

@import url(../../../../css/generic.css); EUR-Lex - 61996J0264 - EL

Avis juridique important

/

61996J0264

?????? ??? ??????????? ??? 16?? ??????? 1998. - Imperial Chemical Industries plc (ICI) ???? Kenneth Hall Colmer (Her Majesty's Inspector of Taxes). - ?????? ??? ??? ?????
????????????? ??????????: House of Lords - ?????? ??????. - ?????? ????????????? -
????? ??????? - ??????? ??? ??? ??????? ?? ???, ????? ??? ??? ????? ?????, ???
?????????? ??????? ??? ????? ??? ??????? ????? - ?????????? ??????? ?? ???
???? ??? ??????? ??? ??????? ??? ????? - ?????????? ??????? ??? ??? ????? -
?????????? ??? ??????? ??????? - ??????? C-264/96.

?????? ??? ?????????? ??? ?????????? 1998 ?????? I-04695

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1 ?????????????? ?????????? - ?????????? ??? ?????????? - ??? - ?????? ?????? ???????
???????????

(?????? ??, ??? 177)

2 ?????????? ?????????? ??? ?????? - ?????????? ?????????????? - ?????????? ?????????? -
????? ??????? - ?????? ??? - ?????? ?????? ?????????? ?????????????? ?? ?????? ??? ??????
consortium ??????? ??? ?????? ?????? ?? ?????? ?????????? ?????????????? ?? ??????
?????????? ?????????? ??? ?????? - ???????????

(?????? ??, ??? 52, 56 ??? 58)

3 ??? ??? - ?????????? - ?????????? ?? ?????????? ??? ?????? ?????????? ???
????????? ?????? - ?????????? ??? ?????? ?????? ?? ?????????? ?? ?????????? ?? ?????? ???
????????? ?? ?? ?????????? - ??? ??????????

(?????? ??, ??? 5)

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4 ??? ?????? ??? ?????????????? ??? ?? ??? 177 ??? ?????? ?????????? ?????????? ???????
????????????? ??????????, ??? ??? ?????? ??????????, ??? ??? ?????? ??? ??????

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

5 ?? ????? 52 ??? ??????? ?????????? ??? ??????? ?????????? ??????? ?????? ? ???,
???? ?????? ??? ?????????????? ??? ?????? ??? ??????? ?????? ?????? ?????????? ??? ?????? ???
consortium ??? ?? ?????? ??????? ??????? holding ??? ?????? ?? ?????????? ???
????????? ?????????????? ??? ?? ?????????????? ??? ?? ?????? ??? ?? ?????? ?????????? holding
????????? ?? ??? ?????? ???, ?????? ?? ?????????? ?????????? ??? ?????? ??? ?? ???
????????? ? ?????????????? ??? ??????? holding ?? ?????????? ??? ??????
????????? ? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ??????
????????? ???.

????????, ? ?????????? ???, ??? ?????????? ?? ?????? ??? ?????? ??? ?????? consortium
????????? ??? ?? ??? ??????? ?? ?????? ?????????? ?????????? ? ?????? ??????????
????????? ??? ???????, ?????????????? ?? ?????????? ??? ?????? ??? ??????????
?????????, ?????????????? ?????????? ?????????? ??? ?????? ??? ?? ?????????? ???
????????????? ??? ?????? ??? ??????? ?????? ??? consortium, ??? ?? ??? ?????????????? ???
??? ?????? ?????????? ??? ?????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????? ?? ?????????????? ?? ?????? ??? ?????? ??? ?????? ??? ??????????
??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ?? ?????????? ???
????????? ??? ?????? ?????????? ??????, ??????, ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
?? consortium ?? ?????????? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ???, ???????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
??? ?????? ??? ?????? ??? ??????????.

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

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???? ?????? C-264/96,

?? ?????? ?? ?????????? ??? House of Lords (????????? ??????) ??? ??
??????????, ???' ?????????? ?? ?????? 177 ?? ??????? ??, ?? ??? ?????? ?????????, ???
?????? ?? ??????? ?? ?????? ?????? ?? ?????? ??? ?????? ?????????? ?????????? ???

