

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

??? 9?? ?????????? 2014 (\*)

«????????????? ?????????? — ?????????????? — ?????????? ?????????? — ?????? 107,  
????????? 1, ??? — ?????? ??? ??? “????????? ??????????” — ?????? ?????????? ??????????????  
??? ?????????????? ??? ?? ?????????? — ?????????? ??????????»

???? ?????? C?522/13,

??. ?????????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????.  
?????? ?? Juzgado Contencioso-Administrativo nº 1 de Ferrol (????????) ?? ??????? ?? 12??  
????????? 2013, ? ?????? ?????????? ??? ?????????? ??? 1? ?????????? 2013, ??? ??????? ??  
?????

**Ministerio de Defensa,**

**Navantia SA**

????

**Concello de Ferrol,**

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

????????? ??? ??? J. C. Bonichot, ?????? ????????, A. Arabadjiev (????????) ??? J. L. da  
Cruz Vilaça, ????????,

????????? ??????????: M. Wathelet

?????????: A. Calot Escobar

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

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

– ? Concello de Ferrol, ?????????????? ??? ??? M. Villalba López, avoué, ??? D. Vidal  
Lorenzo, abogado,

– ? ?????????? ????????, ?????????????? ??? ??? L. Baciella Rodríguez-Miñón,

– ? ?????????? ????????, ?????????????? ??? ??? E. Gippini Fournier ??? B. Stromsky,

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

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

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1      ? ??? ?????? ?????? ?????????????? ?????????? ??? ??????? ??? ?????? 107,  
????????? 1, ???.

2      ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????, ??????, ???  
Ministerio de Defensa (????????? ?????????? ??????) ??? ??? Navantia SA (??? ???:  
Navantia) ???, ????????, ??? Concello de Ferrol (????? ??? Ferrol), ?? ?????????? ???  
????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ? ?????? ??? ??????  
????????????? ??? ?????? ?????????????? ??????????.

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3      ?? ?????? 2/2004 ??? ?????? ??? ?????????? ??? ?????????????? ?????????? ???  
????? ??? ? ?????????? ??? (Real Decreto Legislativo 2/2004 por el que se aprueba el  
texto refundido de la Ley Reguladora de las Haciendas Locales), ??? 5?? ?????? 2004 (BOE  
????. 59, ??? 9?? ?????? 2004, ?. 10284), ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
????? ?????? (??? ????: ??? 2004), ?????? ??? ?????? ?????????? ?????????? ?? «?????  
??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ??????????  
????????? ??? ?????????????? ??? ?????? ???».

4      ?? ?????? 61, ?????????? 1, ??? ?????? ??? 2004 ?????????? ?? ???:

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

- a)    ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ? ??????????  
????????? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???,
- b)    ?????????? ?????????? ???,
- c)    ?????????? ?????????? ???,
- d)    ?? ?????????? ??????????»

5      ?? ?????? 62 ??? ??? ?????, ?? ??? «?????????», ????, ??? ?????????? 1,  
????????? a, ?? ???:

«A????????? ?? ?????? ??????:

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

6      ?? ?????? 63, ?????????? 1 ??? 2, ??? ?????? ??? 2004 ?????? ?? ???:

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

[...]

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

? ?????????? ??? ?? ?????? ? ?????????? ??? ?????????????? ??? ?????? ?????????? ??????????  
????????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?? ?????? ???, ??????????  
??? ?????? ??? ?????????? ??? ?????????? ???, ?????? ?????? ??? ?????????? ??????  
????????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????????? ??????  
?????????. ?? ?? ??? ?????? ?????????? ??? ?? ?????????? . ??????, ?? ?????????? ??? ??????????  
???? ?????????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????????  
??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ?? ??? ?????? ?????? ??????  
????????? ?????? ».

