

????????????????? ?????????? C-282/04 ??? C-283/04

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

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

«????????? ??????? ?????? — ????? 56, ?????????? 1, ?? ?? 43 ?? — ??????? ??????? (“golden shares”) ??? ?????????? ??????? ??? ??????? ??? ??????? KPN ??? TPG — ?????????? ??? ?????? “????????? ?????????? ??????? ??? ??????”, “????? ??????” ??? “????????? ???????????” ??? ?????? ??? ?????????? ??????? — “????????? ??????” ??? ??? ??? ?????? ??? ?????????? ??????? — ?????? ??? ?????????? ?????????? ??????????»

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

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

(????? 56 § 1 ??)

????????? ??? ?????????? ??? ?????? ??? ?? ?????? 56, ?????????? 1, ?? ?? ??????  
????? ?? ?????? ?????? ?????? ??????? ?? ???????, ?? ?????? ??? ??????? ??????  
????????? ?????????? ?????? ??????? ??????? ?????? ?????? ??????? ??????  
????????????? ?????? ??? ?????? ??? ?? ?????? ???????, ??? ?????? ??? ?????? ??? ??  
????????????? ??? ?? ??? ?????? ??? ?? ?????? ???, ?? ?????? ??? ?????????? ??? ??  
???? ?????????? ??? ? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ??????????  
????? ?????????? ???.

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

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

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

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

(???. ??????? 19, 22-24, 26-27, 44, ???????.)

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

??? 28?? ?????????????? 2006 (\*)

«????????? ??????? ??????? – ?????? 56, ??????????? 1, ?? ??? 43 ?? – ??????? ??????? (“golden shares”) ??? ?????????? ??????? ??? ??????? ??? ??????? KPN ??? TPG – ?????????? ??? ?????? “????????? ?????????????? ??? ??????”, “????? ??????” ??? “????????? ??????????????” ??? ?????? ??? ?????????? ?????????? – “????????? ??????” ??? ??? ?????? ??? ?????????? ?????? – ??????? ??? ?????????? ?????????? ??????????»

???? ?????????????????? ?????????? C-282/04 ??? C-283/04,

?? ??????????? ?? ??????? ?? ????? 226 ?? ??? ???????????, ???????????, ???????????,  
?? 30? ??????? ?? ??? ???? 1? ??????? 2004.

????????? ??? ??????????? ????????????, ?????????????? ??? ??? H. Støvlebæk, A. Nijenhuis ??? S. Noë, ?? ??? ?????????? ??? ????????????????

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?????????? ??? ??? ????? ??????, ?????????????????? ??? ??? H. G. Sevenster ??? J. van Bakel ???  
??? M. de Grave,

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

?????????? ?? P. Jann (????????), ?????? ???????, K. Schiemann, N. Colneric, K. Lenaerts ?? E. Juhász, ???????.

????????? ??????????: M. Pojares Maduro

?????????: R. Grass

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

???? ?????? ??? ?????? ??????????? ??? ?????? ??? ?????????? ??? ?????? ?? ???????????  
??? 6?? ??????? 2006.

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1      ?? ??? ?????????? ???, ? ?????????? ??? ?????????????? ?????????????? ?????? ??? ??  
?????????? ?? ?????????????? ??? ?? ?????????? ??? ?????? ?????, ??????????????, ???

????????????? ??? ???????? Koninklijke KPN NV ??? TPG NV, ?????????? ??????????  
????????????? ??? ?? ??????? ?????? ??? ?????? ?????????????? ?????? ?????? ???  
????? ??? ?????????? ?????? ??? ? ?????? ??? ?????? ?????? ?????????? ?? ??? ???  
????? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?? ??? ??????, ?????? ???  
????????? ??? ?????? ??? ?? ????? 56 ?? ??? 43 ??.

## ?? ?????? ??????

2 ?? ?????? ??? ?????? 2:8 ??? ?????????? ?????? ?????? (Burgerlijk Wetboek, ??? ????:  
Burgerlijk Wetboek), ? ?????? ??? ?????????? ??? ?????? ?????? ? ?????? ?????? ??????  
????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? . ? ?????? ??? ?????? ???  
?????????:

«1. ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ???  
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

3 ?? ?????? 2:92 du Burgerlijk Wetboek ?????????? ?? ???:

«1. ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???' ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????.

[...]

