?? ?????????, ?? ?????? ??????? ??????? ?? ?????? ?????????? ? ??????, ?????????
?? ??????? ???????, ?? ??????? ?? ?? ?????? ?? ?????????????????? ??????????? ?? ??
?????????? ? ?? ?? ?????? ?? ?????? 15, ?????????? 2, [...].»

6. ??? ?? ????? 167 ?? ?????? ??, ?? ??????? ?????????? ?????????? ??? ?? ?????
??? ?? ?????? ? ??? ??????? ?????? ?????????? ??????????. ??? ?? ????? 168 ?? ??
??? ??????? ?????? ?? ???:

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

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

7. ??? ?? ?????? ??????, ?????????? ?????????? ?? ?????????? ? Lovbekendtgørelse
???? 966 (????? ????) ?? 14?? ?????????? 2005.

III. ?? ?????????????? ?????????????? ?? ? ?????????? ?? ?????? ??????

8. ? ?????? ??????? C&D Foods ?????? ??? ?????? ?????? ?????????????? Arovit. ??? ??
????????? ?? ?? ?????? ??? ?????? ?????????? ? C&D Foods ??????? ?? 100 % ??
????????? ?? Arovit Holding, ? ?????? ?? ?? ?????? ?? ??????? ?? ?????? ?? ?????????? ??
Arovit Petfood. ??? ?????? ??????? 13 ?????? ?????????? ?? ??????? ?????????? ?????, ??
????????? ?? ??????? ?????????? ? Arovit Petfood.

9. ?? ?? ????? 2007 ? C&D Foods ??????? ?? ?????????? ?? ??????? ??????????????
????????? Arovit Petfood ?????? ??? ?????????? ?????????????? ?????????? ??????????
????????????? ?? ?????????????? ?????????????? ?? ??, ???, ?????? ?????, ?????????, ??????
?? ?????????? ?????????????????. ?? ?????? ?????????? ?? ?? Arovit Petfood ?? ????? ??
????????????????? ?? ?? ?????????????????? ??????? ?????????????? ?????? ??? «mark up» ????? 10 %
?? ?? ?????????? ?? ?????? 25 %. ?? ??? ?? ?????? ?????????? ?? ?????? ? ?????? ?? C&D
Foods ?????????????? ?????? ?????? ?? ?????????? ?? ?????????? ?????.

10. ???? ?? ???? 2009 ?? ?????????? ?????????????????? ?????? Kaupthing Bank
 ?????????? ??? ????? Arovit ??? ???? ?????????? ?? ?????????????? ????????????. H Kaupthing
 Bank ??????? ?? ?????????? ?????????????? ?????????? ?? ?? ?????????????? ????????? Holst
 Advokater ?? ?????????????? ?? ?????????????? ?????????????????? ?? ?????? Arovit. ??? ???
 ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
 ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? C&D Foods.

11. ??? ?????? ????? ??? ?????????????? ?????????? ??? ??? Holst Advokater ??? ???
 ?????????????? ????????? ??? ?? C&D Foods, ?? ?????????????? ??? ??????, ?? ??? ?
 ?????????????????? ?????? ??????????, ??? ?????????? ??? ? C&D Foods ?????????? ??? Arovit
 Holding ??? ??? Arovit Petfood. ??? ?????? ??? ?????????????????? ?????????? ? Holst Advokater
 ?????????????? ??? ?? C&D Foods ??? ?????????????? ?????? ?????? ??, ?? ??????????????
 ?????????? ??? ? ?????????????????????? ?? ?????????? ??? 2009, ?????? ??? ?????????? ?????? ?
 ?????? ???????????.

12. ? C&D Foods ?????? ??? ???????? ??? ?????? ?????????? ??? ?????????? ????? ???
 ?????????? ??? ?????????? ?????? Holst Advokater ??? ??? ?????????????? ??????????. ??????????,
 ????? ? SKAT (?????? ? ?????????????? ??? ?????????????? ??????????) ??? ??, ????????? ??????????
 ???????????, ? Landsskatteret (????????? ??????? ?????????????? ?????) ??????????? ??? C&D Foods
 ??? ?????????? ??? ?????? ??????????. ?? ?????????????? ?????????? ??? ?? ?????????????????????
 ?????????????? ??? ?????? ?????????????? ????? ??? C&D Foods ?, ????? ?????????????, ??? ???
 ????????????????????? ? ?????????? ?????? ??????? ??? ?????????? ??? ??? ????????????????? ?? ???
 ?????????? ??????? ??? C&D Foods.