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

7 ? Navantia ??? ?????? ?????????? ?? ?????????? ??? ?????? ?????? ?? ?????????? ???  
I????????? ??????. ? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ??????????  
????????? ?????? ??? ?? I????????? ?????? ??? ?????? ?????, ??? ?????? ?????????? ??????  
??? ?????? ?????, ?????? ??? ????? ??????????, ?????????? ??? ?????????? ?????????? ??????????  
??? ??? ?????? ?????, ?????? ??? ????? ?????????? ??? ?????? ?????????? ??? ?????????? ??????????.

8 ? Navantia ?????? ?????? ??? ?????? ??? Concello de Ferrol, ? ?????? ???  
????? ?????? ?? 932 348 m2. ?????? ?????? ??? ?????? ??? 6 ?????????? 2001,  
?? I????????? ?????? ??? ?????? ??? Navantia ??? ?????? ??? ?? ??? ?????? ??? ?  
????? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ???  
????????? ?????? ??? ?????? ??? ?????? ??? (??? ????: ?????????? ??? 2001).

9 ? ?????? ?????? ?????? ??? ?????????? ??? ??? ?????? ?????????? ??? ?????? ???, ?? ??? ??????  
????? ?????? ?? 590 308,77 ??? ?? 2010, ?????????? ??? ??? Concello de Ferrol  
??? ?? ?????????? ??? 2008 ?????????? ???.

10 ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? Navantia ??? ??  
????? ??? ?????????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?? ?????? 61, ?????????? 1,  
????????? d, ??? ?????? ??? 2004. ?????? ??? ?????? ??? 2001, ?? I????????? ??????  
????????? ?? ??? ??? ??? ?? ?????? ??? Navantia, ?? ?????????? ??? ?????????? ???  
????????? ?? ??? ?????????? ???.

11 ??? ?? ?????????? ??? 2008 ??? ?? ?????? ??? ?????????? ???, ?? ?????????? ???  
?? ? Navantia ?????? ??? ??? Concello de Ferrol ?? ??? ?????????? ?? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ?????? ?? ?????? ???, ?????? ??? ?????? 62, ?????????? 1, ?????? a, ??? ??????  
?? 2004, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ?? ??? ?????? ???.

12 ?? ??????? ?? 22?? ?????????? 2012, ?? Tribunal Superior de Justicia de Galicia  
(?????? ?? ?????????? ?? ???????) ??????? ?? 25 ?????????? 2011 ??????? ??  
Juzgado Contencioso/Administrativo nº 1 de Ferrol, ?? ?? ????? ?? ??????? ?? ??????? ??  
?? ?????? ?? ???????, ??????? ?? ??? ? ?????????? ?????????? ??????? ??  
?????????. ?? ?? ??????, ? ??????? ?????????? ??????? ?? ??????? ?? ??????????.

13 ?? Juzgado Contencioso-Administrativo nº 1 de Ferrol ??????? ??? ?? ??????????  
????????????? ?? ?????????????? ?????????? ??? ??? ??? ????? ?????????? ??????????  
?? ?????????? ?? ???????? ??? Navantia ??????? ?????????? ?????????? ??? ??? 107,  
????????? 1, ????, ??????? ? ?? ??? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??  
????????? ?????????? ?? ???????? ??? ??????? ??? ?? ?????????? ? ?????????? ?? ?????????? ??  
?????????.

14 ??????????, ?? ?????? ?????? ???????????, ?? ?????? ??????????? ?? ??????????  
?????????, ? Navantia ?? ????? ?????????? ???????????, ??? ?????? ??? ? ?????? ???  
????????? ??? ?????????? —?? ?????????? ??? ?????????????? ??? ?????? ??????????  
?????— ?? ?????? ??? ?????? ??? ?????? ??? ??? Concello de Ferrol. ??? ??  
????????? ??? ?????????????? ??? ?????? ??? Navantia ??? ?????? ?? ??? ???????????  
??? ??? ?? ?????????? ??? ?????????? ??? ??????, ???, ??????, ?????????? ?? ??????????  
????????? ???, ???????, ?? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ???.