3. ?? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

## ?? ?????????? ?????????? ??? ? ??? ??? ?????? ??? ?????? ?????? ??????????

4 ?? 1989 ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??  
????? Koninklijke PTT Nederland NV (??? ????: PTT).

5 ?? ??? ?????? ??? ?????? ?????????????? ??? PTT, ??? ??? ?????? ?? 1994,  
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?? 30 % ??? ?????? ??? ???, ???  
????????? ?? 1995, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 20 % ???  
????????? ???, ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??  
????????? ??? ?????? ?????? «golden share», ??? ?? ?????? ??? ??????.

6 ?? 1998 ? PTT ?????? ?? ??? ?????? ??? ?????? ??? Koninklijke KPN NV (??  
?????: KPN) ??? ??? ?????? ??? ?????? ??? ??? TNT Post Groep NV, ? ??? ???  
????????? ?????? ??? TPG NV (??? ????: TPG), ??? ??? ?????? ??? ??????.

7 ??? ?? ?????????? ???, ? ?????? ?????? ??? ?????? ??? ?????? ?????? ?? ??????????  
???? PTT ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??  
????? ??? ??? ??? ?????? (??? ????: ?????? ??? ?????? ???).

8 ???????, ?? ??????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???

?????? ???? ???. ?????? ??????? ?????. ???? ???. ?????? ????????. ??? ?????? ?????? ???. ?????? ????????, ?  
????????? ??????, ?????? ???. ?????? 17 ??? ?????????? ??? KPN ??? ???. TPG, ??  
????????? ??? ???. ?????? ?????? ?????????? ?????????? ??? ???. ?????? ?????? ?????????? ??? ???.  
?????????.

- ??? ?????? ??????? ??? ?????? (????? 12, ?????????? 1, 2 ??? 4, ??? ?????????? ??? KPN ??? ??? TPG).

– ??? ?????????? ? ??? ?????????? ??? ?????????????? ?????????????? ??? ?????????? ?????????? ?????????? (????? 13, ?????????? 3, ??? ?????????? ??? KPN ??? ??? TPG).

– ??? ?????? ? ??????????? ??? ?? ??????? ?????? ?????? ?????? ?????? ?? ?????? ?????????????????????  
?????? ??????????? ??? 1 % ??? ?????? ?????? (????? 15, ?????????? 3, ???  
?????????? ??? KPN ??? ??? TPG).

– ??? ??????? ??? ??????? ??????? (????? 16, ?????????? 3, ??? ?????????? ??? KPN ??? ?? TPG).

- ??? ?????? ??? ??????????? ?????? ??? ?????????? ??? ???? ?????? ?????????? ???  
????????? ??? KPN Telecom BV ? ??? PTT Post Holdings BV (? ?????? ??????? ?????????? ???  
?? ?????? 4, ?????????? 1, ??? ?????? ??? ?????????????? [Postwet]) ?? ?????? ?? ??????????  
?????????, ?????????? ? ??????????, ?????? ?????? ?????? ??? ?????????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???  
????????????? ??? (????? 25, ?????????? 3, ??????? a, ??? ?????????? ??? KPN  
??? ??? TPG).

- ??? ??????????? ??? ??????????? ?????? ??? ????? ?????????? ??? ??????????,  
????????????? ?? ?????????? ???, ?????? ??? 30 % ??? ?????????? ?????????? ???  
KPN (????? 25, ???????? 3, ?????? b, ??? ?????????? ??? KPN) ? ??? 15 % ???  
????????? ?????????? ??? TPG (????? 25, ???????? 3, ?????? b, ??? ?????????? ???  
??? TPG)-.

– ?? ??????? ??????????? ?? ????? ??????? ?? ??????? ??/? ?? ?? ???????????  
(????? 36 ?? ??????????? ?? KPN ?? ?? TPG).

– ?? ??????????? ? ?? ?????????? (?????? 47, ??????????? 2, ??????? a, ??? ??????????????? ?? KPN ??? ??? TPG).

- ?? ??????? ??? ??????? (????? 47, ??????????? 2, ??????? b, ??? ??????????? ??? KPN ??? ??? TPG).

– ??? ???????????? ??? ???????????? ??? ?????? (????? 47, ??????????? 2, ??????? c, ??? ?????????? ??? KPN ??? ??? TPG), ?????? ????, ??? ?????:

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

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

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

- ??? ??????? ??? ??????? ???????.