13. ???? ??? ?????????? ????? ? C&D Foods ?????? ?????????, ? ?????? ???? ???
 ?????????? ?????????? ??? ?????????? ?????????? ??? Vestre Landsret (??????????????
 ?????????? ??????????????, ?????). ?? ?????????? ??? 15?? ??????????? 2017, ??? ?????????? ???
 ?????????????? ??? ?????????????? ????? 18 ??????????? 2017, ?? Vestre Landsret (??????????????
 ?????????????? ?????????? ??????????????) ?????????? ??? ??????? ??? ?????????? ??? ???????
 ?????????? ??? ??????????????, ?????????? ??? ??????? 267 ????, ?? ?????????? ??????????????
 ?????????????;

1. ?????? ?? ?????????? ?? ????? 168 ??? ??????? 2006/112 ??? ??? ?????? ??? ???
 ??????? ?????????????? ??? ?????????, ??? ????????? ??? ??????? ??? ?????? ????, ??
 ????? ????????? ??? ??? ??? ????????? ????????? ?? ????? ?? ??????? «due diligence» ??? ???
 ??? ??????????????, ??? ?? ????????????????????? ??????? ????????????? ????????? ?? ???
 ?????????? ?????????, ??? ?????? ????????? ?????????? ?????????? ??? ?????????????? ???
 ?????????????? ?? ???;

2. ???? ?????? ??? ??? ????????? ???? ?????????????? ??????????? ?? ??????? ??? ? ????
 ??? ?????????????? ?? ??? ?????????? ??????????? ??? ??????????????, ??? ?????? ??????? ?
 ??????? ?????????????????? ??? ????????? ???? ?????????????? ??? ??????????????????, ??????
 ??????????????? ?? ?????? ????? ?? ?????????????? ????? ????????? ?????????????? ?????? ???? «mark up»
 ?????? 10 %;

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

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

IV. ?????? ????????

15. ?? ?? ????? ?????????? ??? ?? ?????? ??????????? ?????? ???' ?????? ?? ??? ??????? ?????????????? ?? ?????? ?????????????? ?????????????????? ?????? ?????????? ?????????? ?????? ?????????? ?? ?????????? ?? ?????? ?? ?? ?????????????? ?????????????? ??????????. ??? ?????? ?????? ? ?????????????? ?????????????????? ??? ?????????? ?????????????????? ?????????????? ?????????? ?????? ?????? ?????????????? ?????? ?? ?????????????? ?????????? ?????????????? ?????????? (5), ?? ?????????? ?? ?????????? ?????????????? ?? ?????????? ?????? ?? ?? ?????????? ?? ?????????????? ??????????.

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

16. ?? ?????????? ?????????????? ?????? ??? ?????? 168 ??? ?????????? ??? ?????????? ?????? ?????? ??? ? ?????????????? ?????? ?????? ?????????????????? ?????? ??? ?????????????? ??? ??? ?????????? ??? ?????????????????? ?????????? ????. ???? ?????????????????? ??? ? ?????????????????? ?????? ?????? ?????? ? ?????????? ??? ?????????????????? ?????????? ??? ?????????????? (6). ??????????, ?? ?????????? ?????????????? ?????? ?????????? ??? ??? C&D Foods ?????????? ?? ?????????????? ?????? ??? ??? ??? ?????????????? ?? ?????? ?? ?????????????????????? ?????????????? ??? ?????????? ?????????? ?????? ? ????. ?????????????? ?????????????????? ?? ?????? ??? ?????????? ?????? ?????????? ?????? ??? C&D Foods ??? ??? ?????????????????? ?? ??? ?????????????? ??? ?????????? ?????????? ?????? ? Kaupthing Bank.

17. ?? ?????????? ?????????????????? ?????????????????? ??? ??? ? ?????????? ??? ?????????????????????? ?????????????? ??? ?????? ?? ?????????? ?????? ?????? ? ?????????? ?????????????? ?????? ??? ?????????????????????? ?????????? ??? ?????????????????? ?? ????. ?? ?????? ?????? ?????????? ?? ?????????????????? ??? ?? ?????????????????? ??? ?????? ?????????? ??? ??? ?????????????? ?????????????????? ?????????????????????? ?????????????????? (7), ?? ?? ?????????, ?? ?????????????? ?????????? ?????????????????? ?????? ?????? ?????????? ?????? ?????????? ??? ??? ??? ??? ?????????????????? ?????? Holst Advokater, ?????? ?????? ?? ?????? ??? ?????????????? ?????????????? ?????? ??? ??? ?????????? ?????????????????????? ?????????????? ??? ? C&D Foods ?????? ? ?????????? ??? ?????????????????????? ??????????????.

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

18. ?? ?????? ?????????????????? ?????????? ?????????????????? ?????????? ??? ?????????? ??? C&D Foods ?? ?????????? ?????????? ?????? ?????????? ??? ?????????????????? ?? ??? ?????????????????????? ?????????????? ??? Holst Advokater ??? ??? ?????????????????? ?? ?????? ?? ?? ?????????????????? ?????????? ??? ?????????? ??? ??? ??? Arovit Petfood.

19. ?? ?????????? ??? ?? ?????? ?????????? ?????????????????? ?????? ?????? «????????? ??? ??????» ?????? ??? ?????????? ?????????? ?? ??? ?????????????????? ? ?????? ?????????????? ?????????????????? ??????, ???? ?? ??? ?????????? ??? ??? ?????????? ?????????????????? ?? ??? Arovit Petfood ? ?????? ?????????????? ??? ?????? ?????????????????? ?????????? ??????????.

20. ?????????????? ??? ? ?????? ?? ??? ?????????????? ?????????????????? ?????? ?????????????? ??? ?????????????????? ?????????????? ?????? ?????????? ?????? ??? ?????? ?????????? ?????????? ?????????? ?? ???? ?????????????????? ?????????????? ?? ?????????????? ??? ???????.