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Kenneth Hall Colmer (Her Majesty's Inspector of Taxes),

? ?????? ?????????????? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? 5 ??? 52 ???
????????? ??,

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

????????? ??? ??? G. C. Rodr?guez Iglesias, ???????, H. Ragnemalm, M. Wathelet
(????????) ??? R. Schintgen, ??????? ???????, G. F. Mancini, J. C. Moitinho de Almeida, J.
L. Murray, D. A. O. Edward, P. Jann, L. Sev?n ??? K. M. ???????, ???????,

?????? ??????????: *G. Tesauro*

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

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

- ? *Imperial Chemical Industries plc (ICI)*, ?????????????? ??? ??? Peter Whiteman, QC, ???
Christopher Vajda, barrister, ?????????? ???' ?????? ??? ?????????????? ???????? Hammond
Suddards, solicitors,

- ? ?????????? ??? ??????? ??????????, ?????????????? ??? ??? John E. Collins, Assistant
Treasury Solicitor, ?????????? ??? ??? Derrick Wyatt, QC, ??? ??? Rabinder Singh, barrister,

- ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? Peter Oliver ??? ???
H?lne Michard, ??? ??? ?????? ??????????,

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

???? ?????? ??? ?????????? ?????????????? ??? *Imperial Chemical Industries plc (ICI)*, ???
????????? ??? ??????? ?????????? ??? ??? ?????????? ??? ?? ?????????? ??? 14??
????????? 1997,

???? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??? ??? ?? ??????????
?? 16?? ?????????? 1997,

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1 ?? ??????? ??? 24?? ?????? 1996, ? ??? ?????? ??????? ??? ?????????? ??? 29 ???????
1996, ?? *House of Lords* ???????, ???' ?????????? ??? ?????? 177 ??? ??????? ??, ???
????????????? ?????????? ?? ??? ??? ?????? ??? ?????? 5 ??? 52 ??? ??????? ??.

2 ?? ?????????? ??? ??????? ??? ?????? ?????????? ??? ?????? ??? *Imperial Chemical
Industries plc* (???: ICI) ??? ??? ?????????? ?????????? ???, ??????? ?? ??? ???????
?? ?????????? ?? ?????????? ??? ICI ?????? ??? ?????? ??? ?????????? ??????? ??
????? ?????????? ?????? holding ??? ?????? ?????? ? ICI ??? ??? consortium.

3 ? ICI ??????? ??? ??????? ??????? ??? ???????, ??? ? ? Wellcome Foundation Ltd, ?????? ??????? ??? ?????? ????, consortium ??? ? ? ?????? ?? ? ? ???? ?????? ?????? ?????? ??? ?????? ?????? Coopers Animal Health (Holdings) Ltd (??? ????: Holdings), ??? 49 % ? ICI ??? ??? 51 % ? Wellcome Foundation Ltd.

4 ??? ??????????????? ??? Holdings ????? ? ?????? ??????? ?????????? ???????????, ??????????? ?? 23, ?? ?????? ??? ????? ??????? ??? ? ? ?????? ??? ?????????????? ??? ?? ?????????? ?????. ??? ?????? ??? 23 ???????????, 4, ?????? ??? ?????? Coopers Animal Health Ltd (??? ????: CAH), ??????? ??? ?????? ???????, 6 ?? ??? ?????? ??? 13 ?? ?????? ????.

5 ?? ?????????? ?????????????? ??? CAH ??? ?????? ??????? ??? ?????? ?? ?????????? ??? ?????????????? ??? ?? ??? ?????? 1985, 1986 ?? 1987. ???' ?????????? ??? ?????? 258 ??? 264 ??? Income and Corporation Taxes Act 1970 (????? ??? 1970 ??? ?? ?????? ?????????? ??? ?? ??? ?????? ???????, ??? ????: ?????), ? ICI ?????? ?????? ??? ?????, ??? ?? ?????????? ?? ?????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? CAH ??? ?? ?? ?? 49 % (????? ??? ??? ?? ??? ?? ?????? ??? ?????????? ??? ?????? ??? Holdings) ??? ?????? ??? ?????????? ??? ?????? ???????.

6 ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ?? ?????? ?????????? ?????? ??? ?????, ??? ?????? ??? ?????? ??? ?????? ??? ICI ?????? ?? ??????????:

????? 258

«1. ?????? ??? ?????????? ?????????? ??? ??????? ?????????? ??? ???????, ?? ??????? ?????????? ??? ?????? ??? ?????? ??????? ??? ?????? ?????? ?????? ??? ?????? ??????? ??? ?????? ??? ?????????? ??? ?????? (?? ?????? "????????????? ??????"), ?????? ?????? ???????, ?????? ?????? ??????? ??? ?????? ?????? (?? ?????? "????????? ??????") ?????????? ??? ?????? ?????, ?' ?????? ??? ?????? ???????, ?? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????, ?????????? ??? ?????? ?????? "????????????? ?????????? ???????" ??? ??????", ?????????? ??? ?????? ?????? ??? ?????? ???????.