- ?? ??????? ??? ??????????? ??? ??????????? ??? ??? ?????? ?????? ?????? ?????? ???  
?????? 12, 13, 15, ?????????? 3, 25, ?????????? 3, 36 ??? 47, ?????????? 2, ???  
????????????? ??? KPN ??? ??? TPG, ????? ???

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

10 ??? ?? «Afspraken op Hoofdlijnen KPN en TPG» (????????? ?? ??? KPN ??? ??? TPG),  
?? ?????????? ??????? ???????????, ??????, ?? ?????? ?????? ??? ?????? ?????? ???  
????????? ??? ??????? ??? KPN ?????? ?? ?? ?????????? ?? ?????????? ??? ?? ??????????  
????????? ???, ???????, ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
TPG ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????????  
??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????  
?????????. ?? ?????????? ?????? ?????????? ?????? ?? ??? ?????? ?? ?????????? ?? ?????????? ???  
????????? ??? ??? ?????? ?????? ?????? ??? ?? ?????????? ??? ??? ?? ?????? ?????????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ???.

11 ??? ?? 1998 ??? ?? ?????? ??? ?????????? ??? ?????????? ?? ??? ?????? ??????????????  
?????, ??? ?? ?? 6 ??????? 2003, ? ??? ?????? ?????? ?????????? ??? ??????????  
????????? ???????, ??? ?? ?????? ??? KPN ?????? ??? 20 %, ??? ??  
????????? ??? TPG ?????? ??? 35 %.

12 ? ???????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ?? ??? ??????????  
?? ?????????? ???, ?????????? ??? ?????? ??? ?????? ???, ??? 6 ?????????? 2003, ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ???  
????????? ?? ?????????? ?????? ??? ?????? KPN ??? TPG ??? ?????????? ??? ??  
????? 56, ?????????? 1, ?? ??? 43 ?. ? ?????? ?????? ??? ?? ??? ?????? ???  
????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?? ??????????  
????? ??? ?????????????? ??????. ?? ?????????????? ??? ??? ?????? ?????? ??? ?????????? ???  
????????? ??? ??? ?????? ??? ?? ??? ??? 28 ??????? 2003 ??????? ???, ? ?????? ???  
??? ??? ?????? ??????.

13 ?? ?????? ??? ??????? ??? ?????? ?????????? ??? 23?? ??????? 2005, ??  
????????? C-282/04 ?? C-283/04 ??????? ??? ?????????? ??? ?????????? ??????????????  
??? ??? ?????? ?????? ??????.

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

14 ??? ?????? ?????? ??? ?????? ??? ?????????? ???, ? ?????? ?????? ?????????? ??? ??????????  
??????????, ???' ??????, ??? ?????? ??? ?????? 56, ?????????? 1, ?? ??? 43 ?,  
????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? KPN  
??? TPG ??? ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????????? ??? ??????????  
????????? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ??? ?????? ??????.

??? ??? ?????????? ??? ?????????? ??? ?????? ??? 56, ?????????? 1, ??  
????????? ??? ??????.

15 ? ??????? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???

????????? ?????????? ??? ??????? ??? ?????? ??? ?????? 56, ?????????? 1, ?? ??  
??? ?? ?????? ?????????? ??? ?????????? ?? ??? ?????? ?????, ??? ?? ??? ?????? ???  
?? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????, ????, ?? ???  
?????????, ??????????.

16 ? ?????????? ??? ??? ?????? ?????? ??? ?? ?? ??? ?????? ??? ?????????? ???  
???? ?????????? ?????????? ??? ??????????. ??? ?????? ?????????? ???, ??? ??????? ??  
????????????? ?? «?????? ?????» ?????????? ??? ?????? ?????????? ??? ?????? 56,  
????????? 1, ??, ????????, ????, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ???  
?????????, ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????????? ??? ??????  
?????. ??? ?????? ?????? ?? ?????????? ??? ?????? ?????? ?? ?????????? ??? ?????????? ???  
????????? ???, ??? ?????, ??? ?????? ?????? ?????? ?????????????? ??? ?????????? ???, ???  
????? ??? ?? ?????? ?? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????????? ???  
??? ??? ?????????? ??? ??????????, ? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??????????.