21. ?? ?????????????? ??? ?????????????? ?????????????????? ?? ?????? ?? ?????????? ??? C&D Foods ?? ?????????? ?????? ?????????? ?????????????????? ?????????? ?? ??? ???????.

22. ?????????????, ???????, ?? ?????????? ?? ? ?????????????? ?????????? ??? ?????????? ?????????? ?? ?????????? ?????????????? ?????????????????? ?????? ?? ?? ?????????? ?? ?????????? ??? ?????? ?????????????? ??? ??? (??' ?????? ?????????? ??? 1). ?? ?????????? ?????????? ??, ??? ???? ?????????????? ???

????? ?????????????, ?????? ?? ?????? ?????? ? ?????? ??? ?????? ?????? ??? ????????
????????? ?? ??? ?????????????????? ?????????????? ?? ?????. ??? ?????? ?????? ?????? ??????????? ???
?? ?????????? ?????????? ?????????????????? ?????????? ??? ?????????? ?? ?????????? ??? ??? ?????????????? ??
????, ??? ??????????? ??? ?????????? ??????????? ?????? ?????????? (??' ?????? ?????????? ??? 2).

23. ?????????????? ?? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????? ?????????????????? ??
?????????? ?? ?????? ?????? ? ?????????? ?????????? ?? ?? ?????????? ?????????????? ?????????????????? ???
C&D Foods (??' ?????? ?????????? ??? 3).

1. ? ??????? ??? ?????????? ??? ??? ArovitPetfood ?? ?????????????? ??????????????????

24. ? ?????? ?????????? ??? ? ?????????????? ?????? ?????????????? ?? ??? ?????????? ??? ???????????
???, ??? ???? ?????? ?????????????? ??? ?????????????????, ?????????????? ?????????????????? ??? ??? ??????
??? ??????? 9, ?????????????? 1, ??? ?????????? ??? (8). ??????????, ?????? ?????? ?? ?????????? ????
? ?????????? ?, ?????? ?????????????, ? ?????????????? ??? ?????????????? ?????????? ?????????? ??? ??? ??????
??? ??????? ? ?????????? ?????????????? ??? ?????????? ??? ?????????? (9). ?? ?????????? ??????????????
????????????? ?????? ?????????? ?????? ?????????? ?????????????? ?????? ?? ??????????? ?? ??????????
????????????????, ?????????????????????????? ? ?????????????? ?????????????? (????????????????????? ?????????????
?????????????????) (10).

25. ? ??????? ?????????????? ?????????????????? ?????????? ?? ?????????????? ?????????????????? ??????????????????
??? ??? ??????? ??? ?????????? ??? ?????? ??? ?? ??? ?????????????? ?????? ?????? ??? ?????? ??????,
????? ?????? ?????????????????????? ??? ??? ?????????????? ?????????????? ?????????? ??????????????????. ??? ??????
?????? ?????????????????????? ?????????? ??? ??? ?????????????????? ?? ?????????????????? ??????????????????????
?????? ? ?????????? ?????????? ?????????????????? ?? ?????? ??? ??? C&D Foods. ?????? ??????????????????????
?? ??????????? ??? ??? ??? ??????????? ?????????? ??? ?????????????????? ?????? ?????????? Marle
Participations (11).

26. ????? ?? ?????????????? ??? ?????????????????, ?? ?????? ??? ?????????????????? ?????????? ??
????????????????? ??? ?? ?????????????????? ?????????????????? ??????????????, ?????? ??? ???????
????????????????????? ?????? ?? ?????????????????? ?? ?????? ?????????? ?????????????????? ??? ?????????????????? ???
????????????????? ??????????? (12).

27. ? ??????? ?????????????? ?????????????? ??? ?????????? ??? ??' ??????? ??????????????
?????????????????????. ?????????????, ? ?????? ??? ? ?????????? ?????? ?????????????????? ?????????????????????? ?????????,
????? ?? ??????????????, ?? ?????????????????????????? ?? ?????? ?????? ??? ?????????? ??????????????????
????????????????????? (13). ?????? ? ?????????? ?????????? ?????????? ??? ?????????????? ?????????????????? ??
?????????? ?????????????????????????? ?????????? ??? ??? ?????????????? ?????????????????????? ??? ??????????
??? ?????? ?????????????? ??? ???, ?? ?????? ?????????? ?? ?????????? ??? ??? ?? ?????????????????? ??????????
?? ??? ?????? ?????????????????? ??? ?????????????? ??????????????????????. ?? ?????????? ?????????????? ??
????????? ?????????????? ?????????? ?????????? ??? ??? ?????????? (14).??? ?????? ?????? ?????????? ??? ?
?????????? ?????? ?????????? ?????????????????? ???.

28. ?????????? ?? ?????? ?? ?? ?????????????? ?????????????? ?????????? ?? ?????????????? ?????????, ?????
????????? SKF, ??? ?????????????? ?????????????? ?????????????????? ?????? ?????????????? ??????????
????????????????????? ??? ?????? ?????????????? ?? ?????????????? ??? ?? ?????????????? ?????????? ?????? ???
????????????????????? ??? ?????????? ??? ?????????? ??? ??? ?????????? (15). ?? ??? ?????? ?????? ??????
??? ? ?????????????? ?????????????????? ??? ?????????????????? ?????????????? ?????? ??????? ???????????
????????????????????? ?????? ?????? ?? ?????????????? ?????????? (16).