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

a) ??????? ?????? ??? ?????? ??? consortium ??? ?? ?????? ??? 75 % ?????????? ??? ?????? ????????

b) ??????? ???????

i) ? ?????? ??? 90 % ?????????? ??? holding ??? ?????? ??? consortium ???

ii) ? ?????? ??? 75 % ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? holding ?

c) ?????? holding ? ??? ?????? ??? consortium ??? ?? ?????? ??? 75 % ?????????? ??? ?????????? ??? ?????? ??? ???????.

(...)

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

a) ??? ??????? ??????????? ?? ??? ?????? ??????? ?? ? ??? ?????? ??? 75 % ??????????
??? ?????? ? ? ?????????? ?????? ??? 75 % ?????????? ?????? ???????.

b) ?? "?????? holding" ?????????? ?????? ? ?????????????? ?? ???? ?????? ??????????
????????????? ? ?????? ??? ?????? ?????? ?????? ? ?????????? ?????? ?? ?????? ???
????????? ?????? ??? ?????????? ??? 90 %.

c) ?? "????????? ??????" ?????????? ?????? ? ?????????????? ?? ???? ?????? ??????????
????????????? ? ?????? ??? ?????????????? ?????? ???????.

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

a) ??? ??????? ?????????? ?? ??? ?????? ?????? ??????? ?? ? ??? ?????? ??? 75 % ??????????
??? ?????? ? ? ?????????? ??? 75 % ?????????? ?????? ???????,

b) ?? "?????? holding" ?????????? ?????? ? ?????????????? ?? ???? ?????? ??????????
????????????? ? ?????? ??? ?????? ?????? ? ?????????? ?????? ?? ?????? ???
????????? ?????? ??? ?????????? ??? 90 %.

c) ?? "????????? ??????" ?????????? ?????? ? ?????????????? ?? ???? ?????? ????????
????????????? ? ?????? ??? ?????????????? ?????? ???????.

(...)

7. ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????????, ? ??? "???????" ???
??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????, ??? ???
?????? ?????????? ??? ?????? ?????? ?????? ??? ??? ?????? ?????? ??? ?????? ???
?????????, ??? ?? ??? ?????? ?????? ??? 75 % ?????????? ??? ???, ??? ? ???
????????? ?????? ??? ??? ??????

a) ??????? ??????? ??????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????, ?? ??????????
????? ??? ?????? ??????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????????
??? ?????? ??? ?????????? ??? ?

b) ??????? ??????? ??????? ?????? ??? ?????? ?????? ?????? ??????, ?????? ??????
??? ?????? ??? ?????? ??? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??????????
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????????? ?

c) ??????? ??????? ??????? ?????? ??? ?????? ?????? ??? ?????? ??????, ?? ???
?????? ??? ?

8. ??? ??? ?????? ??????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ???????, ??? ?????? ?????? ?? consortium ?? ?? ??? ?????? ?????? ? ??????????
??? ??????? ?????? ?????? ??? ?????? ?????? (beneficially owned) ?? ??????
?????? ??? ??? ?????? ?????? (beneficially owns) ?????? ??? ?? ??? ?????? ???
????????? ???, ?????? ?? ??? ?????? ?????? ?????? ??? ??? consortium.»

????? 259

«1. ?? ??? ?? ??????? ?????????? ?????????? ?????????? ?????????? ? ?????????? ??????
????????????? ??????, ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? 2
??? ?????? 177 ?? ?????? ??????, ??? ??? ?????? ?????? ?????? ?????????? ?????? ??

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

8 ?????????????? ??? ??????? ??? ?????? ??? ?????? ???????, ? ICI ?????? ?????? ???????
????? ??? ?? ??? ?????????????? ???????, ? ?????? ?????? ?????? ??? ?? High Court ???, ???
???????, ??? ?? Court of Appeal.