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

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

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

18 ?????? ?? ?????????? ???, ??? ?????? ??????????, ?? ?????? 56, ?????????? 1, ??  
????????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????  
????? (??., ??? ?? ?????? ???, ?????????? ??? 4?? ?????? 2002, C?483/99, ?????????? ???  
????????, ?????? 2002, ?. I-4781, ?????? 35 ?? 40, ??? ?? 13?? ????? 2003, C?98/01,  
????????? ??? ?????? ?????????? ??????????, ?????? 2003, ?. I-4641, ?????? 38 ?? 43).

19 ?????????? ??? ?????? ?? ??? ?????? ??? ?????? ?????? ??? ?????? ??? «???????  
?????????» ??? ?? ??? 56, ?????????? 1, ??, ?? ?????????? ??? ??????????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????  
????? 88/361/??? ??? ??????????, ??? 24?? ?????? 1988, ??? ?? ??? ?? ?????? ??? ??????????  
????? 67 ??? ?????? (????? ?????????? ??? ?? ?????? ??? ??????????) (?? L 178,  
. 5). ????????, ??????, ?????? ?????? ??? ?????? 56, ?????????? 1, ??, ??????  
?????, ?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??????  
????? ??? (?? ?????? «?????» ??????) ?????? ??? ?????? ?????? ??? ??????  
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????????  
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? (?? ?????? ?????? «?????» ??????) (??., ??? ?? ?????? ???,  
????? ??? 16?? ?????? 1999, C-222/97, Trummer ??? Mayer, ?????? 1999, ?. I-1661,  
????? 21, ??? ?????????? ?????? ?????? ??? ?????? ??? ??????, ?????? 36 ??? 37, ???  
??? ?????? ??? ?????? ?????? ??? ?????? 39 ??? 40).

20 ??? ?????? ??? ?????? ?????? ??????????, ?? ?????????? ?????????? ???  
????? ??? ?????????? ?? «?????????», ??? ?? ?????? ??? ?????? 56, ??????????  
1, ??, ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????, ?????? ???, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? 41, ??? ?? ???  
????????? ??? 2?? ?????? 2005, C?174/04, ?????? ??? ?????? ??? ?????? 2005, ?. I-

4933, ??????? 30 ??? 31, ??? ??? 19?? ?????????? 2006, C?265/04, Bouanich, ??????? 2006,  
?. I-923, ??????? 34 ??? 35).

22 ????????, ????, ????????, ?? ?????????? ??? ? ????????, ??? ????????, ????????, ????????,  
?????? ??? ?????????? ??? KPN ??? ??? TPG ????? ?? ?????????? ??? ????????, ????????,  
????????? ?????? ??? ?????? ??? ?????????????? ??? ??? ?????? ?????????? ??? ?? ??????????  
?? ????????, ????????, ????????, ?????????? ????????. ??? ??? ????????, ???,  
?????? ??? ?? ?????????? ??? ??? ????????, ??? ??? ????????, ??? ??? ??????, ?? ?? ??? ????????,  
?????? ?? ?????????? ??? ??? ????????, ??? ????????, ?????? ?????????? ??? ?????? ?????????? ??? ??????  
56, ????????, 1, ??.

23 ??????????, ?????????? ??? ?? ??????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?????? ??? ?? ?????? ?????? ??? ?? ?????????????? ?????? ?????? KPN  
??? ??? TPG.

24 ????????, ??????? ?????? ??? ??????? ???????, ?????????? ??? ???????????  
????????? ??? ??????? ??? KPN ??? ??? TPG, ??? ?????? ??? ?????? ??? ?????????????? ???  
??? ?????? ??????? ??? ??? ??? ??? ?????? ??? (?????? ??????, ?? ????????  
???????????, ?????????? ? ???????), ?????????? ??? ??????????? ??????? ?? ??????  
??? ?????????? ??????. ????, ??? ?????? ?????????? ? ???????, ??????, ?? ??????  
????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ???  
????????? ??? KPN ??? ??? TPG, ? ?????? ??? ?????????????? ??? ??? ?????? ???  
????????? ??? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????? ??? ?????????? ??? ?????? ??? ?????? ??? KPN ??? ??? TPG.