29. ??? ?????????? ?????????????? ?????????? ??? ?? ?????? ??? ?????????? ??????: ??????????????????, ?????
??? ?????????? ??? ?????????? ??? ??? Arovit Holding ??? ??? ?????????? ??? ??? Arovit Petfood, ?
C&D Foods ?????????????????? ?????? ?????????????? ??? ?????????????????? ??? ?????????????????????? ???

????????? ???? ?????? ?????????????? ?? ???? ?????????? ?????????????? ???? ??? Arovit
Petfood.

30. ?? ?????????? ???? ?? ???? ???? ?????????????? ???? ?? ???? ???? ???? ????
?????? ???? ?????????? ???? ?????????? ?????????? ?? ?????????????????? ???? ???? ?????????? ?????
?????? ???? ???? ?????????????????? ???? ?????? Kaupthing Bank, ??? ???? ????????? SKF
????????????? ?? ?????? ?????????????????? ???? ??????. ?? ?? ??????? ???? ?????? ???? , ?? ??????????
?? ??? ????????? SKF, ??? ?????????????????? ???? ?????????????? ?????????????? ??????. ?????? ??
????????? ???? ???? ?????? ?????????? ???? ???? ?????????????? ?????? ??????.

31. ??????, ?? ?????????????? ???? ?????????????????? ???? ?? ?????????? ?? ????????? ??????
????????? ?????????????? ?????? ???? ???? ? ?????????????????? ?? ????? ???? ???? ?????? ?????? ??????
????? ?? ?????? ???? ?????????? ??????????, ?????? ?????????????? ?????????? ???? ?????????????? ???
???????????????????? (17). ?? ?? ??????, ??? ?????????? ?? ??????? ???? ?????????????????? ????? ?
????????????????? ?? ?????? ?????????????????? ???? ?????????????? ???? ???? ?????????? ???? ???? ?????????? ?????
????????????????? ???? ?????????????????? ???? ?????????????????????? ?????????????? ?? ??????? ?? ??????????
??????.

32. ?????????, ? ?????? ???? ?????????????????? ?????????????????? –????? ???? ?????? ?????????? ???
????????? ?????? ???? ?????????????????? ???? ???? ??????? ???– ??????? ?? ?????????????????????? ?????
?????? ?????????????????? (18) ??? ?????????? ?????????? ?????????? ? ?????????? ??????? ???
????????????????? ?? ??? ??????? ???? ???? ?????????? ?? ????? (19). ?? ?? ??????, ?? ??????????????
????????? ???? ?????????? ?? ?????? ???? ?????????? ???? ?????????? ???? ??????? ?? ??????
?????????????????.

33. ??????, ???? ??? ???? ?????????? ???? ??? ?????????????? BLP Group ?????????? ??
????????????????? ???? ?? ?????????? ?????????????? ?????? ?????????? ?????????????????? ?????????? ??
????????????????? ??????? ???? ?????????????????????????? ???? ???? ?????????? ??????.

34. ???? ?????????????? ???? ?????????????, ??? ?????????? ?????????????????? ???? ?????????????????
????????? ???? ???? ???? ?????????????????? ??????????, ??????? ???? ?????????? ???? ?????????? ?????????????????
??????. ? BLP Group ?????????????????? ???? ? ?????? ?? ???? ?????????????? ??????????????????
????????????????????????? ???? ?????????????? ???? ?????????? ???? ?? ?????????????????????? ?? ?????????????? ???
??? ??????? ???? ?????????? ???? ???? ?????????? ?????? ???? ???? ???? ???? ???? ???? ???? ????
????????????????? ???? ??????? ?????????????????? ???? ??????????????????????. ?? ?????????????? ??????? ???
????????? ?? ?????????????????? ?????. ?? ?? ??????, ???' ??????? ???? ?????????? ???? ?????????? ??????
????????? ??????? ?? ?????????????????? ?????????????????????????? ???? ???? ?????????? ??????, ???? ?????? ???
????????????????? ??????? ???? ?????? ?????? ???? ?????????? ?????????? ?? ???? ?????????????????????? ??????????????
?? ????? (20).

35. ??? ?? ??????? ???? ?????????? ?????????????? ???? ? ?????????????????? ??????? ?????????? ???
????????????? ???? ?????????? ???? ??????? ?????? –????? ???? ???? ?????? ???? ?????????????????? ?????
????????????????????????? ?????????????????? ?? ?????– ??????? ?? ?????????????? ?????????????? ??????????????????
???, ?? ?? ???????, ?????????? ???? ?????? ?????????????? ???? ???.