15     ????? ??? ?????????? ??????, ?? Juzgado Contencioso-Administrativo nº 1 de Ferrol  
?????????? ?? ?????????? ?? ??????? ?? ?????????? ?? ?????????? ?? ??????? ?? ?????????? ?? ?????????????? ??  
???? ?????????????? ??????:

«?????? ?? ?? [????? 107 ????] ? ??????????? ??? [Navantia] ??????? ?? ?? ?? ??  
?????? ?????????; ?????? ?? ?? [????? 107 ????] ?? ??????? ??? ?? ?????? ???  
[??????] ??? ??????] ?????? ?? ?????????? ?????????? ???????? ?? ??? ?????? ???  
[...] ??? ?? ?????? ?? ?? ?????? ??? ?????? ??? ?????????? ?? ?????????? ?????????? ??  
?????? ??? ?????? ?????? ?? ?????????? ?? ?????? [...] ??? ?? ??? ?????? ?? ?? ???  
????????? ?????? ?????? ?? ?????? ??? ?????? ?????????? ?? ?????? ?? ?????? ?????? ??  
????????? ?????? ?????? ?? ?????? ??? ?????? ?????????? ?? ?????? ?? ?????? ??????;»

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

17      ????????????????, ??????????, ??? ??? ?????????????? ??? ?????????????? ?? ??????? ???  
 ?????????????? ?? ?? ?????? 108, ??????????? 1, ????, ??? ?????? ?????????? ??? ??? ??????  
 ?????????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ??????????.

18      ????? ?????? ?? ?????????????? ???????, ?????????????? ???, ??? ? ? ????? 107,  
?????????? 1, ????, ??? ???? ?????????? ??? ?????????? ? ???????, ?????????? ???  
?????????? ??? ?????????? ??? ?????? ??? ?? ?????? ? ?? ?????????? ?????? ??? ??? ??????  
? ??????? ?? ??????? ??? ?????????? ??? ??? ?????? ?????????? ?????????? ??????????  
?????????? ? ??????? ??? ?????? ?????????? ?????? ?????? ?????????? ??? ??? ?????????? ?????,

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

19      ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?? «??????»  
?????????», ??? ???? ?????? ??? ?????? 107, ?????????? 1, ??? ?????? ?????? ???  
????????? ??? ???? ?????????? ??? ?????? ??? ?????? ??? (?????? ?????? ???).  
Deutsche Post, C?399/08 P, EU:C:2010:481, ??? 38 ??? ??? ?????????? ???).

20      ??????, ?????????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??????????, ???  
??? ?????? ??? ?????? 107, ?????????? 1, ???, ?????, ?????, ?????, ?? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????, ??????, ?????? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????, ?????, ?????? ???  
????? ?????? ?????? ??? ?????? ???, ??????, ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? (?????? ?????? ???). Deutsche Post, EU:C:2010:481, ??? 39  
??? ??? ?????????? ???).

21      ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????????, ??? ???? ???  
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???????. ?????????? ???,  
???, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ???  
????????? ??? ??????, ??? ?????????? ???, ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ????  
????????? ??? ???? ??? ?????? ??? ?????? ??? ?????? (?????? ?????? ???). Deutsche  
Post, EU:C:2010:481, ??? 40 ??? ??? ?????????? ???).

22      ??????, ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?? ??????,  
????????? ???, ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ???  
????????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? (??????  
Bouygues ??? Bouygues Télécom ??? ?????? ????. ??? ?????? ??? ?????? ??? ?., C-  
399/10 P ??? C?401/10 P, EU:C:2013:175, ??? 101).

23      ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???).

24      ?? ????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????  
??????, ? Navantia ????????, ??? ???? ?????? ??? 2001, ?? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? Concello de Ferrol,  
????????? ??? ???? 60 ??? 61 ??? ?????? 2004, ??? ???? ?????? ??? ???? ???? ?  
????? ??? ???? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ???, ????????, ?  
????????? ????????, ??? ?????? ?????? ??? ?????? 62 ??? ?????? ???,  
????????? ??? ???? ???? ?????? ?????? ?????? ??? ?????? Concello de Ferrol ???,  
???? ????????, ??? ? Navantia ????????, ??? ?????? ??? ????????, ???).