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

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

27 ???????, ?? ?????????? ??????? ??????? ??????? ?? ??? ????? ?????????????? ??????????? ??  
??? ?????????? ?????????????? ??? ??????? ??? KPN ??? ??? TPG. ??? ??? ?????? ???  
????????? ??? ??????? ?? ??????? ??? ??????? ???????, ??? ????? ?????????? ??  
?????? ??? ?????????????? ??? ??????? ?? ?????????????? ??? ??????? ???, ???  
????????? ??? ?? ?????????? ??? ??????? ??? ((?????????????)) ??? ??? ?????? ??? ??  
???? ??????? ??, ?? ?? ??????, ??? ?????????????? ??? ??????????? ?? ?????????? ?? ???????.

29      ??????, ??????? ?? ?????????????? ???, ?????????? ???? ?? ?????????????? ???? ???  
????????? ???? ???? ????, ?? ?????????????? ???? ?????? ?????????????? ???? ???? ????

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

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

31    ????? ?? ???????????????, ?? ??????? ??????? ??????? ??????????? ???????????????  
??? ?? ??????? ??? ?????? 56, ??????????? 1, ??.

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

32    ? ??????? ??????????? ?? ???????, ???????, ?? ??????????? ?? ???????  
????? ??????????? ?? ??????? ?? ??????? ?? ??????????? ?? ??????? 58 ?? ? ???  
?????????? ??????? ??????? ??????????? (??, ?? ?? ?? ??????? ???, ??????? ??? ??  
?????????? 2004, C-319/02, Manninen, ??????? 2004, ?. ??7477, ?????? 29), ??????? ???  
?????????? ??????? ??????? ??????? ??????????? ?? ?? ??????????? ?? ??????? ??? ??  
?????????? ??? ??????????? ??????? ??? ??????????? (??, ?? ?? ?? ??????? ???, ?? ???????  
?? ??????????? ??????? ???????????, ?? ??????? ??? 15? ??????? 2006, C?255/04,  
?????????? ??? ???????, ? ??????? ??? ??????? ??????????? ??? ???????, ?????? 43 ??  
?? ????? ??????????? ???????).).

33    ??????? ??????? ??????? ??????????? ???????????, ???????????, ???????, ??? ??????? ???  
?? ??????????? ?? ??????? ??? ??????????? ?? ??????????? ?? ??????????? ?? ???????  
?????? ???????????, ????? ?? ??? ????? ?? ??? ????? ?? ??????? ?? ??????????? ??? ?? ???????  
?????????. ???????, ???????, ?? ?? ??????? ??????? ??? ????? ?? ??????? ??? ??????? ?  
?????? ???, ???????????, ??????? ??? ????? ?? ??? ???????????, ? ?????? ??????????? ??  
???? ?? ??????????? ??????? ??????? ??? ?? ??????????? ??? ??????????? ??? ??????? ???  
???? ?? ??????????? ??? ?? ?? ??????? ??????? ??? ??????? ??? ??????????? ??? ??????? ???  
(?, ?? ?? ?? ??????? ???, ??????? ??? 4? ??????? 2002, C?503/99, ??????? ??? ???????,  
?????? 2002, ?. I-4809, ?????? 45).

34    ?? ???????, ???????, ???????, ??? ??????? ?? ??????? ?? ?? ??????? ?? ??????? ??  
??????????, ?? ??????? ?? ?? ??????? ??????? ???????, ?? ??????? ??????????? ?? ???????  
?????????? ??????????? ??????? ??????? ??????? ??????????? ??????? ??????? ?? ??????? ??  
?????? ??? KPN ??? ??? TPG, ??????? ?? ??????????? ??????? ??? ????? ?? ??? ????? ??  
???? ?? ??????? ??????????? ? ?????? 32 ??? ??????? ??????????? ??? ?? ?? ????? ??  
?????? ??? ??????????? ???????.

35    ??? ????? ?? ??????? ??????? ??? ??????? ??? KPN, ? ??????????? ??? ??? ??  
?? ??????????? ??????? ??? ??????? ??????????? ??????? ?? ??????????? ??  
??????????.

36    ??? ??? ??????? ???, ??????? ?? ??????? ??? ????? ?? ??????? ?? ??????? ??  
???? ?? ??????? C-282/04 ??? ??????? ??? ??????? ??? ??????? 56, ??????????? 1, ??.

37    ??? ????? ?? ??????? ??????? ??? ??????? ??? TPG, ? ??????????? ??? ??? ??  
?????????? ??? ?? ??????? ????? ?? ??????????? ??? ?? ??????????? ??? ??????????? ??  
?????????? ???????, ??? ??????? ??? ??????? ??? ?? ??????????? ??? ??????????? ??? ???