2. ?????? ??? ?????? ?????? ?? ??? ?????????????????????? ?????????????? ?? ?????;

36. ?????????, ? ?????? ?????????? ?????? ?????? ?????? ?? ?????????? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?????? (21) ?? ?????????????? ?????? ??????
????????? ?? ?? ?????????? ?? ??????????????, ?????? ?? ?????? ?????? ?? ??????????????
????????? ?????? ?????? ?? ?????? ?? ?????????? ?????? ?? ?????????? ?? ?????????? ??
????? ??? (22). ?????????? ?????? ?? ?????? ? ?????? ?? ?? ?? ?? ?????? ??????
?? ?????????????? ?? ?????????? ?????????? ?????????? ?? ?????? ?? ?????????? ?? (23).
37. ?????????, ?????????? ?????????? ?????? ?????? ?????? (24) ?? ??????????,
????? ?????? ?????? ?? ?????? ?????? ?? ?????????????? ?????????????? ?? ?? ??????????
(25).
38. ??????? ?????? ?? ?? ?????? 135, ?????????? 1, ?????????? ??, ?? ?????????? ??, ??
????? ?????? ?????????????? ?? ?????????????? ?? ?? ?? «??? ?????? [...], ?? ?????? ??????
????????? ?? ?????????? ?????????? ? ??????, ?????????? ?? ?????? ??????» . ? ??????
????? ?????????????? ?????? ?????? ?????? ?????? ?? ?? ?????? 13, ?????????? 1, ?????? 11, ??
????????? ?????? ?????? ??
39. ??? ?????????????????? ?????? ?? ?????? ?? ?????? ?????????? ?????? ?? ??????????
?? ?????????????? ?????? ?????????? ?? ??????????????, ?? ?????????????? ? ?? ??????????
?? ?????????? ?? ?? ?????????????? ?? ?????????????? ?????? ?? ??????, ???
????????????? ?????? ?? ?????? (?????????????) ?????????????? ?? ?? ?????? ??????????
????????????????? (26). ??? ?????????? ??????, ??? ?? ?????????? ?????????? ?????? ??????????
?? ?????????????????? ?????? ?????? ?? ?????? ?????? ?????????? ?????????? ?? ?? Arovit
Petfood (27).
40. ??? ?????????? ?? ?? ??????, ? ?????????? ?????? ?? ?????? ?? ?????????? ?? ??
?? ?????? ?? ?? ?????? 135, ?????????? 1, ?????????? ??, ?? ?????????? ??
41. ?? ?? ?? ?? ?? ?????? ?? ?????????? ?? ?? ?????????? ?????????????????? ??????????
?????? ?? ?????? ?? ?????? ?????? ?? ?? ?????????? ?????? ?? ?????????????? ?? ?? ??.
42. ?? ?????? ?????????? ?????? ? ?????????????? ?????? ?????????????????? ?????????????
?? ?? ?????????? ?????? ?? ?????????? ?? ?????????? ?????????????? ?????????????? ??
????????????? ?? ??? . ?????? ?? ?? ?????????? ?????? ? ?????????, ?????? ?? ??????????
????? ? ?????? ?? ?????? ?????? ?? ?????? ?? ?????????????? ?????? (28). ?????????? ??
????? ?? ?????????? ?? ?? ?? ?? ?????? ??????, ?? ?????????? ?????? ?? ?? ?????????,
????? ?????? ?? ?????? ?????? ?? ?? ?????????? ?????????????? ?????????????? (??
????????????????? ?????? ??????).
43. ??? ?? ?????????????? ?????????, ?? ??????????, ?????????????? ?? ?????????????? ??
????????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?? ?? ?????????? ?????,
????????? ?? ?? ?????????????????????? ?????????? ?????????????????? ?????? ?? ?????? ? ??
????????? (29).
44. ?? ??? ?? ?????? ?? ?????? ?????????????? ?????????? ?? ?????? ?? ?????? ?? ??
????????? ?? ?????????????? ?????? ?? ?????? ?????? ?? ?? ?????????? ?????? ?? ?????????,
????? ?? ?????? ?????????????????? ?????????? ?? ?????????? ?? ?????? ?????????? ?? ??
????? ?? ?????????? . ?? ?? ?? ?? ?????? ?? ?? ?????? ?? ?? ?????? ??????????????
????????? ?????????? ?? ?? ?????????????? ?? ?? ?????? ?? ?????????? ??????????????????
????????????? ?????????? ?? ?????????????? ?? ?????? ?????.
45. ?????? ?????? ?? ?????????????? ?? ? ?????????? ?? ??????????????, ??? ?? ??????

52. ??? ?? ?????? ??? ?????????? ?????????? ???' ??????? ?? ?????? ??????. ??? ???? ???? ???? ?????????? ?????????, ??? ?? ???? ?? ????????????? ?????????? ????????? ??????, ?? ????????????????? ?? ????? ???? ????????? ????????? ????? ?????? ? ?????????? ? ?????????? ? ??????????, ??? ??????????, ? ?????????????, ? ????????????????? ?? ????? (34), ??? ???? ?????????? ??? ????????? ?????????? ?????????????? ????????????????? ???? ??????. ?? ??? ?????? ?????? ?????????????????

????????? ? ????????? ??????????? ?????????? ?????? ????????? ????????? ??? ????????? ???????
(35).

53. ??? ??????????? ????????? ??????? ??? ????????? ??????? ?????? ?????????????? ?????? ???
?????, ??? ????? ?? ????????? ??????????? ????????? ??? ?????????? ????????? ??? ?? ??????? ???
??????? ? ??????????? ??? ??????????????? ?? ?????. ??? ?? ??????? ?????????????? ??? ??? ???
?????????? ??? ????????? ?????????????????? ????. ??????????, ?? ??????? ?????? ?????? ?? ?? ?????????
????????? ??????, ??? ??????????????? ??? ?????????????????? ??????, ?? ?????? ?? ??? ?????????????
?? ??? ?????????????????? (36), ??? ??????????????? ?? ??????? ?????? ?????? ?? ????????????? ???
????? ? ??????? ??? ?????????.