25      ????????, ??? ?????????? ???, ??? ???? ???? 61, ?????????? 1, ??? ???? ???  
2004, ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ???  
?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ???  
????????? ????????. ? Concello de Ferrol ????????, ???, ??? ??? ????????

????????????? ??????? ??? ?? ???? ?????????????? ??? ?? ???? ?????? ? ???????????  
????????? ??? ?????????????? ??? ???????, ??? ????? ?????????? ? ?????????? ??? 2001,  
????????? ?????? ??? ??????? ??? ?????????????? ??? Navantia ?? ??????????? ??? ???.

26 ??????, ??? ?????????? Concello de Ferrol, ??? ?? ??? 63, ?????????? 2, ???  
?? ??? ????? ?????????? ???, ??? ?????????? ???????????, ??? ?????? ??? ??????????  
??? ?????? ???, ??? ?????? ? ?????? ?????????? ??? ??? ?????????? ??? ??? ??? ??  
????????? ??? ?????????? ?? ?????????? ?????? ??? ?????? ?????????? ???????????, ??  
????????? ?????????? ?????????? ?????? ?? ?????????? ??? ?? ??? ?????? ??? ?????? ???  
????????? ??? ??? ? ?????????? ??? 2001 ?????? ?? ?????????? ?????? ?????????? ???.

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

28 ?????? ? ?????? ?????? ?????????? ?????????? ???, ??? ?? ??? 62, ?????????? 1,  
?????? a, ??? ??? 2004, ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????  
????? ?????? ?????????? ??? Navantia, ??? ?????????? ??? ?????? ???  
????????? ?????? ?? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ???????????, ??? ??  
????????? ?? ??? ?????? ?????? ?????????? ?? ?????????? ?????????? ?????? ?? ??????  
????, ????, ????, ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????????? ??? ??  
????????? ??? ?????? ??? ?? ?????????? ??? ?????? ?????? ?????????? ?? ?????? ??? ??  
«?????», ??? ?? ?????? ??? ?????? 107, ?????????? 1, ???, ?????? ?? ???????????,  
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ???,  
????? ??? ?????????? ??? ?????? ??? ?????? ?????? (????????? Comitato «Venezia  
vuole vivere» ?.?.?. ??? ???????, C?71/09 P, C?73/09 P ?? C?76/09 P, EU:C:2011:368,  
????? 94, ???? ??? ??????? ??? EDF, C?124/10 P, EU:C:2012:318, ??? 77 ??? ???  
????????? ??? ??????????).

29 ?? ????????, ??? ??????? 24 ?? 26 ?? ??????? ??????????,  
?????? ??? ?????? 62, ?????????? 1, ??????? a, ??? 63, ?????????? 2, ??? ?????? ???  
2004, ?????? ??? ???' ?????????? ??? ?????????? ??? 2001, ? ?????? ??? ??? ?????? ??????  
????????? ???, ??? ?? ????????, ?? ?????????? ??? ?????? ?????????? ???, ??? ??  
????????? ??? ?????? ?????? ?????? ??? ?????????? ???, ??? ?????? ?????? ?????? ???, ??? ??  
????????? ??? ?????? ?????? ??? Navantia.

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

31 ??? ?????? ??? ???????, ?????? ?? ??????? ??? ? ?????? ??? ??? ?????? ??????  
????????? ??? ?????? ?????????? ??? Navantia.

32 ???????, ?????????? ??? ?? ?????? 107 ??? ?????? ?????????? ??? ?????????? «???

????? 17).