????????????? ??? ??????????? ??? TPG, ? ?????? ?????? ?????? ? ???????? ?????????? ?????????? ???  
???? ?????? ??? ?????? ?????? ?? ??????????? ??? ?????? ??? ?????????? ?????????? ???  
????????????? ??? ??? ??? ?????.

38    ???????, ?????? ?? ?????????? ??? ? ??????? ????? ?????????? ?????? ???????  
??????????, ??? ? ??????? ?????????? ??????????, ?????? ?? ??????? ?????????? ??????????  
???? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????????? ?????????? ???  
????????? (??., ??' ???????, ?????? ??? 20?? ?????? 2002, C?388/00 ?? C?429/00,  
Radiosistemi, ?????? 2002, ?. I-5845, ????? 44).

39    ??????, ? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ?????? ??? ??  
????????? ??? ?????????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ???  
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40    ???????, ??? ?????? ?????????? ? ?????? ?????????? ??? ?????? 38 ??? 39 ???  
????????? ???, ?????? ?? ??????????, ??????, ??? ?? ?????? ?????????? ??? ??????? ??  
????????? ?????? TPG ??? ?????????? ??? ?????? ?????? ?????????? ??? ??  
????????? ?? ?????????? ?????????? ?????????? ??????????. ???????, ? ?????? ???  
??? ?????? ?????????? ??? ?????????? ?? ?????? ?????????? ?????????? ?????????? ??? ??  
????????? ?? ?????????? ??????????, ?????? ??? ?????? ?????? ?????????? ?????????? ??????????  
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41    ?????? ??? ?????? ??? ???????????, ?????? ?? ?????? ?????? ? ?????? ?????? ???  
????????? ??? C-283/04 ??? ?????? ??? ?????? ??? 56,  
????????? 1, ??.

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42    ? ??????? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????????? ??? ???????  
????? ?? ??????? ??? ?????? ??? ?? ?????? 43 ??, ??? ?????? ??? ??????????  
??????????, ??? ??? ??? ?? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????? ??  
????? ?????????? ??? ??? ?????????? ?????? KPN ? ??? TPG, ??? ???  
????? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ???  
??? ?????? ?????? ???, ??????, ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????????  
????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ? ??? ?????? ??? ?????? ??? ?????? (??.  
??????, ??? ?? ?????? ???, ??? ?????? ??? 5?? ?????? 2002, C?208/00, Überseering,  
????? 2002, ?. I-9919, ????? 77 ??? ??? ?????????? ??????????).

43    ??? ?????????? ? ?????? ?????????? ??? ?????? 41 ??? ?????????? ???, ???  
????? ??? ?? ?????? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ??????????  
??????????, ?? ?????????? ?????? ?????? ?????? ??? ?????? ?????????? ??? ??????  
?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????????  
?????????. ???????, ?????? ?????????? ??? ?????? 56, ?????????? 1, ??,  
????????? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ??? ??????  
??? ?????? ??? ?????? ?????????? (??., ?????? ???, ?????? ??? 13?? ???  
2003, C-463/00, ?????? ??? ?????? 2003, ?. ?-4581, ????? 86).

44    ?????????? ??? ?????? ??? ?????????? ???, ?????????? ??? ?? ?????????? ???  
????? ???, ?????????? ??? ?????????? ??? ??? ?????? ??? TPG ?????????? ??????????  
????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???, ??  
????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??????????  
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?? ???  
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?????? ?????? ?????????????? ??? ?????????????? ?????? ?????? ?????????? ?????????????  
????????????????? ??? ?? ?????????? ???, ??? ?????????? ??? TPG, ?????? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????, ?????? ???  
????????? ??? ?????? ??? ?? ?????? 56, ?????????? 1, ??.

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45      ????? ?? ?????? 69, ??????????? 2, ??? ??????????? ???????????, ? ?????????? ???????  
?????????????? ???. ??????? ??????? ?????? ?????? ?????? ?????? ?????? ?????? ???. ???????  
?????????. ?????? ? ??????? ?????? ???. ?????? ???. ??????????? ???. ?????? ???. ?????? ???.  
????????? ?????? ???. ???. ???. ?????????? ???????, ???. ??????? ???. ???. ?????? ???.  
?????????? ???. ?????????? ???.

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

2) ?????????????? ?? ?????????? ??? ??? ????? ?????? ??? ?????????????? ?????.

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

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