54. ?????? ??????????????? ????? ?? ?????????? ????? ?????????? ??? ?????????? ?????? ?????????? ??
????? ?????????????? ?? ????? ??? ??? ?????????? ? ??? ?????????? ?? ?????????? ??? ?????? ??? ??
????????????? ?????????? ??? ??????????. ??? ?????????? ?? ?????????????? ?????????? ?????? ?????? ???
????????????????????? ??? ?????.

55. ??????????, ??? ??????????? ?????? ??????????????? ????? ??? ??? ?????????????? ?????????????? ?????
?????????? ?????????????????? ???????, ??? ?????? ?????????????? ?? ?????????? ?????????????????? ?????????.
?? ??? ??????? ?????????????? –??? ?????? ?????????? ?? ?????????? ?? ??????? ?????????????? ?? ??
????????????????? ??? ??????????– ??????????????? ??? ? ?????????????? ??? ?????? ??? ?????????????? ?
C&D Foods ??? ??? ??????????? ?????????????????? ?? ??? ?????????? ??? ??? ?????????????????????
?????????????. ??? ?????? ?????? ? ?????????????????? ?????????? ?? ??? ?????? ??? ?????????????????? ??? ???
????????? ??????????????? ?????? 10 % «mark up». ??? ?????? ??? ?????????????????? ??? ?????????????????? ??
????? ?????????????? ??? ?????? ?? ?????????? ??????? ??????????. ??? ?????? ??????, ?????????????????? ?????
????????????????? ?????????? ??????, ?????????? ?????? ?????????? ??? ?????????? ?????????? ??? ??????
??? ?????????????? ? ??? ?????????????? ??? ?????????? ? ?????????????????? ?? ?????.

56. ???????????, ??? ??? ?????????? ?????????????? ??? ?????? ?????????? ?? ?????????? ??????? ??
?????????? ?? ?????????????????? ?? ?????????? ??? ? ??????? ?????????????? ?????????????????? ?????????????? ??
?? ??????????????? ??? ??????????? ??? ??? ?????????? ??????????????? ?????????? (Arovit Holding), ?? ?????
??? ?????? ? C&D Foods ?????????????? ?? ??????? ?????????? ?????????????????? (37). ??? ??? ?????
????? ?? ??????????? ?? ?????? ?????????????? ?????? ?????????????????? ??? ??????????? ?????? ?????????
????????? ??? ?????????????????? ??? ??? ?? ?????????????????? ?????????????????????? ??? ???????????.
?????????????, ??? ?? ?????????????????? ?????????????? ?????????????? ?? ?????? ??? ??????????????? ?????? ?
????????? ?????????????????????? ?????????????? ?????????? ?????????? ?????????? ??? ?? ?????????????? ?? ??????
????????? ???????????.

57. ??????? ??????? ?? ?????????????????? ?? ?????? ??? ?????? ? ?????? ??? ?????????? ???????
????????? ?? ?? ??????????? ??????????????? ??????????????????? ?????? ?????? ??????? ??? ??????
????????????????????? ?????? ??? ??????????????????? ?????? ?????????? ??? ??????????????????? ??? ??????. ????
?????????????? ?????? ??? ?????????? ?????? ?????? ?????????????????????? ??? ?????? ?? ?????????? ???????.

V. ????????

58. ??? ??? ?????????? ?????????? ?????????????? ??? ?? ?????????????????? ?????????????? ??? Vestre
Landsret (?????????????????? ?????????????????? ?????????? ??????????????????, ??????) ??????? ?? ??????????????
?? ?????:

1. ?? ?????? 9, ?????????????? 1, ??? ?????????? 2006/112/E? ??????? ?? ??????????????? ??? ???
????????? ??? ?????? ?????????????????? ?????????????????????? ?????? ??? ?????????? ??? ?????????????? ?????? ??????????
?????? ??? ?????????????????????????????? ?????????????? ??? ??? ?????????? ??? ??????????????????
????????????????????????? ??? ?? ?????????????? ??? ?????????? ?????? ?????????????????? ????. ??? ??? ?????? ?????? ?
????????????????? ?????????????? ??? ?????????????????? ?????????????? ?????????????????? ??????????, ?????? ??? ???????

????????????? ?? ???? ?????????? ?????????? ?? ???? ??????????????, ??? ?
????????? ??? ?????????? ?? ?????????? ????? ???? ?????????? ?????????????? ???????,
????????? ?????????????? ?????????????????? ??? ??? ?????? ??? ?????? 9, ?????????? 1, ???
????????? 2006/112.