33 ????????, ??????? ???? ??? ????? ?? ??????? ????? ?????????????? ??  
????????? ?????????????? ??????? ?????????? ?????????? ?????? ?? ?????, ?????????? ???  
????????? ?????? ??????? ?????? ?????, ??????? ??? ?????????? ?? ??????????  
????????? ?????? ??????? ?? ????? ?? ????? ?????? ???????????????, ??????? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? 107, ?????????? 1, ???, ??? ?????? ?? ????? ??  
????????? ??? ?????? ??? ?????? ?????? ?????, ??? ?????????? ?????? ?????? ?????????? ??  
????? ??? ???????????????, ?? ?????? ??? ?????????? ?????? ?????? ?????? ??? ??????  
??? ?????? ?????????? (????? P, EU:C:2013:525, ??? 18).

34 ??????, ??? ????? ?????????? ??? ?????????? ?????? ?? ?????? 107,  
????????? 1, ??? ?????? ?? ?????????? ??, ??? ?????? ??? ?????????? ?????? ??????????  
?????????, ?????? ?????? ?????? ?? ?????? «????????? ?????????? ??????»  
????????? ?????? ??????» ?? ?????? ?? ?????, ?? ?????? ?????, ??? ?????? ???  
????? ??? ?????????? ?? ?? ????? ???????, ?? ?????????? ?????????? ??? ?????? ??????????  
(????? ?????????? ??? ???????????, C?88/03, EU:C:2006:511, ??? 54 ??? ???  
????????? ??????????).

35 ??? ????????, ? ?????????????? ??? ????? ?????????? ?????? ?? «?????????»  
??????????, ??????, ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????  
«?????????» ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ????. ???????,  
? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????  
????????? ?????????? ?????? ?????? ?? ?????????? ??? ?? ?????????? ?????????? ?? ?????? ?? ??  
????????? ?????? ?? «?????????» ?????????? ???????, ??? ?????? ?????? ??  
????????? ??? ?? ?? ??? ?????? ?????? ?????????? ??? ?? ?????? ??? ?????, ??????  
????????? ?????????? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ??????  
????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????, ?? ??????????  
????????? ??? ?????? ?????????? (????? Paint Graphos ?.??., C?78/08 ??? C?80/08,  
EU:C:2011:550, ??? 49).

36 ??????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?? ?????????? ??????????,  
?????, ???, ??? ?? ?????? 60 ??? 63 ??? ?????? 2004, ?????????? ?????? ???? ??  
????????? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ???????????.  
?????????, ?????? ?? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??????  
????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
??? ?????????? ??????.

37 ????????, ??? ?? ?????????? ???, ??? ?????????? ??? ?? ??? ?????? ?????? ???  
????????? ??? ?????????? ???, ? ?????? ??? ?????? ??? ?? ?????? ?????? ?????????? ??  
????????? ??? Navantia ?????????? ??? ?? ??? ?????? ?????? ?????? ?????? ???' ??????  
??? ?????????? ?????????? ??? ?????? ??? ?????? ??? 2001, ?????? ? ?????? ???  
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????????? ??? ?????? ???.

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

39 ????????, ??? ?????? ??? ?? ?????????? ??? ?? ?????????? ?, ??? ?????? ?????? ??? ??????  
????????? ??? ?????? ??????», ??? ?????? ?????? ?? ?????? 62, ?????????? 1,

? ??????? a, ??? ???? ??? 2004, ?????? ?? ?????? ?????????? ??? ?????? ???  
????????????? ?????????????? ??? Navantia, ??? ?? ?????????? ?? ?????????? ??  
????????????? ??? ??? ?????? ?????????? ??? ?????? ??? ??? ???, ??? ???  
????????? ??? ?????? ?????????? ?? ??????????.

40   ?????????, ??? ?? ?????? ??? ?????????? ?? ?????????? ?? ?????????? ???  
????????? ?? ?? Navantia, ??? ?? ?????? ??? ?????? ?? ?????????? ?? ?????????? ??  
????????? ???, ??? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ?? ??????????  
??? ??? ?????? ?? ?????? ?????????? ?? ??? ?????? ?????, ??? ??? ?? ??????????  
??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?? ??????????  
?????.