9 ?? ??????????? ???? ???? ???? ???? ???? House of Lords, ?? ??? ???? ???.
???? ? ?????? ???? ?????????????? ???? ?????????????????? ??? ??? ???, ?????? ??? ????
????? ?? ??????? ???? ?????????????????? ??? ?????????? ??? ?????????? ?????? ???
????? ?????????? ? |CI ?????????? ??? ??? ?? ??? ?????????????? ??????????,

10 ???????, ? ICI ?????????? ??? ? ?????????? ?? ??? ? ?????? holding ?? ??? ? ???
????????????? ??? ??? ???? ?????? ?????????? ?????? ?????????? ?????????? ??? ??????
????????? ?????????? ??? ?????????? ?????????????? ??? ?????????? ??? ??? ??????????????
????????? ??? ?????? ??????????, ??? ?????????? ??? ?? ??? 52 ??? 58 ???
????????? ??.

11 ? ?? ????? ?????????? ?????????? ?????????? ??? ?? ??????? ??? ? ?????? ??? ?????? ??? ?????? ???
?????? ??? ?????? ?????? ??????? ?????????? ??? ??????, ??? ?????????? ??? ??????
holding ????????, ??? ??????, ??????????, ??? ???????, ??? ?????? ?? ??? ?????? ??? consortium, ??
????????? ??? ? ??????? *holding* ??????? ?????????????? ? ?????? ?????????? ?????????? ??????????
???? ??????, ??? ??? ????? ?????? ? ?????? ???, ??? ?????? ?? ?????? ??????????
????? ?? ?????, ?????? ??? ? ??????? *holding* ??????? ?????? ?????????? ?????????? ??? ??
???? ?????? ??? ????? ?????????? ??? ??? ?????? ?????????? ?????????? ??? ?? ?????????? ??
??????.

12 ?????? ??? ICI, ?????????????? ??? ?????? ??????? ????????????, ?????????????? ??? ??????
???????????, ??? ????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????????? ?? House of
Lords, ??? ?????? ? ??????? holding ??????? 23 ???????????, ?? ??? ?????? 10 ????
????????? ??? ?????? ??????? ?????????? ??? ?????? ?? ??? ?????? ?????? ??????, ?? ?????????? ???
????????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ??????????
??????.

13 ?? House of Lords ??????? ??? ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ???
????????? ??? ?????????? ?? ??? ??? ??? ?????? ??? ?????????? ?????????????? ??? ?? ?????? ??? ?????? ? ??????
?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ? ICI ??? ?????? ??? ?????? ?? ??????
????? ??? ?????? ?????? ?? ??????? ??? ??????? ??? ?????? ??? ?????? ?????????????? ?? ??????
??????????, ?? ? ?????? ?????? ?????????????? ??? ?????????????? ??? ?? ?????????? ??????,
?????????? ?????????? ??? ?????????? ?????? ??????????. ??? ??????????, ?????????? ?? ??????????
?? ?????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ??????????.

«1) ?? ?????????? ????:

16 ??????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????. ??????????, ?? ??????
????????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????? 258, ?????????? 5, ??? ?????, ??? ?? ??????
??????? holding ??? ?????, ? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ??????
????????? ? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????????, ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
??? ?????????? ??? ?????? ?????? ?????? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ????? 52 ???
????????.

17 ??? ?? ??????? ??, ?? ?????????? ?? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????? ?? ??????????.

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

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

18 ?? ?? ?????? ??????? ?? ?????? ??????????? ?????? ?????? ??? ?? ?????? 52 ???
????????? ?????????? ?? ??????? ?????????? ?????? ?????? ?????? ? ?????, ??? ?????? ??
????????????? ?? ?? ?? ?????? ?????? ?????? ?????? ?????????? ?? ?????????? ?? *consortium* ??? ??
?????? ???????? ??????? *holding*, ?????? ?? ??????? ?????? ?????? ??? ?????? ?? ??
????????? ?? ?????????????? ?? ??????? *holding* ?? ?????????? ??? ??????
????????????? ?? ?????? ?????? ?????????? ?????????? ?????????????? ??? ?????? ?????? ?????.

19 ??????? ?? ?????????? ?? ?????????? ???, ?????? ? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ???, ?? ?????? ??? ?????? ?????? ?????? ?? ?????? ??? ??????
????????? ??? ?????? ?????? ?? ?????? (?? . ?? ?????? ?? 14??
????????? 1995, C-279/93, Schumacker, ?????? 1995, ?. ?-225, ????? 21. ?? 11??
????????? 1995, C-80/94, Wielockx, ?????? 1995, ?. ?-2493, ????? 16. ?? 27?? ??????
1996, C-107/94, Asscher, ?????? 1996, ?. ?-3089, ????? 36, ??? ?? 15?? ??? 1997, C-
250/95, *Futura Participations* ??? Singer, ?????? 1997, ?. ?-2471, ????? 19).