2. ?? ????? 168 ??? ??????? 2006/112 ?????? ?? ?????????????? ??? ??? ?????? ??? ???
????????? ?????????????????? ??? ?????????? ?? ?????????? ?????????? ?????? ?????????? ???
????????????????????? ?????????????? ??? ?????????????? ?? ??? ??? ?????????????????? ????? ??? ???
????????????????? ?????????????? ?????????? ??? ?????????????? ?????????? ?????????????????? ??????????, ????
????????????? ?????? ??? ?????? ?????? ?????? ??? ?????????????????????? ?????????? ?? ???
????????????????????? ?????????? ??? ??? ?????????? ??? ??????????, ??? ?????????????????????? ??? ?????? ??????
??? ?????? 135, ?????????????? 1, ?????????? ???, ??? ?????????? 2006/112. ? ?????????????? ?????
?????? ??? ???? ?????????? ??????????????????.

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

2 ??, ?????????, ?????????? ??? 20?? ????????? 1991, Polysar Investments Netherlands
(C?60/90, EU:C:1991:268), ??? 14?? ????????????? 2000, Floridienne ??? Berginvest (C?142/99,
EU:C:2000:623), ??? 27?? ????????????????? 2001, Cibo Participations (C?16/00, EU:C:2001:495),
??? 6?? ????????????????? 2012, Portugal Telecom (C?496/11, EU:C:2012:557), ??? ??? 16??
????????? 2015, Larentia + Minerva ??? Marenave Schiffahrt (C?108/14 ??? C?109/14,
EU:C:2015:496), ?????? ??? ?????????????? ??? ?????????????? ??? ?????? ?????????? Ryanair (C?249/17,
EU:C:2018:301).

3 ??? ??? ?????????????? ?????? ?????????? ?????? ?????? ? ?????????? ??? 29?? ?????????????? 2009, AB
SKF (C?29/08, EU:C:2009:665).

4 ?????? ??? ??????????????, ??? 28?? ????????????? 2006 ?????????? ?? ?? ?????? ?????????? ??????
????????????????????? ?????? (?? 2006, L 347, ? 1).

5 ????? ?????? ?????????????, ?????????????? ????? ??? ?????????????? ??????????????????, ?? ?????????????
??? 27?? ????????????????? 2001, Cibo Participations (C?16/00, EU:C:2001:495, ?????? 21), ??? 29??
????????????? 2009, AB SKF (C?29/08, EU:C:2009:665, ????????? 30 ??? 31), ??? ??? 16??
????????? 2015, Larentia + Minerva ??? Marenave Schiffahrt (C?108/14 ??? C?109/14,
EU:C:2015:496, ?????? 21).

6 ?? ??? ? ? ??????, ?????????? ??? 22?? ????????????????? 2001, Abbey National (C?408/98,
EU:C:2001:110, ?????? 32).

7 ?????????? ??? 16?? ?????????? 1992, Meilicke (C?83/91, EU:C:1992:332, ?????? 23), ???
22?? ????????????? 2005, Mangold (C?144/04, EU:C:2005:709, ????????? 34 ??? 37), ??? ??? 21??
???????????????? 2016, Tele2 Sverige ??? Watson ?..?. (C?203/15 ??? C?698/15, EU:C:2016:970,
?????? 130).

8 ?????????????? ??? 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).

9 ?????????????? ??? 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).

10 ????????? ??? 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).

11 ???????? ??? 5?? ???????? 2018, Marle Participations (C?320/17, EU:C:2018:537, ????? 35) –????? ?????? ?????????? ??? ?????? ??? ?????? ?? ? ?????????? ????? ?????????? ?????? ?????????? ?? ?????????? «????????? ??? ??????????» ????? ??????????.

12 ???????? ??? 29?? ???????????? 2009, AB SKF (C?29/08, EU:C:2009:665, ????? 34).

13 ?????????? ??? 20?? ???????? 1996, Wellcome Trust (C?155/94, EU:C:1996:243, ????? 33), ??? 3?? ???????? 2005, Fini H (C?32/03, EU:C:2005:128, ?????? 22 ??? 24), ??? 26?? ?????? 2005, Kretztechnik (C?465/03, EU:C:2005:320, ????? 19), ??? ??? 29?? ???????????? 2009, AB SKF (C?29/08, EU:C:2009:665, ????? 34).

14 ?? ????? ?? ??????, ?????????? ??? 22?? ?????????????? 2001, Abbey National (C?408/98, EU:C:2001:110, ????? 35), ??? 29?? ?????????? 2004, Faxworld (C?137/02, EU:C:2004:267, ????? 39), ??? ??? 3?? ?????????? 2005, Fini H (C?32/03, EU:C:2005:128, ?????? 23 ??? 24).

15 ???????? ??? 29?? ???????????? 2009, AB SKF (C?29/08, EU:C:2009:665, ????? 33).

16 ???????? ??? 29?? ???????????? 2009, AB SKF (C?29/08, EU:C:2009:665, ????? 32).

17 ?????????? ??? 22?? ?????????????? 2001, Abbey National (C?408/98, EU:C:2001:110, ????? 35), ??? 29?? ?????????? 2004, Faxworld (C?137/02, EU:C:2004:267, ????? 39), ??? ??? 3?? ?????????? 2005, Fini H (C?32/03, EU:C:2005:128, ?????? 23 ??? 24).