41   ????????, ??? ???? ?????? ???, ?? ?????? ?? ?????? ?????????? ?????????? ???  
? Navantia ???????, ??? ??? ?? ?????? ?? ?????????? ??? ?????????? ???, ??????????  
??????????????, ?? ??? ?????? ?? ?????? ?? ?????????? ??? ?????? ?????????? ??  
????????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ???????. ???????, ?????? ??  
??? ?? ?????????? ?????????? ?????????? ?????? a priori ??????????.

42   ????????, ??? ???? ?????????, ? ?????? ??? ?????????? ?????????? ?????????? ???  
????????? ??? ?????? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ???, ???  
????????, ?? ?????? ??? ?????? ?????????, ??? ? ?????????? ??? ?????? ?????????? ??? ??  
? ??? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ?????????? (???????)  
????????? ??? ??????????, EU:C:2006:511, ?????? 52 ??? 80 ?????? ??? ???  
????????? ??????).

43   ????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?????????? ??????????  
????? ?? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ?????? ??????????  
????????? ?? ?? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ??????????  
????? ??? ??? ?????????? ? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ???  
??????, ?????? ?? ?????? ?????? ?????? ???, ?????, ??? ?????? ??? ?????? ?????? ???  
?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ???  
????? ?? ?????? ???, ?????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???  
(??????? ?????????? ??? ?????? ??????, EU:C:2006:511, ??? 81).

44   ?? ??????????, ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????????? ?? ?????????? ???  
????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????  
?? ?????????? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??????????  
?? ?? ?????????? ??? ?? ?????????? ?????? ??? ?????? ?????? ??? ?????????? ??????????  
??????, ??? ?????? ??? ?????? ??? ?????? ???, ????? ?????? ??? ?????? ??? ??????????  
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?? ???  
????????? ??? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???  
????????? ?????? ??? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????????  
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45   ????????? ??? ?????? ??? ?????????????? ?????? ?? ?????????? ???, ?? ??????????  
????????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??????????  
????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??????????.

46   ????????, ??? ???? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??  
????? ? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????????? ???

???????????? ?????? ? ?????? ?? ?????????? ?????? ? ?????????? ?????????? ?????????? ?????????? ?????? ??  
????????? ?????? ?? ?????????? ?????????? ?????? ??? ?????? ??? ?????? 107, ?????????? 1,  
????. ??????????, ??? ?????????? ??? ?? ?????? ?? ?????? ??? ?????????? ?????????? ??????????  
??? ????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ??????  
????????? ??? ?????????? ?????? (?????? Bouygues ??? Bouygues Télécom ???  
????????? ?.?. ??? ?????????? ??? ?????? ???., EU:C:2013:175, ??? 99 ??? ???  
????????? ?????? ??????????).

47    ??? ??????, ??? ?????? ?? ?????????? ?? ?????? ?????????? ?????? ??? ?????? ??????  
??????, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ????????, ??? ??????????  
??? ?????????? ??? ?, ???, ?????????? ?????????? ?????????? ?????????? ?????????? ??? ??????  
????? (??., ??' ????, ?????? Bouygues ??? Bouygues Télécom ??? ?????? ????. ???. ???  
????????? ??? ?????? ???., EU:C:2013:175, ??? 109).

48    ???????, ??????, ??? ?????????? ??? ? ?????????? ?????????? ?????????? ??????????  
????????? ??? ?? ??????? ?????? ??? ???, ????????, ??????? ?????????? ??????.  
?????????, ? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ?????? ?? ?????? ???  
????????????? ??? Navantia, ? ????? ?????? ??? ?? ?????????? ?????????? ????????,  
????????????? ??? ????? ?????? ??? ?????? ??? ?????????? ??? Concello de Ferrol.