20 ??? ???????, ??? ?? ?????????? ?????? ???, ??? ??? ????? ???????, ?
????????? ?????????? ??? ?? ?????? ?? ?????? 52 ?????????? ?????? ?????? ??? ??????
????? ??? ?? ?????? ?????? ?????? ??' ?????? ??? ?????? ??? ?????? ?? ??????
????????? ??? ?? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ??
????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ??????, ???
?? ????? 58 ??? ??????, ??? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??
????? ??? ?? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ??????, ??? ?????? ??
????? ??? ?? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ??
????????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ??
????????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ??
??? ???????, ?????? ?? ?????? ??? ?????? ??? ?????? ??? ? ??? ?????? ??? ??
????????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ??
????? ??? ?? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? (????????? ??? 28??
????????? 1986, 270/83, ??????? ??? ?????? ?????? 1986, ?. 273, ??? 18, ??? ??
13?? ??? 1993, C-330/91, Commerzbank, ?????? 1993, ?. ?-4017, ??? 13).

21 ???????, ??? ?? ?????????? ??? ?? ?????? ??? ?? ?????? ?????? ??? ?????? ??????
????????? ??? ?? ?????? ???, ??? ?? ?????? ???, ?? ?????? ?????? ???, ?? ?????????? ???
?? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?? ?? ?????????? ??? ?? ?????? ?????? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?????? 58 ??
????? (????? ??? 27?? ?????????? 1988, 81/87, Daily Mail and General Trust, ??????
1988, ?. 5483, ??? 16).

22 ?????????? ? ?????????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? consortium, ??
????? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?? ??????????????,
????? ?????? holding, ?????????? ?? ??? ?????? ???, ?? ?????? ?????? ?????? ??? ??
????? ?? ?????????? ?? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????
holding ??? ? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ?????? ??????.

23 ???????, ? ??????? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ??????
?????????, ?????????? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????? ???
????????? ??? ?????? ?????? ??? consortium. ???????, ?????????? ??
????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ??????.

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

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

26 ?????????? ?? ?????????????? ??? ?????????????? ??? ?????????? ???????????????, ?????? ??
????????????? ??? ? ??????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ??
????????? ??? ?????????????? ?? ?????????? ??? ?????????? ?????????????? ?????????????? ?? ??????
????????? ??????????, ????? ?????? ??? ?????? ?????? ?????? ? ?????????????? ????
????????? ?????????? ??? ?????????? ??????????, ????? ??????, ??????, ??? ??????????????
???? ?????? ? ?????????????? ??? ?????????? ?????????? ?????? ?????? ?????? ?????? ??????????????????
??? ?????????? ??? ?????? ??? ?????????? ??????????. ???, ? ?????????? ?????? ?????? ????
??? ?????????? ?????????? ??? ?????????? ?????????????? ??? ??????????????, ?????????? ??? ??
???? ?????????? ?????? ??? ?????????? ?????????? ??? ?????????? ?????????? ??? ??????
?????????????.

27 ????????, ??? ?????????? ???????, ? ??????? ?????????? ?????????????? ??? ??????
????????? ?? ?????????? ? ?? ??? ?????????? ??????? ?????????? ?? ??? ?????? ?? ???
????????? ?????????? ?????????? ??? ??????? ?????????? ? ??? ??????????. ????????,
????? ?? ?????????? ??? ??? ??? ?????????? ?????????? ??? ?????????? ??? ?? ?????? ??????
? ???????? ??? ?????????? ??? ?????? ?????????????? ? ?????????? ??? ?????????? ??????????.

28 ????? ?????? ?? ??????????? ??????? ?? ??? ?????????? ?????????????????? ?? ?? ??????????
?????? ?? ???? ??????? ?? ?? ?????? ??? ?? ??????? ?? ?????????? ?? ?? ?????? ??? ?????????? ??
????????? ??????????? ?? ?? ??????????? ?? ?????? ??? ?????????? ?? ?????????????????? ?? ?? ?????? ??? ??????????
????????? ???????????, ?????? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?????? ?? ?? ??????????
?????? ?? ??????????????? ?????? ?? ??? ?????? ?? ?????????? ?? ?????? 56 ?? ?????????? ??
?? ?????? ?? ?????????? ?? ??????????? ?????? ?????? ?????????? ?????????????? ?? ?? ?????? ?? ??????
?? ?????? ?????????? ?? ?????????????? ?????? ?????? ?????????????? ?? ?????? ??????, ???????,
????????????? ?? ?????? ?? ?????? 52 ?? ??????????.