18 ??, ?????????? ??? 12?? ?????????????? 2006, Optigen ?..?. (C?354/03, C?355/03 ??? C?484/03, EU:C:2006:16, ????? 44), ??? 6?? ?????????? 2006, Kittel ??? Recolta Recycling (C?439/04 ??? C?440/04, EU:C:2006:446, ????? 41), ??? ??? 16?? ?????????????? 2010, Euro Tyre Holding (C?430/09, EU:C:2010:786, ????? 28).

19 ?????????? ??? 6?? ?????????? 1995, BLP Group (C?4/94, EU:C:1995:107, ????? 24), ??? 8?? ?????????? 2000, Midland Bank (C?98/98, EU:C:2000:300, ????? 20), ??? 6?? ?????????????? 2012, Portugal Telecom (C?496/11, EU:C:2012:557, ????? 38), ??? ??? 22?? ?????????????? 2001, Abbey National (C?408/98, EU:C:2001:110, ????? 25).

20 ???????? ??? 6?? ?????????? 1995, BLP Group (C?4/94, EU:C:1995:107, ????? 27). ? ???????? ???????? ??? ?????? ?????????? ?????????? ?? ?????????? ??? ??????????, ??, ?????????? ???????? 36 ??, ??? ?????????? ??????????.

21 ?????????? ??? 6?? ?????????? 1995, BLP Group (C?4/94, EU:C:1995:107, ?????? 18 ??? 19), ??? 8?? ?????????? 2000, Midland Bank (C?98/98, EU:C:2000:300, ????? 20), ??? ??? 29?? ???????????? 2009, AB SKF (C?29/08, EU:C:2009:665, ????? 57).

22 ?????????? ??? 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), ??? ??? 14?? ?????????????? 2017, Iberdrola Inmobiliaria Real Estate Investments (C?132/16, EU:C:2017:683, ????? 28).

23 ?????????? ??? 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), ??? ??? 14??
????????????? 2017, Iberdrola Inmobiliaria Real Estate Investments (C?132/16, EU:C:2017:683,
????? 29).

24 ?????????? ?????????? ?????????, ?????, ?? ????? 169 ??? ????????? ???.

25 ?????????? ??? 6?? ?????????? 1995, BLP Group (C?4/94, EU:C:1995:107, ????? 28), ???
14?? ?????????????? 2006, Wollny (C?72/05, EU:C:2006:573, ????? 20), ??? 12?? ??????????????
2009, Vereniging Noordelijke Land- en Tuinbouw Organisatie (C?515/07, EU:C:2009:88, ?????
28), ??? 13?? ????????? 2008, Securenta (C?437/06, EU:C:2008:166, ????? 30), ??? ??? 29??
???????????? 2009, AB SKF (C?29/08, EU:C:2009:665, ????? 59), ????? ??? ?? ?????????? ???
???? ??????? Iberdrola Inmobiliaria Real Estate Investments (C?132/16, EU:C:2017:283, ??????
37).

26 ?????????? ??? 13?? ????????????? 2001, CSC Financial Services (C?235/00,
EU:C:2001:696, ????? 33), ??? ??? 29?? ?????????? 2009, AB SKF (C?29/08, EU:C:2009:665,
????? 48).

27 ?. ?????? 26 ??? ?????????? ??????????

28 ?., ??????, ??? ??? ?????????? ??? ??? ??????? Iberdrola Inmobiliaria Real Estate
Investments (C?132/16, EU:C:2017:283, ?????? 36 ??? 37).

29 ?????????? ??? 29?? ?????????? 2009, AB SKF (C?29/08, EU:C:2009:665, ????? 62),
????? ??? ??? 30?? ?????? 2013, X (C?651/11, EU:C:2013:346, ????? 56).

30 ?. ?????????? ??? 29?? ?????????? 2012, Gran Via Moine?ti (C?257/11, EU:C:2012:759,
????? 27), ??? ??? 22?? ?????????? 2015, Sveda (C?126/14, EU:C:2015:712, ????? 20).

31 ?. ?????? ??? 14?? ????????????? 2017, Iberdrola Inmobiliaria Real Estate Investments
(C?132/16, EU:C:2017:683, ????? 29).

32 ??????? ??? 29?? ?????????? 2009, AB SKF (C?29/08, EU:C:2009:665, ??????? 63 ???
73).

33 ?., ??????, ??? ??? ?????????? ??? ??? ??????? Iberdrola Inmobiliaria Real Estate
Investments (C?132/16, EU:C:2017:283, ?????? 36 ??? 37).

34 ??????? ??? 29?? ?????????? 2009, AB SKF (C?29/08, EU:C:2009:665, ????? 60).

35 ?., ??????, ??? ??? ?????????? ??? ??? ??????? Iberdrola Inmobiliaria Real Estate
Investments (C?132/16, EU:C:2017:283, ?????? 25 ??? 31).

36 ??????? ??? 22?? ?????????? 2015, Sveda (C?126/14, EU:C:2015:712, ????? 29).

37 ?????????, ?? ?????? ?????????????????????? ?????????? ?????????? ??? ?????? ??? ??
????????? ?? ?????????? ?????????? ?? ??? ??? ??? ?????? ??? ?????? 9, ?????????? 1,
??? ?????? ???, ?. ?????????? ??? 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 Schifffahrt (C?108/14 ??? C?109/14, EU:C:2015:496, ????? 20), ????? ??? ?? ??????
24 ??? ?????????? ??????????