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

50    ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????????? ??? ??????????  
????????? ? ?????? ?????????? ??? ?????? Streekgewest (C?174/02, EU:C:2005:10)  
????? ??? Distribution Casino France ?.?. (C?266/04 ??? C?270/04, C?276/04 ??? C?321/04  
??? C?325/04, EU:C:2005:657). ??????????, ? ?????????? ??? ?????????? ?????????? ??????????  
????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ? ?????? ?????? ?????? ??????????  
????? ?????? ?????????? ??? ???????, ?? ?? ??????, ? ?????? ???????, ?????????? ??? ?????????? ???  
????????? ??? ??? ?????? ?? ??????????. ??? ?????? ??? ?????? ??? ??????, ??' ????  
????????? ??? ? ????? ?????? ?????????? ?????????? ?????? ?????? ?????????? ???  
?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??????????, ?? ??????????,  
?? ?????? ?????? ??? Navantia.

51    ??????, ??? ?????? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????  
????????? ??? ???????, ?????????? ???, ??? ??? ?????????? ??? ?????? ??? ??????  
?? ??????? ???????, ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
??? ?? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ???  
??? ?????????? ??? ?????? ??? ?????????? (?????? Libert ?.?., C?197/11 ??? C?203/11,  
EU:C:2013:288, ??? 76 ??? ?????? ?????????? ??? ??????).

52    ??????????, ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????  
????????? ?? ??? ?????? ?????????? ?? ?????? ?? ?????? ?????????? ??? ???  
????????????? ??? ?????????? ???, ?????? ?? ?????????? ??? ?? ??????????  
????? ?????????? ??? ??? ?????? (?????? Libert ?.?., EU:C:2013:288, ??? 77 ???  
???? ?????????? ??? ??????).

53    ?? ??????????, ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???  
???? ?????????? ??? ?? ?????? ??? ?????? ???, ??? ?????, ??? ?????, ??? ?????, ? Navantia

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

54 ? ?' ?????? ??? ????????, ? ?????????? ?????????? ?????????? ?????????? ?? ??????????  
?? ??????? ?????? ??? ?????? ??? ?? ?????????? ??? ?????????? ?????? ?????????? ???  
????????? ??? ?????? ?????????? ?? ??????????.

55 ????????, ?? ??????? ?????????????? ??? ?????????? ??? ?????? 19 ??? ??????????  
????????? ?????????? ?? ?????????? ?? ?????????? ?????? ??????????, ??? ?????? ??????????  
????????? ?? ?????????? ??, ??? ? ? ?????? ??? ?????????? ?????????? ??? ?????????? ???  
????? ??? ??????????, ?????????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ???  
????????? , ? ? ? ?????? ?????????? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ???  
????????? , ??? ? ? ?????? ??? ?????? 107, ?????????? 1, ???.

56 ?????????? ??? ?????? ??? ?????????????? , ??? ?????????????? ?????????? ?????? ?? ??????  
? ?????????? ??? ?? ?????? 107, ?????????? 1, ??? ? ???? ??? ?????? ??? ?????????? ??  
????????? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ?????????? ???  
????? ?????????? ?????????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????????? ??? ? ?????? ???  
????? ??? ?????????? ?? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ???  
????????? ?????? ?? ?????? ?????????? ??? ?????????? . ?????????? , ??? ?????? ??????????  
????????? ?? ?????????? ??, ??? ? ? ?????? ??? ?????????? ?????????? ??? ?????????? ???  
????????? ?????? ?????????? , ?????????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ???  
????????? , ? ? ? ?????? ?????????? ?????? ?? ?????????? ?? ?????????????? ??? ??????????  
????????? , ??? ? ? ?????? ??? ?????? 107, ?????????? 1, ???.

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

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

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

? ? ?????? 107, ?????????? 1, ??? ? ???? ??? ?????? ??? ?????????? ?? ??????  
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ? ?????????? ???  
????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????? ?????? ?????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ??????????  
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????????  
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? , ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?????? 107, ?????????? 1, ???.

(?????????)

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