29 ???????, ?? ?????????? ????? ?????? ??? ? ?????? ?????????????? ??? ?????? ?????? ???
?????????? ?????????? ??????, ?? ?????????? ???????????, ?? ?????????? ??????
????? ?? ?????????? ??? ?????????? ?????? (?? . ??????? ??? ?????????? ??? 28??
????????? 1992, C-204/90, Bachmann, ?????? 1992, ?. ?-249, ??? C-300/90, ??????? ???
??????, ?????? 1992, ?. ?-305). ???????, ??? ?????????????? ?????????? ????????
????? ?????? ?????? ??? ?????????? ?????????? ??? ???????, ??????, ??? ???
????????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ???' ???????
????????? ?????????? ??? ???????, ???????, ?????? ? ?????? ?????? ??
????????? ?? ?????? ?? ?????????? ??? ??????? ??? ??????? ?????????? ??????????. ??
?????????, ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????, ??????, ???
????????? ??? ?????? ??? ?????????? ??? consortium ?? ?????????? ?? ??? ?????? ?????? ???
????????????? ??? ?????? ?????????? ?????????? ??? ???, ???????, ??? ??????????
?? ?????? ??? ?????????????? ?????? ??? ?????????? ?????????? ??????????

30 ????? ???????, ??? ????? ??????? ?????? ?? ?????? ? ??????? ?????? ?? ?????? 52 ???
?????? ?????? ??????? ??? ??????? ?????????? ?????? ?????? ?????? ? ?????, ??? ?????? ???
????????????? ??? ?????? ??? ??????? ?????? ?????? ?????? ?????? ??? ?????? ??? consortium ????
??? ?????? ??????? ?????? holding ??? ?????? ?? ??????? ?????? ??? ?????? ?????? ?????
????????????? ??? ?? ?????????? ?????? ??? ?? ?????? ?????? holding ?????????? ??
???? ?????? ???, ?????? ?? ??????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????
????????? ??? ?????? holding ?? ??????? ?????? ??? ?????? ?????? ?????????? ??? ??????
????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????.

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31 ?? ?? ??????? ??????? ?? ?????? ?????????? ?????? ??? ?????? ?? ?????????? ???
????????? ??? ?????? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????? 5 ??? ??????. ??? ??????????, ?????? ? ??????? ??? ?????? ?????? ?????? ?????? ???
? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
?????, ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? consortium ??? holding ?????? ?????? ?????????? ??? ?????? ?????? ???
??? ?????????, ?????????? ? ?????? ??? ?????? ?????? ??? ?? ??? ?????????? ??? ?????? ???
??? ?????? ??????, ?? ?????? ?????????? ?????????? ?? ?????? ?????? ?????? ??? ?????? ?? ???
????????? ??? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? holding ?????? ?????? ??????.

32 ??????, ??? ?? ?????????? ??? ? ?????????? ?????? ??? ? ?????????? ?????????? ?????? ?? ?? ??
????????? ??? ?????? holding ??? ?????? ??? consortium ?????????? ?????????? ???
? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????.

33 ??? ??????, ???, ?? ?????? 52 ?? 58 ?? ?????? ??? ?????????? ??? ?????????? ???
????? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ??? consortium ??? ? ?????????? ??? holding
??? ?????? ??? ?? consortium ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ??? ?????? ??? ?????? 5 ?? ??????.

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

35 ??????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? 5 ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

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

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????????? ??? ?? ?????????? ??? ??? ??????, ?? ?????? ??? 24?? ?????? 1996, ??
House of Lords, ??????????:

37 ?? ????? 52 ??? ??????? ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????? ?
?????, ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
????? ??? consortium ??? ?????? ?????? ?????? holding ??? ?????? ?? ??????????
??? ?????????? ?????????????? ??? ?? ?????????????? ??? ??? ?? ??? ?????????? holding
????????? ?? ??? ?????? ???, ?????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ???
????????? ??? ?????????????? ??? ?????????? holding ?? ?????????? ??? ??????
????????? ??? ?????? ?????? ?????????? ?????????? ?????????????? ?????? ??? ?????? ??? ???
????? ??????.

38 ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ?? ?????? 5 ??? ??????? ??
??? ?????????? ??? ?????? ?????? ??? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?? ??
????????? ?????? ??? ?? ??? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?????? ??? ?? ??
????????? ??? ?????? ?????????? ??? ??????????.